

LICENSING SUB COMMITTEE C

A meeting of the Licensing Sub Committee C was held on 24 October 2008.

****PRESENT:** Councillor Taylor (Chair): Councillors Mawston and Morby.

****OFFICIALS:** C Breheny, C Cunningham and J Hodgson.

****ALSO IN ATTENDANCE:** Agenda Item 3

M Rafi – Applicant

S Catatel – Applicant's Legal Representative

Agenda Item 4

G Singh – Licence Holder (Agenda Item 4)

C Singh – Licence Holder's Father

D Singh – Licence Holder's Brother

S Upton – Principle Trading Standards Officer

Councillor Purvis – Ward Councillor

Councillor Khan – Ward Councillor

R Smith – Barrister representing Cleveland Police

PC Higgins – Cleveland Police

PC Allen – Cleveland Police

PC Walker – Cleveland Police

PC Sinclair – Cleveland Police

D Bashir – Landlord of the premises

G Mills - Resident

****DECLARATIONS OF MEMBERS' INTERESTS**

No Declarations of Interest were made at this point of the meeting.

LICENSING ACT 2003 – APPLICATION FOR PREMISES LICENCE – THE MASSALA, 2 KESTREL AVENUE, BRAMBLES FARM, MIDDLESBROUGH – REF: MBRO/PRO472

A report of the Head of Community Protection had been circulated outlining an application for a Premises Licence for The Massala, 2 Kestrel Avenue, Middlesbrough, Ref No. MBRO/PRO472, as follows:

Summary of proposed Licensable Activities

Provision of late night refreshment

Summary of proposed hours of Licensable Activities

11pm to 12.30am daily

Full details of the application and accompanying operating schedule were attached at Appendix 1 to the submitted report.

The Chair introduced those present and outlined the procedure to be followed at the meeting.

The applicant, Mr Rafi, and his Legal Representative were present at the meeting and confirmed that copies of the report and Regulation 6 Notice had been received.

Details of the Application

The Senior Licensing Officer confirmed that there were no absent parties and presented the report which was confirmed as being an accurate reflection of the facts by the applicant's legal representative.

The report outlined that, on 1 September 2008, an application was received for a Premises Licence, as stated above, and that the applicant had advertised the application, as required by the Licensing Act 2003, in the Herald & Post on 11 September 2008.

It was highlighted that the premises consisted of a hot food takeaway in a parade of shops which were in close proximity to residential premises. The applicant also held a premises licence in respect of the adjacent premises which also operated as a hot food takeaway allowing the provision of late night refreshments until 12 midnight.

The Committee was asked to note that in June 2008 the Council's Environmental Protection (Noise) Team had received a complaint from a local resident in relation to noise nuisance associated with the premises. The complaint mainly related to noise nuisance from an extractor fan and also late opening. The matter was resolved by Officers, however, since the application had been made a further complaint had been received which was currently being investigated.

Members were informed that the Environmental Protection (Noise) Team had reached an agreement with the applicant in relation to the addition of a further condition which they believed would limit disturbance. As a result they had not made any representations in relation to the application. The condition was as follows: -

- Noise and vibration shall not emanate from the premises so as to cause nuisance or disturbance to nearby occupiers of other premises.

In relation to the complaint regarding late opening, Licensing Officers had visited the premises on a number of occasions and identified trading at the premises after 11pm. An investigation was ongoing and as a result of the discussions with the owner the application for a premises licence had been submitted.

On 16 September 2008 a representation was received from L Foster, a local resident, who objected to the application on the grounds of the prevention of public nuisance.

On 23 September 2008 a representation was received from Miss M Bevington, a local resident, who objected to the application on the grounds of the prevention of public nuisance.

On 24 and 25 September 2008 representations were received from Mr P S Sandhu, a local resident, who objected to the application on the grounds of the prevention of public nuisance.

On 24 September 2008 a representation was received from J A Burnett, a local resident, who objected to the application on the grounds of the prevention of public nuisance.

Applicant in Attendance

The applicant, Mr Rafi, and his legal representative were in attendance at the meeting. The applicant's legal representative presented the case in support of the application.

Prior to presenting the case the applicant's legal representative queried with the Senior Licensing Officer the opening hours of the Brambles Farm Hotel, which was situated in close proximity to The Massala. The Senior Licensing Officer advised that he would need to confirm the details and it was agreed that he would leave the meeting to obtain the requested information. Upon his return the Committee was advised that the operating hours of the Brambles Farm Hotel were 10am to 12 midnight on a daily basis.

