

LICENSING SUB-COMMITTEE C

A meeting of the Licensing Sub-Committee C was held on 27 May 2015.

PRESENT: Councillors B E Taylor (Chair): P Purvis and J A Walker

ALSO IN ATTENDANCE: Representing the Applicant:

Ms Khan - Legal Representative
Mr Abassi - Applicant - 9 Parliament Road
Mr Kareem - Applicant - 39 Princes Road
D Lester - D & B Consultants
Interpreter
Witness – Ms Pietras

Representing Cleveland Police:

J Langley - Legal Representative
PC C Hilton
PC E Price

Representing Trading Standards:

Mr R Gilbert - Legal Representative

Representing Middlesbrough Council:

Mr C Holland - Legal Advisor to the Committee

OFFICERS: B Carr, F Helyer, J Hedgley, T Hodgkinson and S Upton

DECLARATIONS OF INTERESTS

There were no Declarations of Interest made at this point of the meeting.

14/20 **APPLICATION FOR REVIEW OF PREMISES LICENCE - 39 PRINCES ROAD, REF: OL/15/6**

All parties agreed to the Review applications in respect of 9 Parliament Road and 39 Princes Road being considered first.

Reports of the Principal Licensing Officer, Improving Public Health, had been circulated outlining an application for a Review of a Premises Licence in relation to 9 Parliament Road, Middlesbrough, TS1 4JU, Ref No. OL/15/4 and 39 Princes Road, Middlesbrough, TS1 4BG, Ref No. OL/15/6 respectively.

Full details of the applications and accompanying operating schedules were attached at Appendix 1 to the submitted reports.

Summary of Licensable Activities and Hours for Licensable Activities - 9 Parliament Road, Middlesbrough

Sale of Alcohol Off Premises - 7.30am - 11pm - Daily

Summary of Licensable Activities and Hours for Licensable Activities - 39 Princes Road, Middlesbrough

Sale of Alcohol Off Premises:
8am - 10pm - Monday to Saturday
9am - 10pm - Sunday

A copy of a plan showing the location of other licensed premises within the Gresham area was circulated to Members of the Committee.

The legal representative for Trading Standards and Public Health circulated a copy of a skeleton argument and chronology of events on behalf of Middlesbrough Trading Standards and Middlesbrough Public Health.

The Chair introduced those present and outlined the procedure to be followed at the meeting. The Principal Licensing Officer presented the report in relation to the applications for a Review of the Premises Licence in respect of 9 Parliament Road, Middlesbrough, TS1 4JU, Ref No. OL/15/4 and 39 Princes Road, Middlesbrough, TS1 4BG, Ref No. OL/15/6, received on 1 April 2015, as outlined above.

Copies of the applications had been served on all the interested parties on 1 April 2015. A notice giving details of the applications was displayed close to the premises on 2 April 2015.

In respect of 9 Parliament Road, the premises consisted of a convenience store located amongst other retail premises in a busy residential area and had traded with the benefit of a Premises Licence since 18 July 2007.

In respect of 39 Princes Road, the premises consisted of a convenience store located in a busy residential area and had traded with the benefit of a Premises Licence since 17 April 2008.

The Director of Public Health had submitted representations supporting the application to review the two premises licences on 15 April 2015 on the grounds of the prevention of crime and disorder and public safety. A copy of the application in respect of the two premises was attached at Appendix 4 to the reports.

Further evidence in support of the application to review both premises licences received from Trading Standards had been circulated to the Committee and interested parties on 18 May 2015

On 29th April 2015, representations were received from Cleveland Police in respect of both premises, supporting the application for a review of the premises licence on the grounds of the prevention of crime and disorder and the prevention of public nuisance. Further evidence received from the Police in support of the application to review both premises licences was circulated to the Committee and interested parties on 15 May 2015.

The Licence Holders' legal representative confirmed that the reports were correct.

The Chair invited the legal representative for Trading Standards and Public Health to make his representations.

Legal Representative - Trading Standards and Public Health

The legal representative advised that the chronology circulated earlier at the meeting was a neutral narrative which set out to detail the sequence of events. The two basic tenets of the application to review the Premises Licences were the incidents which occurred on 2 December 2014 and 26 February 2015. Both incidents involved the handling of illicit cigarettes (81,600 cigarettes on 2 December 2014 and 2,700 and 11,780 cigarettes on 26 February 2015), and included the following breaches of statute and regulation:-

- The Tobacco Products (Manufacture, Presentation and Sale Safety) Regulations 2002;
- The Consumer Protection Act 1987; and
- The Trademarks Act 1994

The Committee was advised that there had been a multi-agency operation involving Trading Standards Scam Busters North East Enforcement Team, Environmental Health, HM Customs and Excise and Immigration Officers.

The legal representative for Trading Standards and Public Health queried the use of an Interpreter at the Licensing Sub Committee. It was clarified by the Licence Holders' legal representative that although her clients could understand English there was certain terminology that they may require to be explained.

The legal representative stated that the evidence of Sinead Upton appeared to be accepted by the licensees and he invited Members to read the statement provided by Ms Upton as he did not propose to call her as a witness. He invited Ms F Helyer to confirm the information contained within her statement.