The applicant's legal representative informed the Committee that the applicant owned the premises adjacent to The Massala and that the premises also operated as a hot food takeaway, Mr Chippy, which benefited from a 12 midnight licence. It was advised that there was also a Chinese takeaway premises situated close by and the legal representative queried the operating hours of this premises. The Senior Licensing Officer advised that the Chinese takeaway mentioned was not known to him and therefore the operating hour would be until 11pm.

The Chair invited the applicant's legal representative to present the case in support of the application. The legal representative stated that the applicant had owned the unit for twenty-two

years and was not new to the area or to the trade. It was advised that the applicant knew his customers and had a strong local connection.

The legal representative stated that the area within which the premises was situated was a vibrant area of town and consisted of three takeaway premises, a twenty-four hour external cash machine, a bakery and two off-licences. The premises was situated on a dissection of two very major roads and was directly opposite the Brambles Farm Hotel. The takeaway premises was frequented by people leaving the Brambles Farm Hotel and it also served the whole of the Brambles Farm estate.

In respect of the representations received the legal representative advised that two were from the same person. It was stated that the person concerned lived next door to the premises and that the majority of the complaint focussed on noise generated by the extractor fan and drilling on the premises and not from the business or customers. The legal representative stated that applicant had worked with the Environmental Noise Team to address these issues and had spent two thousand pounds on fixing the extractor fan.

With regard to the allegation of late opening the legal representative advised that the applicant had been confused by a letter received from the Planning Department, a copy of which was circulated to Members. The legal representative informed the Committee that the Licensing Department had interviewed the applicant in respect of the allegation and that the matter was not relevant to the Committee's consideration of the application.

In terms of possible conditions that could be added to the licence the legal representative advised that there was no CCTV on the premises at present but that the applicant did intend to install a system. The legal representative suggested that the installation of CCTV in the premises within a two- month period could be made a condition of the licence. Reference was also made to the other steps that had been proposed by the applicant to promote the four licensing objectives. These included placing safety mats in front of the shop, displaying wet floor signs when needed, installing litter bins for waste, ensuring that employees cleaned the area after closing and notifying customers of the need to leave the premises quietly.

The legal representative made reference to the representations received and acknowledged that inevitably there would be some noise as customers left the premises. The legal representative stated that the premises was situated on a crossroads and that it was better to focus a number of premises in one place. In respect of the complaint received via email it was stated that the complaint focussed on the Council rather than on the premises. Reference was also made to the representation attached at Appendix 6 of the report and the legal representative confirmed that an accident had occurred but that the man on the bicycle had been under the influence of alcohol.

The legal representative stated that the issues raised within the written representations in respect of large volumes of traffic on the estate were not related to the application. It was stated that the premises was situated in an area containing a number of commercial units and that the area was a major stop off point.

The legal representative respectfully requested that if the Committee felt that the hour of 12.30am daily was too late then perhaps the Committee could be minded to grant a premises licence with the operating hours of 12 midnight Monday to Thursday and 12.30am Friday, Saturday and Bank Holiday Sundays. The legal representative advised that the applicant would comply with any conditions imposed on the licence.

Questions from Members

Members of the Committee were afforded the opportunity to ask questions of the applicant and the following issues were raised: -

- In response to a query regarding why the applicant had traded beyond the hour of 11pm despite being in the business for twenty-two years the applicant advised that he had been confused by paperwork received from the Planning Department. The applicant explained that

following receipt of the letter he had not realised that he also needed to contact the Licensing Office.

- A Member of the Committee made reference to the applicant's proposal to supply litter bins and tidy up outside of the premises and the Member stated that he hoped that this was already happening. The applicant confirmed that he did collect any rubbish outside of the premises and disposed of it.
- Reference was made to the issues raised in respect of traffic problems and a Member of the Panel expressed the view that the concerns raised within the written representation related to the curtilage that fronted the properties. The applicant advised that people came to the area to purchase food and alcohol but that they were not all his customers. The applicant advised that many of his customers requested delivery of their orders.
- Clarification was sought on the opening hours of the adjacent premises, Mr Chippy, and the applicant confirmed that the premises benefited from a 12 midnight licence.
- Reference was made to the ongoing investigation into trading after hours and the applicant's legal representative advised that the applicant had been interviewed under caution in relation to the matter. It was stated that the matter was still to be resolved but that the Licensing Office had suggested that the applicant submit an application.

The Senior Licensing Officer advised the Committee that following information received from the Street Wardens a visit to the premises by Licensing Officers had taken place on 12th June at 4pm. Staff at the premises had been advised that if the take-away intended to remain open beyond 11pm then a premises licence was needed. It was noted that a 12 midnight opening hour was displayed on advertisements.

The Committee was advised that subsequently the business was found to be trading beyond 11pm on 20th and 21st June 2008. The Senior Licensing Officer explained that a visit had been undertaken on 23rd June and Mr Sultan had been advised of the need for a licence. A letter had also been sent to the applicant and Mr Sultan, which advised of the need for a licence. It was noted that the letter had highlighted that if the business continued to trade after 11pm then the Council would instigate legal proceedings.

The premise was found to be trading beyond 11pm on 29th June, 4th July and 12th July 2008 and legal proceedings had since been instigated. The applicant's legal representative acknowledged the information presented and advised that the issue was separate to the hearing.

- In response to a query in respect of whether any complaints had been received in respect of the Mr Chippy take-away the Senior Licensing Officer advised that he was not aware of any complaints.
- A Member of the Committee queried who the applicant envisaged his customers to be between the hours of 11pm and 12.30am. The applicant explained that often people finished drinking late and wanted to visit their local takeaway on the way home. It was anticipated that the majority of customers would be from Brambles Farm area or local residents.
- In response to a question on how noise would be prevented the applicant stated that the doors would be closed at 12.30am and no one else would be served.

Summing Up

The Chair invited the applicant's legal representative to sum up.

The applicant's legal representative summed up by stating that the premises had a connecting door to the adjacent premises - Mr Chippy's but that the opening hours of the two premises were 'out of sync'. The legal representative stated that it was not the case that the premises would be experiencing a lot of people going in and out as many people placed their orders by phone. In addition, the applicant was prepared to agree to a cut off time, after which no more orders would be accepted, to ensure that the premises was closed by 12.30am.

It was stated that the premises was situated in a vibrant area, that times were changing and people wanted to visit takeaways after a night out, particularly on a Friday and Saturday. The applicant's legal representative concluded that the application was a worthy one and that there had not been many representations; two of the representations made had been from the same person, two had been very general and no one had attended the hearing.

It was confirmed that there were no further questions and all interested parties other than the Officers of Legal Services and the Members Office, withdrew whilst the Committee determined the application.

Subsequently all the parties returned and the Chair announced the Committee's decision.

DECISION

ORDERED that the application to Vary the Premises Licence for The Massala, 2 Kestrel Avenue, Brambles Farm, Middlesbrough, be granted in part until 12 midnight daily subject to the following conditions:

- The premises will be fitted with CCTV that will monitor the premises both internally and externally. All footage will be retained for a minimum of 31 days.
- Safety mats will be fitted in front of the shop and wet floor signs will be displayed when necessary.
- Litter bins will be installed and employees from the premises will be responsible for cleaning the area after closing.
- Customers will be asked by employees to leave the premises quietly.
- Signs notifying customers of hot surfaces will be displayed and all products will be wrapped up and bagged.

In reaching the above decision Members had considered the following: -

1. The four Licensing Objectives of the Licensing Act 2003.
2. Relevant Government Guidance, particularly in relation to:-
 - Prevention of Public Nuisance, starting at paragraph 2.32
 - The Pool of Conditions at Annex D
3. Middlesbrough Council's Licensing Policy particularly in relation to:-
 - Prevention of Public Nuisance (pages 10 to 15 in particular para 38)
4. The case presented by the applicant.
5. The written representations received.

The Committee had decided to grant the application in part for the following reasons: -

1. The Committee considered that the variation until 12 midnight daily would not be detrimental to the licensing objective of Prevention of Public Nuisance and would satisfy the needs of the residents. The Principle Licensing Officer would write to the residents and a review of the licence would be undertaken if there were any disturbances.
2. The Committee considered that the Mr Chippy premise was open until 12 midnight daily and no complaints had been received. The Committee considered that an opening hour of 12 midnight was fair for this particular premise, although the Council's Licensing Policy stated that the normal closing hour for premises situated in residential areas was 11pm.

LICENSING ACT 2003 – REVIEW OF PREMISES LICENCE – BORO WINES, 22 BOROUGH ROAD, MIDDLESBROUGH – REF: MBRO/PRO272

A report of the Head of Community Protection had been circulated outlining a review for a Premises Licence for Boro Wines, 22 Borough Road, Middlesbrough, Ref No. MBRO/PRO272, as follows:

Summary of current Licensable Activities

Sale of alcohol for consumption off the premises

Summary of proposed hours of Licensable Activities

Sale of Alcohol 8am - 11.00pm Monday to Saturday
 10am - 10.30pm Sunday

A copy of the premises licence was attached at Appendix 1 to the submitted report.