Ms Helyer responded to questions from the legal representative for Trading Standards and Public Health and clarified the information contained within her statement.

The Licence Holders' legal representative queried whether Ms Helyer was certain that the applicant's witness (Ms Pietras) had indicated that she felt intimidated and had stated that it was easier to sell alcohol to intoxicated people as she had been assaulted in the past by a customer. The Sub Committee was advised that "intimidated" was not a word that the witness would usually use and the witness would say that she had not used these words. Ms Helyer advised that the witness had said she felt intimidated as she lived in the area and was fearful of going to court.

In response to a query whether Ms Helyer had made a record of the conversation, Ms Helyer indicated that she had not, but she remembered the conversation very well. The Licence Holders' legal representative queried whether Ms Helyer had wished to pursue the alleged sale of alcohol to intoxicated people as an offence. Ms Helyer advised that she had raised the issue with Sgt Higgins from the Police Licensing Unit and had brought it to the attention of the licensee.

The Licence Holders' legal adviser queried whether Ms Helyer had a copy of the Street Audit to enable her to look at the reference to Karpackie beer. Ms Helyer advised that she was not happy to share the Street Audit information with everyone as it was part of an ongoing investigation. The Licence Holders' legal representative advised that the assertion was that her client was selling 9% volume beer and her client should be able to see the information in order to contest the assertion.

The Sub Committee was advised that at the time of the Audit there were three premises including the two premises that were the subject of the Review, selling the high strength beer. The third premises had agreed not to sell any beer above 6.5%. The legal representative for Trading Standards and Public Health accepted that it was not possible to demonstrate that the Karpackie beer had been sold from the two premises.

The Sub Committee was advised that the main issue why the review had been brought was as a result of the sale of illicit cigarettes.

The Licence Holders' legal representative queried the part of the statement where Ms Helyer had stated that 3 males had approached the fridge and selected Karpackie beer for the price of £1.20 per can. The legal representative asked where the price of £1.20 had come from. Ms Helyer advised that it was the price that was displayed at the time of her visit to the shop. The Licence Holders' legal representative requested Ms Helyer to look at an invoice which demonstrated that the cost per can was £2.20. The Trading Standards legal representative queried whether the document should be considered as it had not been circulated prior to the Committee. The Licence Holders' legal representative stated that the document was not contentious.

A discussion ensued where the price of the various cans of beer and the strength of the beer was disputed between Ms Helyer and the Licence Holders' legal representative. The Licence Holders' legal representative stated that she had photographic evidence of the items in question. Ms Helyer advised that when she had delivered the statements to the Licence Holder, he had advised that he had taken all the superstrength beers off the shelves.

The Chair asked Ms Helyer what action the Licence Holder had taken when the 3 males were in the store. Ms Helyer stated that he had not challenged the 3 males.

The legal representative advised that his next witness, Julie Pearce was unable to attend the meeting due to a bereavement. He requested that the evidence of the Director of Public Health be accepted and that full weight be given to the evidence as it did not relate to any specific incidents.

The Council's legal advisor to the Committee requested the legal representative for Trading Standards and Public Health to clarify which evidence he wished to be agreed. The Committee was advised that the evidence of the Director of Public Health, Sinead Upton, G Teeley, Emma Price, Wayne Flowers, Christopher Hilton, PC Pickering and Jodie Allwood should be agreed. The evidence of Julie Pearce should be taken as hearsay evidence.

The Licence Holders' legal representative stated that the evidence of the Director of Public Health was not agreed. She had understood that Judith Hedgley would be attending on behalf of the Director of Public Health. The Licence Holders had sent questions to the Director of Public Health but they had not yet received a response. The legal representative for Trading Standards and Public Health stated that he did not intend to call Judith Hedgley because he had seen a copy of the evidence and there were no allegations in relation to a breach of the licensing objectives. The Licence Holders' legal representative stated that she objected to the evidence of the Director of Public Health.

The Chair invited the Police to present their case.

Mr Langley stated that he wished to point out that four minutes into this hearing he had been served three statements and ancillary documents and he had not had the opportunity to look at them. He stated that the two Police officers could not provide factual evidence of what was said and at what time but they could provide evidence of incidents that had occurred.

The Police legal representative invited PC Price to confirm how long she had been a Police Officer and how long she had been involved in a licensing role. PC Price advised she had been a Police Officer for 11 years and had been involved in licensing for four and a half years. As part of her role she visited licensed premises to ensure that they were being operated correctly and that the Premises licence holder adhered to the licensing conditions.

The legal representative referred to page 2, Paragraph 3 of PC Price's statement regarding a report from Mr Kareem on 23 May 2014, that an intoxicated male had threatened staff at the premises. PC Price confirmed that in her view this was anti-social behaviour involving alcohol.

Reference was made to an incident that occurred on 20 February 2015 involving a male and a female where a shop window had been smashed. PC Price confirmed that this incident involved anti-social behaviour, alcohol abuse and criminal damage. Reference was also made to an incident involving a fight between intoxicated people where the case was ongoing. A case involving an intoxicated male and female being abusive to staff had resulted in a male being arrested for being drunk and disorderly and in possession of drugs.

The Police had also provided evidence of a further 4 or 5 incidents; all alcohol related. There were also 6 examples of alcohol related incidents and 15 examples of alcohol related anti-social behaviour in the vicinity of the premises. PC Price indicated that in her view, the sale of super-strength beer contributed to the problems in the area.

The Licence Holders' legal representative queried whether there was a condition on the Licence Holders' licences which prohibited the sale of super-strength beers. The Committee was advised that there was no evidence that attributed any of the incidents referred to earlier to her clients premises. The legal representative stated that there were five off-licences on Parliament Road, one directly opposite Polski Sklep and two near Princes Road.

The Licence Holders' legal representative pointed out that although the premises had a licence until 11pm, they actually closed at 10pm. Sainsburys and Tesco were open until 11pm.

Reference was made to EJP 1,2 and 3 of PC Price's evidence and the Licence Holders' legal representative pointed out that the Licence Holder was entitled to call the Police for assistance if there were problems at the premises. The incident referred to in EJP4 was nothing to do with either of the two premises. Ms Helyer pointed out that all the incidents had been included in the evidence to demonstrate the problems with alcohol related anti-social behaviour in the area.

The Police legal representative invited PC Hilton to confirm how long he had been a Police Officer and how long he had been involved in a licensing role. PC Hilton advised he had been a Police Officer for 8 and a half years and had been involved in the Gresham area for six years.

The Police legal representative asked PC Hilton what kinds of incidents he usually dealt with in the area. PC Hilton advised that he spent 90% of his working day dealing with the aftermath of alcohol related anti-social behaviour incidents. The legal representative asked PC Hilton if it was correct that the vast majority of incidents could be attributed to high percentage alcohol. PC Hilton confirmed that Kestrel/Polish super-strength beer attributed to the vast majority of anti-social behaviour incidents. Cans were found scattered in the children's play area.

PC Hilton confirmed that at least 10 times over a six year period he had witnessed people leaving the Polski Sklep premises, swearing and shouting and acting in an intimidating way. The play equipment was not getting used by the children in the area because of undesirable people hanging around the play area drinking and swearing. The Police had in the past obtained Dispersal Orders in order to move these people along. The Police legal representative asked PC Hilton that in his view, if the premises were no longer able to sell alcohol would the quality of life for residents in the area be improved. PC Hilton confirmed that in his view it would be improved by 100%.

The Licence Holders' legal representative queried whether the ten incidents mentioned by PC Hilton only related to the Polski Sklep premises and PC Hilton confirmed that this was the case. The legal representative queried whether PC Hilton had witnessed any people coming out of other stores causing anti-social behaviour and PC Hilton confirmed that he had and he had reported it to the Police Licensing Team. The Licence Holders' legal representative queried whether PC Hilton had considered calling for a Review of those Premises' Licences. The Police legal representative objected at this juncture and advised that it was not within the remit of PC Hilton to call for a review of a Premises Licence, it would be the Licensing Section who would make that decision.

The Chair referred to the play area at Ayresome Gardens and the fact that children were being deprived of the facility because of alcohol related anti-social behaviour. PC Hilton advised that he had seen people drinking and causing anti-social behaviour and public order offences because of high percentage volume alcohol. He advised that the effect of the alcohol could be recognised within a few hours of a person consuming it.

The legal representative for Trading Standards and Public Health queried whether there was any way in which PC Hilton could see that the situation could be improved. PC Hilton advised that if alcohol strength was lowered it would assist or if people causing the problems could be offered alcohol related counselling services.

A Member pointed out that in his statement, PC Hilton had stated that Dispersal Orders had been used in the past and she queried whether the notices had been effective. PC Hilton advised that it would be dependent on the number of incidents in a particular area whether a Dispersal Order was sought and an Inspector would usually make a decision with regard to the exclusion zones. In the past Dispersal Orders had been granted all over the Gresham area.

The Licence Holders' legal representative queried whether in PC Hilton's view that if the Licence Holders' two licences were to be revoked, the people causing the problems would move to another area. PC Hilton agreed that this could be likely. The Licence Holders' legal representative queried whether Dispersal Orders were effective. PC Hilton advised that they

were only effective in the short term, but they were not a long term solution.

The legal representative for Trading Standards and Public Health stated that he had noted that there was no sale of perry allowed from the two premises and he queried whether PC Hilton had witnessed people coming out of the premises with high percentage volume alcohol. PC Hilton confirmed that he had witnessed the above but he had not witnessed anyone leaving the premises with perry.

The Police representative advised that the Police Officers had provided statements in respect of incidents that had occurred at 39 Princes Road and it was important that information in relation to both premises was considered. The Licence Holders' legal representative advised that she had no objections to the statements in respect of 39 Princes Road and she confirmed that she had no questions to ask.

The Council's legal advisor to the Committee stated that the Members were capable of reading the statements and he queried whether there was something that the Police legal representative wanted to clarify or amplify.

The Police legal representative requested the Committee to look at all of the incidents which he would address in closing.

The Chair invited the Licence Holders' legal representative to present her case.