The Chair introduced those present and outlined the procedure to be followed at the meeting.

The licence holder, Mr Singh, accompanied by his brother and father was present at the meeting and confirmed that copies of the report and Regulation 6 Notice had been received.

Details of the Application

The Principle Licensing Officer confirmed that there were no absent parties and presented the report which was confirmed as being an accurate representation of the facts by the licence holder.

The report outlined that, on 29 August 2008, an application was received from Cleveland Police for a Review of the Premises Licence for Boro Wines, 22 Borough Road, Middlesbrough on the grounds of the protection of children from harm. Cleveland Police stated that in a three-month period there had been three underage sales made at the premises, two of the sales had been made by the Premises Licence Holder and Designated Premises Supervisor (DPS).

Cleveland Police served copies of the application for review on all responsible authorities on 27 August 2008 and, in order to fulfil the requirements of the Licensing Act 2003, Licensing Officers posted a notice at the premises and in Council Officers on 29 August 2008 advertising the review application. At the end of the 28 day consultation period a further three representations were received.

On 19 September 2008 a representation was received from Councillors McPartland and Khan, Ward Councillors, on behalf of St. Aidan's Residents Association on the grounds of the prevention of crime and disorder, the prevention of public nuisance and the protection of children from harm. On 29 September 2008, Linda Lewis, Chair of the St. Aidan's Residents Association, supplied further information in support of this representation.

Applicant in Attendance – Cleveland Police

PC Higgins, Allen, Walker, Sinclair, and R Smith, Barrister representing Cleveland Police, were in attendance at the meeting and presented the case in support of the application for a review of the licence in respect of Boro Wines.

The Barrister representing Cleveland Police advised that a summary of the grounds for review were set out on page 3 of Appendix 2. The request for a review had been necessary, as the licensing objective of protecting children from harm had been infringed, with sales to underage persons. These sales were not test purchases but observed sales by Police Officers.

The evidence gathered had shown that in the two cases identified the young people clearly looked under the age of eighteen and were in fact sixteen and seventeen years of age. Between

February and June 2008 there were a total of three incidents, with two incidents occurring in June 2008, whilst a major music event was hosted in the town.

Sales of alcohol to underage persons had not only been made by the Designated Premises Supervisor but by another person, his father, who had been issued with a fixed penalty notice. Police Officers had attempted to work with the licence holder between February and June 2008 yet further underage sales had been made.

In terms of location the premise was situated in an official area of anti-social behaviour, which was caused by alcohol and alcohol from the premises. The premises had a 'reputation' for serving underage persons and young people flocked to the store, as they were well aware that they would receive alcohol on request.

The Justices Licence had been converted into a premises licence under the Licensing Act 2003 and no conditions had been placed on the licence. The Barrister invited the Committee to consider not only the policy but also the guidance. The guidance recommended that the provision of records, proof of age schemes, staff training, notices and CCTV needed to be in place at a very basic level to promote the licensing objectives. Yet the premises failed to operate even at this very basic level and although CCTV was in place, upon inspection, it had not been turned on.

Reference was made to section 11.8 of the guidance, which stated that, "a failure to respond to a warning was expected to lead to a decision to request a review." Reference was also made to section 11.20, which stated that, "it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented." The Barrister stated that in summary the Police strongly supported revocation of the licence.

Cleveland Police – Sergeant Higgins

The Barrister introduced Sergeant Higgins who confirmed that his statement was a true and correct record. In response to the Barrister's questions Sergeant Higgins confirmed that the premises was situated in the Gresham area, which was regularly highlighted as a district hotspot for anti-social behaviour. The area suffered from underage drunken youths in the street and damage to properties.

In terms of the reputation of the premises Sergeant Higgins stated that the premises had always had a reputation of complaints and not only in respect of sales to underage persons. Complaints had also been received in respect of problem drinkers hanging around the premises and this had been one of the reasons for the designation of Borough Road as an alcohol free zone.

Sergeant Higgins explained to the Committee that on 29 February 2008 Operation Corkscrew had taken place. The operation focused on the seizure of alcohol from underage persons and two officers had been situated in each of the four neighbourhood policing areas. Two officers had focused on the Gresham area and the officers had observed a sale of alcohol, through the glass of the store, to two underage persons at the premises.

The officers had detained the two youths and verified their ages. The officers then spoke to the licence holder and arranged for an interview to take place. The licence holder was issued with a fixed penalty notice, which he accepted. The licence holder had been made aware of the seriousness of underage sales and had appeared receptive to the advice provided. Sergeant Higgins confirmed that the officers had made it clear what action needed to be taken to prevent further underage sales. The licence holder had been advised of the types of identification to accept - only passport and photo driving licences could be accepted as proof of age. The importance of working CCTV had been emphasised.

Sergeant Higgins confirmed that the licence holder had provided reassurances to officers that these measures would be put in place. In response to a question from the Barrister Sergeant Higgins stated that he could not recall there being Challenge 21 posters displayed at the premises at that time.

The Barrister made reference to the events of the 1 June 2008 and Sergeant Higgins explained that the music live festival was held in the town on that date and that it was an extremely busy time. Everyone involved had been focussed on reducing the problem of underage drinking at the event and each year the situation improved thanks to the concerted efforts of all concerned. Sergeant Higgins confirmed that the Police presence in the town centre on that date had been very large.

In respect of the incident that occurred at the premises Sergeant Higgins explained that PC Allen had informed him by 1pm on that date that an underage sale of alcohol had taken place at the premises. Sergeant Higgins explained that PC Allen had been provided with advice via the telephone and that he and PC Walker had attempted to attend. On the way to the premises he had observed a group of approximately 20 youths in possession of approximately 2/3 bottles of alcohol.

Sergeant Higgins advised that he and PC Walker had been called to attend another incident but that on his return he had seen a number of youths, under 18, hanging around the premises and acting suspiciously. At 6.45pm a female youth had entered the store and within a couple of minutes she had left the store carrying two bottles of alcohol. When questioned the female stated that she was seventeen years old and Sergeant Higgins stated that she clearly looked under eighteen. The female youth had purchased bottles of bellabrusco, which was a cheaper alcoholic beverage to purchase, and the footage was captured on video. Sergeant Higgins confirmed that he had checked at that point whether the CCTV was working but the CCTV had been switched off. The tape inside had displayed footage from a few months previous.

In terms of the reputation of the premises Sergeant Higgins stated that youths had been telling the Police that they visited the premises, as they believed they would be able to get served. The youths that were under eighteen years of age clearly looked under eighteen but they were still able to purchase alcohol from the premises. It was confirmed that the licence holder's father had accepted a fixed penalty notice for selling alcohol to an underage youth.

Sergeant Higgins stated that in his view the issue with the premises was that the law was being totally disregarded in respect of underage sales. The licence holder fully understood his responsibilities and had reassured officers after the first incident that it would not happen again. However, he had since totally disregarded the law and under 18's were aware that they would be served at the premises.

Sergeant Higgins stated that in his view the addition of conditions on the premises licence including the provision of CCTV and a Challenge 21 Policy would not prevent sales to underage persons. The licence holder was willing to sell to underage persons unless there was a permanent Police presence.

Cleveland Police – PC Walker

The Barrister addressed PC Walker and confirmed with him that his statement was a true and correct record. The Barrister asked PC Walker to outline his concerns in respect of the premises. PC Walker stated that in his experience the problem with the premises was the underage sale of alcohol was carried out on a regular basis.

PC Walker confirmed what he had witnessed on 1 June 2008 and stated that the female youth had positively identified the licence holder's father as the gentleman who had sold her the alcohol. When questioned the female had confirmed that at no point had she been asked her age or for any form of identification.

In terms of the action that could be taken to prevent future sales to underage persons at the premises PC Walker stated that in his view nothing further could be done other than revocation of the licence. PC Walker explained that the licence holder had been provided with advice on a number of occasions, he had also been issued with a fixed penalty notice and yet he had still failed to maintain a refusal book.

The Barrister asked PC Walker, based on his experience as a Police Officer, to provide the Committee with an indication of how anti-social behaviour and underage drinking affected local

residents. PC Walker advised the Committee that he had been a Police Officer for twenty-seven years and that anti-social behaviour and underage drinking occurred in most wards and caused misery for local residents. Once word 'got round' that a premises would sell alcohol to underage persons, children flocked there. In respect of the premises under review PC Walker expressed the view that no further action could be taken.

Cleveland Police – PC Allen

The Barrister addressed PC Allen and confirmed with him that his statement was a true and correct record. PC Allen advised the Committee that he had been a Police Officer for over six years and that he had a good grasp of the issues affecting Middlesbrough by day and night. PC Allen confirmed the events that had taken place on 1 June 2008, as outlined in his statement.