The Licence Holders' legal representative asked Mr Kareem to confirm his full name and occupation and to state how long he had held a Premises Licence. Mr Kareem confirmed the above and advised that he had held a licence for 8 years. Mr Kareem was asked to provide details about the incident that occurred on 2 December 2014. Mr Kareem advised that his friend who was accompanied by his girlfriend and another friend had turned up at the premises and asked to borrow his car as they had lent somebody else their car who was assisting somebody to move and the car had not been returned. Mr Kareem had recommended that they visit Redcar and he had agreed to loan them his car.

The friend's car was returned 45 minutes later and the key was left with Mr Kareem. Mr Kareem advised that his freezer fan was making a noise so he called his friend and girlfriend because he wanted his car back. His friend had offered for Mr Kareem to use his car in the meantime.

Mr Kareem advised that when he went to use the car, he did not check what was in it. He drove to Portrack Lane and was stopped by a Policeman on a motorbike. The Policeman had advised that the tinted windows of the car at the front of the vehicle were too dark as they were over 45%. Mr Kareem had advised that the car was not his, it was his friends. The Policeman had confirmed that there was no insurance on the car he was driving. Mr Kareem confirmed that he had 3rd party insurance to drive the vehicle.

In response to a query whether he knew that the vehicle was not insured, Mr Kareem said he did not. Mr Kareem had telephoned his friend to advise that the vehicle did not have valid insurance but his friend had insisted that it did. The Policeman had subsequently spoken to Mr Kareem's friend on the phone and advised him to drive to Portrack Lane. His friend and his girlfriend attended at Portrack Lane in a taxi.

The Policeman had subsequently found boxes with cartons of cigarettes in the car. He had asked Mr Kareem what they were and Mr Kareem had confirmed that he did not know what they were. His friend had also denied knowing that the cigarettes were in the car. The Policeman had asked Trading Standards to come and look in the car and they had asked if the cigarettes had belonged to Mr Kareem and he had advised that they did not. Some time later Mr Kareem was asked by Trading Standards to attend an interview with regard to the cigarettes. Mr Kareem's friend was also invited to attend Trading Standards for an interview.

The Licence Holders' legal representative queried whether the Licence Holder had been charged with anything or if he had been arrested and Mr Kareem confirmed that he had not. The legal representative for Trading Standards and Public Health referred to the two incidents

that had occurred on 26 September and 2 December.

The Council's legal advisor to the Committee pointed out that the agreement was that the Committee would deal with both reviews simultaneously.

The Licence Holders' legal representative asked Mr Abbasi to confirm if he had ever been approached by the Police, Trading Standards or the Licensing Committee. Mr Abbasi advised that he had in the past been the Licence Holder for both Polski Sklep and 39 Princes Road and he had never had any issues with any of the responsible authorities. He confirmed that he had been trained by D & B Licensing Consultants.

The Licence Holders' legal representative queried whether Mr Abbasi recalled the incident involving the witness where it was alleged that the sale of a number of cans of Polish lager to a group of approximately 4 males who appeared to be drunk had taken place. Mr Abbasi advised that a lady had come into the shop and she smelled of alcohol and she had been asked to leave. Four men had then entered the premises and they were talking loudly and were joking around.

The legal representative asked Mr Abbasi if he considered the four males to be drunk. The Licence Holder confirmed that he did not think the men were drunk, they just spoke loudly. Mr Abbasi confirmed that he had spoken to PC Helyer who had asked why the four men had been served. Mr Abbasi had advised that the men were not drunk, they always spoke loudly. He advised that the previous lady that had entered the premises had appeared to be drunk and he had asked her to leave. The legal representative asked if Mr Abbasi was saying that the lady (the witness) who worked in his shop did not feel intimidated and he confirmed that she was not.

The legal representative asked Mr Abbasi whether there would be any requirement to sell counterfeit cigarettes and Mr Abbasi confirmed that there would not be any reason. Mr Abbasi was asked why there was an application to transfer the Premises Licence to his wife. Mr Abbasi confirmed that he wanted to transfer the licence for two reasons; their small child would be attending full time school in September and his wife wanted to assist in the shop and his mother had recently had back surgery so the applicant wanted to visit his mother in Iran.

The legal representative for Trading Standards and Public Health asked Mr Kareem if he accepted that there was a close relationship between him and Mr Abbasi. Mr Kareem confirmed that he was the DPS in Polski Sklep but he was the Premises Licence Holder for 39 Princes Road. Mr Kareem confirmed that he and Mr Abbasi were not related.

Mr Kareem was asked if he and Mr Abbasi bought separately for both shops. Mr Kareem confirmed that it was cheaper if the two premises bought items together as they were able to receive a better discount. Mr Kareem was asked how long he had been in this country. Mr Kareem confirmed that he had lived in the country for 15 years.

The legal representative for Trading Standards and Public Health stated to Mr Kareem that he had heard submissions put by his barrister that it would be uneconomical to sell alcohol very cheaply in his shop. It had been put that the Police witness had been mistaken. The barrister had stated that the reason why the alcohol was sold cheaply was because there was a discount.