Cleveland Police – PC Sinclair

The Barrister addressed PC Sinclair and confirmed with him that his statement was a true and correct record. PC Sinclair advised the Committee that he had had been a PCSO for just short of six years and had been attending ward surgeries in Middlehaven for at least five years. PC Sinclair stated that the licence holder was well known to him, as he regularly conducted off licence visits as part of his duties. In respect of the licence holder's duty of care to children and minors PC Sinclair stated that although the licence holder was receptive at the time he never acted on the advice given to him.

In response to a question from the Barrister PC Sinclair stated that he had undertaken numerous visits to the premises in 2007. The number of visits undertaken was too numerous to count but PC Sinclair stated that he had visited the premises at least 3/4 times per week during the course of the year.

In terms of the issues raised at the beat surgeries PC Sinclair stated that the main concern in the Middlehaven area was the sale of alcohol to minors. Another concern that was regularly raised was people drinking in the streets. The impact on local residents included noise, disorder and litter, including cans and bottles being discarded in the streets.

PC Sinclair advised the Committee that he had quite a good relationship with the licence holder and staff at the premises but that the complaints received in respect of the premises were always exactly the same. The licence holder appeared unable or unwilling to take on board the advice provided to him to prevent sales of alcohol to underage persons. In response to a question from the Barrister PC Sinclair advised that he had passed on all the advice possible to the licence holder on preventing underage sales, Challenge 21 and staff training. PC Sinclair confirmed that in his view he could no more to prevent underage sales from the premises.

PC Sinclair advised the Committee that the sale of alcohol to underage persons was having a big impact on people living on St Aidens Street and Priory Street and that they were really at the 'end of their tether' and wanted action to be taken.

Questions from the Licence Holder

The licence holder was afforded the opportunity to ask questions of the Police.

The licence holder's brother queried whether there was any possibility that the youths purchasing alcohol could have purchased it from another premises within the vicinity. Sergeant Higgins stated that he was aware that there was another off licence situated 200 – 300 yards from the premises that was currently under review. Sergeant Higgins explained that on 1 June 2008 the youths were in very close proximity to the premises under review and were directly on the pavement outside of the premises. The youths were not on the opposite site of the road but in the doorway of the premises.

The licence holder's brother stated that everyone admitted that there was a problem at his brother's premises and queried whether it was possible to appoint him as Designated Premises Supervisor (DPS) at the premises. The licence holder's brother stated that he was currently the DPS at 42 Diamond Road, and the Police had received no complaints in respect of his premises.

The licence holder's brother stated that since 1 June 2008 his brother's premises had been operating the Challenge 21 scheme, CCTV had been working and a refusal book had been in place. The licence holder's brother stated that if his brother was revoked as the DPS the situation might improve. The licence holder's brother stated that he was a responsible person and that underage youths did not 'hang around' his shop.

The Barrister advised that the premises licence was under review and the removal of the current licence as the DPS was not on the table. The Council's legal representative advised the licence holder that the matter before the Committee was a review of the premises licence, the removal of the DPS was a separate matter.

Representations

S Upton, Principle Trading Standards Officer

The Principle Trading Standards Officer stated that a representation had been submitted, as there were concerns that sales of alcohol were being made to under 18's from the premises. Trading Standards had received a complaint from a consumer about under age sales from the premises in 2007 and the police licensing unit had notified the service that three sales of alcohol to under 18's had taken place within the last four months. In February 2008, the licence holder was issued with a fixed penalty ticket and in June 2008 two sales of alcohol to under 18's took place from the premise.

The Principle Trading Standards Officer stated that numerous warnings had been given to the licence holder but despite the warnings as well as the advice provided to him sales to under 18's had continued. There were also concerns that there were a lot of children hanging around the premises and that the premises had a reputation for selling alcohol to under 18's. The Principle Trading Standards Officer stated that there was a concern that if the applicant could not be relied on to comply with previous warnings and advice from the police then he could not be relied upon to comply with other conditions concerning the operation of his business.

Councillor Khan, Ward Councillor Middlehaven

Councillor Khan stated that there were a lot problems on Borough Road, as well as towards Marton Road but that once the premises had been brought under review the hours of opening had been changed and the problems were now non existent.

Councillor Purvis, Ward Councillor Middlehaven

Councillor Purvis stated that underage sales of alcohol at the premises had always been mentioned as a problem at Community Council and that the problem needed resolving. The present licence holder had failed to prevent underage sales and action needed to be taken. The problem could not go on any longer and the older generation within the community wanted changes. Councillor Purvis advised that there were problems with anti-social behaviour in the area and that he hoped the Committee would consider someone else as DPS for the premises.