Mr Kareem stated that he had said that there was an offer and that was why the alcohol was cheap. He said that 62p had been the recommended price and he had sold it for 75p. The legal representative for Trading Standards and Public Health asked Mr Kareem if he was saying that the Police witness was mistaken and that the information that she had written was incorrect. Mr Kareem confirmed that in his view the witness was mistaken. The offer was for Skol and it was cherry flavour and Mr Kareem confirmed that he disagreed with the evidence of the Police witness.

The legal representative for Trading Standards and Public Health asked Mr Kareem if he recalled an incident in the Princes Food Store that occurred on 9 October 2014 at 2.35pm. Mr Kareem confirmed that he did recall the incident and two of his employees were there at the

time. Mr Kareem confirmed that the lady was intoxicated but the four males were not. A discussion took place between Mr Kareem and the legal representative for Trading Standards and Public Health over whether the males were intoxicated - Mr Kareem stated that in his view they were not.

Mr Kareem was asked if he was present when his employee spoke to Ms Helyer. Mr Kareem was asked if he was aware of the previous assault on his employee. Mr Kareem stated that he was aware of the incident but it was nothing to do with the four males.

The legal representative for Trading Standards and Public Health stated that Mr Kareem's employee had said that she had been assaulted before so it was easier to sell to people who were intoxicated. Mr Kareem stated that his staff would never sell alcohol to people who were drunk or under-age. Mr Kareem stated that if his employee had stated that it was easier to sell alcohol to people who were intoxicated because she felt intimidated, he would probably have sacked her.

The legal representative for Trading Standards and Public Health referred to the two incidents which occurred on 2 December 2014 and 26 February 2015. Both incidents involved the handling of illicit cigarettes. He asked Mr Kareem who was in the vehicle at the time of the incident on 2 December. Mr Kareem confirmed that he was in the vehicle. The legal representative for Trading Standards and Public Health stated that in his view Mr Kareem was lying when he said he did not know that the cigarettes were in the vehicle. Mr Kareem maintained that he did not have any knowledge of the cigarettes being in the vehicle.

The legal representative for Trading Standards and Public Health referred to the incident that had occurred on 26 February 2015 involving a vehicle parked near Polski Sklep. Mr Kareem was advised that 11,780 cigarettes were found in his vehicle and he was asked if he knew that the cigarettes were in the vehicle. Mr Kareem maintained he did not know that the cigarettes were there.

The legal representative for Trading Standards and Public Health stated that there was an ongoing investigation in respect of the 81,600 cigarettes found on 2 December 2014. The vehicle in which the cigarettes were found was registered to Princes Food Stores. Mr Kareem was asked how the cigarettes that were in his store, come to be there in the first place. Mr Kareem advised the legal representative for Trading Standards and Public Health that he should ask Mr Abbasi as they both shared the same van.

The legal representative for Trading Standards and Public Health was advised by Mr Kareem that the cigarettes were found when he was alone in the shop. The legal representative stated that Mr Kareem was the Premises Licence holder for 39 Princes Road and the vehicle was registered to that premises. He asked if Mr Kareem managed Polski Sklep. Mr Kareem advised that he worked at Polski Sklep to assist Mr Abbasi. Mr Kareem stated that he did not know about the cigarettes in the van, he said that he did not have the key to the van, Mr Abbasi had the key.

The legal representative for Trading Standards and Public Health stated that he had no further questions,

The Chair queried whether the Police legal representative wanted to ask any questions. The Police representative stated that he was unable to ask any questions because of sub judice as there was an ongoing investigation into these matters.

A Member referred to the pictures of multi pack beers. She queried whether Mr Kareem split the packs up for sale. Mr Kareem stated that he did split the multi packs. The Member queried whether this was lawful. The Licence Holders' legal representative stated that her client was perfectly entitled to split the packs.

The legal representative for Trading Standards and Public Health pointed to the black sacks at the rear of the Committee room and advised Members that they contained 11k to 12k cigarettes. He stated that over 6 to 7 times that amount were found in the vehicle and he asked the Licence Holder if he was asking the Committee to accept that he did not know what

was in the bags. Mr Kareem stated the sacks were not clear sacks and the person who he borrowed the vehicle off was moving house.

The legal representative for Trading Standards and Public Health asked Mr Kareem how well he knew the person he had borrowed the vehicle off. Mr Kareem stated that he knew the person very well 15 years ago and when he borrowed the car, the bags were already in the vehicle. Mr Kareem was asked if he had spoken to the person that he borrowed the car off since the incident. Mr Kareem advised that he had called the person when he was invited to attend a voluntary interview. He had asked the person to go with him to the Trading Standards Office and the person had agreed to do that.

The Council's legal advisor to the Committee stated that the statement from PC Pickering had been agreed. PC Pickering had stated that he had carried out a search of the rear of the vehicle and on the seat. He stated that he could see a hold-all in the back of the car containing boxes of cigarettes which were clearly visible. Mr Kareem stated that he had not looked in the rear of the car. He had only been in the car for three minutes.

Mr Kareem was advised that a statement from Sinead Upton stated that Mr Abbasi was found carrying a black bag out of Polski Sklep containing 2,700 cigarettes and a further 11,000 were found in the back of the van. He was asked if he was happy to carry on with his friendship with Mr Abbasi. Mr Kareem stated that he believed Mr Abbasi's version of events 100%.

Mr Abbasi was asked to confirm his full name and occupation. He confirmed that he had held a licence for three years. Mr Abbasi was asked to give an account of the events that had occurred on 26 February. Mr Abbasi stated on the night of 25 February he was going to his friend, Mr Sultan's shop on Borough Road, for food. Mr Sultan had asked to borrow the van to attend an auction the following day.

Mr Abbasi stated that he had told Mr Sultan that he needed the van back by 11.00am the following day as he needed to go to the cash and carry. When Mr Sultan had returned the van he had left the key and a black bag. Mr Abbasi was asked if he had checked the van and he confirmed that he had not checked the vehicle. The bag that was left was a black bin liner and Mr Abbasi stated that he could not remember if the bag was closed. The bag had been placed behind the counter. Mr Abbasi was asked what he had thought when the bag had been left and he said that he didn't know. When asked if he thought the contents of the bag were cigarettes, he said that he did not.

Mr Abbasi was asked when the bag had come to his attention. Mr Abbasi said he did not know; he had a delivery. Mr Abbasi was asked if he thought the bag was part of the delivery he had received and whether he had forgotten that his friend had left the bag.

Mr Abbasi advised that he had checked the bag later and realised that the bag contained cigarettes and he did not want anything like this left in his shop. Mr Abbasi confirmed that he was very concerned about the contents of the bag and he tried to return the bag to the van. He noticed PC Pickering when the Policeman had greeted him. Mr Abbasi was asked if he was concerned at this point and he said that he was not worried as he expected Mr Sultan to return.

Mr Abbasi stated that as he went to take the bag to the van he was approached by Trading Standards who had asked what was in the bag. Mr Abbasi stated that he was scared so he had said that there was shopping in the bag. He later confirmed that it was cigarettes. He was asked that when he went to put the bag in the van if he had noticed the other boxes in the van. He denied seeing the other boxes. Mr Abbasi was asked at what point he returned to the shop. He stated that he returned to the shop after placing the bag in the van.

In response to whether there was CCTV at the shop Mr Abbasi confirmed that it had been confiscated by Trading Standards. In response to a query with regard to whether the CCTV would show Mr Sultan entering the shop, Mr Abbasi confirmed it would.

It was confirmed that there was an ongoing investigation in respect of these issues. Mr Abbasi was asked to confirm if he knew whether the cigarettes were in the van. He confirmed that he

did not as he had not checked the van.

The Chair asked Mr Abbasi if he sold perry products. Mr Abbasi confirmed that he had sold perry by mistake but he no longer sold it. In response to a query Mr Abbasi confirmed that he believed that the perry was 7.6% volume.

The Licence Holders' legal representative asked Mr Abbasi if the perry he had sold by mistake actually had the word perry on the bottle. Mr Abbasi confirmed that the bottle did not contain the word perry and it was an honest mistake.

A Member stated that she was confused about the bag that had been left at the shop and whether the bag was tied up and why Mr Abbasi had decided to move the bag. Mr Abbasi stated that he had opened the bag up and checked the contents in the shop. He confirmed that he had not retied the bag.

Mr Abbasi was asked if when he was asked by the Police Officer what was in the bag and he had replied shopping, if he had suspected that the cigarettes were illegal. Mr Abbasi confirmed that he did think the cigarettes might be illegal.

The Council's legal advisor to the Committee asked Mr Abbasi if he had asked Mr Sultan why he had left the cigarettes at the shop and in the van. Mr Abbasi stated that Mr Sultan had said he didnt know.

The Licence Holders' legal representative advised that she had tried to serve a copy of Mr Sultan's statement to the other interested parties but the legal representative for Trading Standards and Public Health had refused to accept it. The legal representative for Trading Standards and Public Health stated that the documentation should have been served before the start of the hearing.

The Council's legal advisor to the Committee stated that the Committee had just heard from a witness providing evidence in respect of Mr Sultan's role in the situation and he advised that the Licence Holders' legal representative should serve the evidence immediately.

The Licence Holders' legal representative stated that she had been criticised earlier by the other interested parties with regard to her response about their evidence being served late.

At this point the Committee had a break in proceedings.

The Committee re-commenced and the Licence Holders' legal representative advised that she would not be serving the other parties with Mr Sultan's evidence as they would not be relying on his statement. Members were invited to read the statement of Mr Lester from D & B Licensing Consultants which summarised their role and information with regard to the training the company provided.

The Licence Holders' legal representative asked Ms Pietras to confirm her name and place of work and confirm that the information contained in her statement was true. The Licence Holders' legal representative stated that Ms Pietras denied stating that she had felt intimidated and fearful for her safety.

Ms Pietras stated that she did not serve drunken customers and that she advised them that could not get served and she requested that they leave the shop. In response to a query Ms Pietras confirmed that she had lived in this country for seven years and had worked in the shop for five years.

In relation to the incident on 2 October 2014, Ms Pietras stated that she had asked a lady who appeared to be drunk to leave the shop and she had subsequently left the shop. She stated that the four men were not drunk and she did not serve them as there was another staff member on duty. She stated that she had advised Ms Helyer that it was easier for her to tell the drunken lady to leave the shop.