Representations from the Licence Holder

The licence holder stated that the licence he had secured a loan for £30,000 for the premises and that there was no other employment opportunities available to him. He stated that he had two baby girls and was aware that he had made a big mistake. The licence holder confirmed that a refusal book and CCTV were now in place.

The licence holder's brother stated that his premises was situated at 42 Diamond Road and that he had held a licence for the premises for a period of five years. The police had received no complaints in respect of his premises but he acknowledged that his brother had made mistakes. The licence holder's brother advised that measures had been put in place since the 1 June 2008 at his brother's premises and no complaints had since been received.

The measures in place at the premises included a Challenge 21 policy, operational CCTV, a refusal book, alcohol displayed behind the counter and customers had to prove they were over 18 or they would not be served. The problems and issues raised previously had been solved. The licence holder's brother requested that the Committee be minded to remove his brother as the DPS, as opposed to revoking the licence, to lessen the sentence.

The Council's legal representative advised the Committee that the issue of the DPS could be considered in relation to the sale of alcohol. The licence holder's brother stated that if his brother was removed as the DPS then the youths would no longer flock to the premises. He could be appointed as the DPS, as the young people did not approach him because he did not sell alcohol to under 18's. The residents and the licence holder would be happy with the solution.

Questions from Members of the Committee

Members of the Committee were afforded the opportunity to ask questions of the licence holder and the following issues were raised: -

- In response to a query as to whether the licence holder was fully aware of his responsibilities in relation to the sale of alcohol he confirmed that he was.
- A Member of the Committee queried why the CCTV had not been working and the licence holder explained that there had been a fault with the system but it had since been repaired.
- In terms of the advice provided to him on numerous occasions by the police on preventing underage sales the licence holder confirmed that he had understood the advice provided.
- When asked whether he had previously challenged anyone who appeared under the age of 18 the licence holder confirmed that he had. In respect of the incident on 1 June 2008 the licence holder advised that he had not seen PC Allen when he was stood outside of the premises.
- In terms of an underage sales policy the licence holder confirmed that the Challenge 21 scheme was in place.
- A Member of the Committee queried with the licence holder's brother when he had first been made aware of the problems that his brother was experiencing in controlling underage sales. The licence holder's brother stated that he had been made aware of the problems approximately one month ago.
- In response to a query in respect of why it had taken so long for the licence holder to take action and implement the measures recommended by the police the licence holder stated that he had been trying his best. The licence holder stated that he had been doing so many hours at the premises and that he not been serving everyone.

Questions from the Barrister representing Cleveland Police

The barrister representing Cleveland Police was afforded the opportunity to ask questions of the licence holder and the following issues were raised: -

- When asked about the measures taken to prevent sales of alcohol to under 18s the licence holder acknowledged that prior to 1 June 2008 if he challenged a young person on their age and they were unable to provide photographic ID he would ask them for their date of birth. The licence holder acknowledged that making sales without ID had been an act of stupidity.
- The licence holder accepted that he held a great responsibility in controlling who was and who was not being served alcohol. The barrister stated that if the licence holder was experiencing problems he had his brother to turn to, who had held a licence for a period of five years.
- The barrister stated that the licence holder had been issued with a fixed penalty ticket in February 2008, which he accepted and was subsequently provided with advice by the police

on how to prevent underage sales. In June a further sale was made to an underage person despite the advice already provided by the Police. The barrister referred to the period between February and June 2008 and queried whether there had been any Challenge 21 posters displayed at the premises during that period. The licence holder stated that there had been posters on display and that he had been trying to sort the problems out.

- In response to a query as to whether the licence holder had contacted the police's licensing unit to obtain any advice on staff training the licence holder confirmed he had not contacted the unit. The barrister stated that the licence holder had turned to no one for advice prior to the Police submitting the review application and it had taken months for the licence holder to put in place the measures recommended by the Police.
- The licence holder had tabled a copy of a refusal book and the barrister queried when the licence holder had started keeping a refusal book. The licence holder stated that he had bought the refusal book at the end of July 2008 but that prior to that date he had used a normal writing pad.
- On examination of the refusal book the barrister stated that the book was a cause of concern given that the licence holder had needed to refuse sales of alcohol on an hourly basis from 28th July 2008. The barrister queried whether the licence holder was flooded with requests for underage sales. The licence holder stated that it was the same in many other stores but acknowledged that his premises did have a reputation.
- The barrister stated that the information contained within the refusal book highlighted that on three occasions, within a period of two days, the licence holder had refused people attempting to buy alcohol at 7.30am. The barrister queried with the licence holder whether he displayed the hours during which he was licensed to sell alcohol and whether he regularly had drunk people visiting his premises and attempting to purchase alcohol at 7.30am. The licence holder made no comment.
- The barrister made reference to the staff names detailed within the refusals book and queried with the licence holder what training had been provided to his staff in order to prevent underage sales. The licence holder stated that his staff had been advised that if customers had no ID no sale could be made.
- In response to a query as to whether the 'no ID no sale' advice was sufficient in terms of staff training the licence holder stated that he was also present at the premises to oversee the sales. The barrister stated that in the past the licence holder's presence had not been sufficient to prevent underage sales, as his best efforts had not been good enough.