The legal representative for Trading Standards and Public Health advised that Ms Helyer was

an official and she was taking notes on the day of the visit and he stated that Ms Helyer was right and Ms Pietras was wrong. Ms Pietras stated that she had said it was easier to ask the woman to leave if she was drunk. She stated that the shop had a refusals book and that she knew how to enter it in the book. In response to a query with regard to whether she had completed the refusals book on that occasion, Ms Pietras stated that she believed that she had.

SUMMING UP

Licence Holders

The Licence Holders' legal representative advised that the case would cause confusion. The Committee had heard from a number of witnesses but they should bear in mind the real issue, that the two Licence Holders had held licences for a number of years.

Two of the incidents involved one of the Licence Holders. The Review was requested and Mr Kareem was approached on 2 December and he put forward an explanation. The owner of the vehicle in question had immediately attended the Police Station and was able to verify Mr Kareem's statement. Mr Kareem was invited to attend the Police Station voluntarily and he put forward the same account. Mr Kareem had provided a statement to the Police and since then he had not been approached and there had been no subsequent arrest or charges.

In respect of Mr Abbasi, it happened a short time later. He had not been asked to put forward an explanation. At this stage all the Committee needed to consider was whether being in possession of cigarettes would suggest that the licences should be revoked. The Committee was advised that there was nothing to stop the responsible authorities from bringing a review if charges were made. The two men were innocent until proved guilty.

The Licence Holders' legal representative stated that she accepted that there would be a difference in opinion. The Committee had heard evidence from Ms Helyer and Miss Pietras. Ms Upton had provided a factual account of what had happened on that day. The Licence Holders had not denied that the cigarettes were there. Mr Abassi had provided CCTV footage to prove that the black bin liner was brought into the shop by another individual.

The legal representative stated that she understood why the Police had concerns but it was unreasonable to assume all alcohol related anti-social behaviour was caused by these two shops and they actually did not say that this was the case.

The Committee was advised that they needed to think whether these two premises were causing these problems. Mr Kareem had contacted the Police when there had been disturbances and it was difficult to see how this could be held against him. Some of the incidents, particularly the ones that occurred at 6.24 and 11pm occurred when the premises were not even open.

The incidents contained within the Police evidence should not automatically be attributed to these two premises. The evidence from the Police did not directly attribute them to the premises. Neither of the Licence Holders had been charged, convicted or arrested for any offences. If the Committee were to revoke the two licences, the Licence Holders would have lost their businesses for nothing. It would be unfair. There had been a single incident in respect of the sale of perry and the Licence Holder had offered an explanation and admitted that it was a mistake and removed the product from his premises. Members were advised that given the evidence that they had heard, the Licence Holders should be given the benefit of the doubt and be allowed to retain their licences.

Police

The Police legal representative advised that he had been fortunate to be able to read all of the documentation including the three late statements, the evidence of Mr Lester and the ancillary documentation.

The Committee had heard from PC Price and PC Hilton. PC Price had visited the premises

and PC Hilton has been the local beat officer for six years. The officers statements were accepted. PC Hilton had observed perpetrators of crime purchase high strength beer from the premises and go on to commit anti-social behaviour. The Police had needed to apply for Dispersal Orders. He invited the Committee to look at the facts observed by the Police Officer in his duties. Ms Helyer had also observed high strength alcohol for sale at the premises.

The legal representative referred to the incidents including where an unconscious female needed medical attention. The stabbing incident and the incident where someone had set themselves on fire. This was as a result of alcohol abuse.

DB Lester Consultants had confirmed that they provided training to Premises Licence holders and the effects that alcohol could have on a person. It could lead to anti-social behaviour. The training included what the licensing objectives were, the moral and legal obligations and what the safe limits of alcohol were. Selling high strength alcohol undermined the licensing objectives. The Police were having to resort to Dispersal Orders to move people on in order to prevent public nuisance.

In terms of the prevention of harm to children, people drinking high strength beer were preventing children from playing in children's play areas.

Trading Standards and Public Health

The legal representative for Trading Standards and Public Health referred to the copy of the skeleton argument and chronology of events on behalf of Middlesbrough Trading Standards and Middlesbrough Public Health which had been circulated earlier.

The Committee was advised that it had been accepted by the two Licence Holders that they worked together on two premises and that they shared a van. The close connection between the two Licence Holders was important and it was important that the two applications were heard together.

Neither of the Licence Holders had been convicted or arrested. Mr Abbasi had held the Premises Licence for Princes Food Store until 2014. There had been limited questioning allowed in respect of these cases because of ongoing investigations. The Committee was advised that whilst the two Licence Holders had not been convicted of anything the burden of proof in respect of licensing cases was different.

There had been a large number of statements submitted and the Committee was invited to read them all. The Committee was asked to put weight on those who carried out the licensing role as part of their jobs. There was an issue of credibility in respect of the evidence that the Committee had heard. In the view of the legal representative for Trading Standards and Public Health finding 81,000 cigarettes in a vehicle belonging to the applicants was unfortunate, the 11,000 cigarettes that were found could be classed as careless but the bag containing the cigarettes that was in the store was culpable. The pattern was that the cigarettes were found either at the properties or in the vehicles of the Licence Holders.