Questions from S Upton, Principle Trading Standards Officer

The Principle Trading Standards Officer was afforded the opportunity to ask questions of the licence holder and the following issues were raised: -

- In response to a query the licence holder stated that he had trained his father in the need to prevent underage sales and had told his staff that only a passport or driver's licence could be accepted as proof of ID.
- The licence holder accepted that the three sales to underage persons that had taken place at his premises were a result of him accepting someone's word for their age.

Summing Up

The Chair invited all parties to sum up.

The Licence Holder

The licence holder's brother stated that people working in his premises included family members that he had trained and that a thorough approach was needed to prevent underage sales. The licence holder's brother stated that removing his brother as the DPS would stop the problem of

underage sales, as his brother was not responsible and that was why the young people were approaching his brother's premises. It was stated that the previous DPS had held the licence for two years and that during that period there had been no complaints about the premises.

The licence holder's brother stated that revoking the premises licence would have a detrimental financial impact on his brother and he requested that the Committee be minded to remove his brother as the DPS as opposed to revoking the premises licence. It was stated that the CTTV was now working, a refusal book was in place and all alcohol had been moved to behind the counter. The situation had improved.

Cleveland Police

The barrister representing Cleveland Police summed up by stating that the Police's position in relation to the application for review was that the licence should be revoked, for the following reasons: -

- Financial considerations were not at the mind of the Committee. The Committee was concerned with the licensing objectives and the impact on the community at large.
- The licence holder had failed to protect children from harm and the refusal book demonstrated that the premises still had a reputation for selling to underage persons.
- Revocation of the licence would send out a strong message that selling to under 18's would not be tolerated.
- The management had taken no action to prevent underage sales until the last minute and the premise was not a good neighbour.
- Measures that should have been in place previously were not implemented until July 2008, which was unacceptable.

Trading Standards

The Principal Trading Standards Officer that there were concerns in respect of the way in which the premises was managed and that the premises did have a reputation. It was stated that Trading Standards would not be comfortable with any other action than revocation of the licence.

Councillor Khan, Ward Councillor Middlehaven

Councillor Khan stated that with a change of management the problems would be gone and that the premise would not be another empty shop frontage. The premise could be a good neighbour and part of the community.

It was confirmed that there were no further questions and all interested parties other than the Officers of Legal Services and the Members Office, withdrew whilst the Committee determined the application.

Subsequently all the parties returned and the Chair announced the Committee's decision.

DECISION

ORDERED that the Premises Licence in respect of Boro Wines, 22 Borough Road, Middlesbrough, Ref No. MBRO/PR0272 be revoked.

In reaching the above decision Members had considered the following: -

1. The application for review of the premises licence, on its own merits.
2. The four Licensing Objectives of the Licensing Act 2003, in particular the Protection of Children from Harm and Prevention of Crime and Disorder.
3. Relevant Government Guidance, particularly in relation to:-
 - Reviews, starting at paragraph 11.1 (page 82)

4. Middlesbrough Council's Licensing Policy particularly in relation to:-
 - Prevention of Children from Harm, paragraph 99.
5. The representations made by Trading Standards and Cleveland Police in respect of the review of the Premises Licence.
6. The representation made by the Councillors Khan and Purvis on behalf of Middlehaven residents.
7. The written representation submitted by the Chair of St Aidens Resident Association.
8. The case submitted by the licence holder and his representatives.

Members had made their decision based on the following reasons: -

1. There had been at least three underage sales at the premises. Youths congregating at the shop caused unacceptable disturbance and anti-social behaviour for residents.
2. The Police on different occasions had explained to the premises holder the procedures to prevent underage sales. The advice was ignored and sales continued.
3. The Committee did not consider that having conditions on the licence would be sufficient in this case, to protect children from harm, as previous warnings and advice was ignored, nor would it prevent crime, disorder and nuisance to the local neighbourhood.

The licence holder was advised of his right to appeal to the Magistrates Court within 21 days of the date of the decision.