The Licence Holders had claimed that it was their friend who was responsible. The CCTV would show that the bag was on the premises and one of the Licence Holders had initially stated that there was shopping in the bag before confirming that the contents were cigarettes. The legal representative outlined the relevant legislation that was applicable to the case. He referred to the work involved as part of the multi-disciplinary operation on 26 February 2015. He stated that an interim measure in respect of the Premises Licences was not acceptable and that the licences should be revoked.

Many of the facts of the case had not been disputed by the Licence Holders. The notes taken by Ms Helyer who was an authoritative witness stated that the shop assistant who had been assaulted at the premises previously, had said that it was easier to serve someone than refuse them.

The Committee was advised that the legal representative was not saying that all the incidents contained in the evidence were as a result of these two premises, however the sale of the

perry along with the issue of the cigarettes, even if they were mistakes, they were culpable ones.

There was no evidence to say that children had been directly harmed by the sale of the cigarettes. Only three premises in the area sold high strength beers. It was not sufficient to impose conditions on the licences. The fact that the perry had been sold at the premises and the fact that drunken people had been served at the premises meant that the Licence Holders were not fit and proper people to hold a licence.

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

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

In reaching the decision Members considered the following:-

1. The Licensing Act 2003 and amended Government Guidance issued under Section 182 of the Act.
2. Middlesbrough Council's Licensing Policy.
3. The case presented by the Applicants.
4. The representations received from the Police.
5. The representations received by Trading Standards and Public Health

DECISION

The Committee decided that the Premises Licences in respect of 9 Parliament Road, Middlesbrough TS1 4JU (Ref. No: OL/15/4 and 39 Princes Road, Middlesbrough TS1 4BG (Ref. No: OL/15/6 be revoked for the following reasons:

1. These were two applications for review, both brought by Trading Standards on 1 April 2015.
2. One related to Princess Food Store, 39 Princes Road, Middlesbrough, where the licence holder and designated premises supervisor is Harde Mharden Kareem. The licence permits the sale of alcohol for consumption off the premises between 8 am to 10 pm Monday to Saturday, and 9 am to 10 pm Sunday.
3. The other related to Polski Sklep, 9 Parliament Road, Middlesbrough. Here the licence holder and designated premises supervisor is Mr Saman Abbasi. His licence permits the sale of alcohol for consumption off the premises between 7.30 am to 11 pm 7 days a week.
4. The premises are linked in that there is a close business connection between Mr Kareem and Mr Abbasi. The two shops purchase stock together to achieve economies of scale. Mr Kareem runs his own shop but he is also an employee of Mr Abbasi. Mr Abbasi was an employee of Mr Kareem until he bought his own shop. There was evidence that Mr Abbasi uses Mr Kareem's van. There was evidence that Mr Kareem was present during inspections of Polski Sklep. Mr Kareem and Mr Abbasi had the same legal representation at the hearing before the committee. The premises are close to each other and are both in the former Gresham ward of the town.
5. As both review applications were founded on similar facts in relation to closely connected premises, it was agreed, with the consent of the advocates, that the applications would be heard together. In addition to Trading Standards bringing the review, representations were also received from Cleveland Police and the Director of Public Health.
6. Having heard all the evidence in the case the Committee retired to consider its decision.

7. The starting point for the Committee was the Licensing Act 2003, s.52(3) of which requires the Committee, having regard to the application and any relevant representations, to take such of the specified steps (if any) as it considers appropriate for the promotion of the licensing objectives.

8. The Committee then had regard to the guidance issued by the Secretary of State pursuant to s.182 of the Licensing Act 2003, and in particular section 11 of that guidance which deals with reviews.

9. The Committee also had regard to Middlesbrough Council's licensing policy. It listened carefully to the case presented by Trading Standards, the Director of Public Health and the Police, as well as to the representations made by the premises licence holders and their representatives.

10. The review applications were considered on their own merits.

11. The Committee decided, having regard to the application and the representations, that the appropriate step to promote the licensing objectives was to revoke the premises licences in respect of both Princess Food Store and Polski Slep.

12. Firstly, the Committee took extremely seriously the discovery on 2 occasions of very large quantities of smuggled and sometimes counterfeit cigarettes in vehicles in the custody of first Mr Kareem and second, Mr Abbasi.

13. On the first occasion, 2 December 2014, over 81,000 cigarettes were found in a vehicle being driven by Mr Kareem. None of the cigarettes contained the required pictorial or written safety warnings. Every indication is that the cigarettes were illicit.

14. Investigations are ongoing in relation to this matter, but the committee does not consider that this prevents it from considering it now, and it has in mind paragraph 11.25 of the s.182 Guidance which provides:

Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. There is, therefore, no reason why representations giving rise to a review of a premises licence need be delayed pending the outcome of any criminal proceedings. Some reviews will arise after the conviction in the criminal courts of certain individuals, but not all. In any case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives. Where a review follows a conviction, it would also not be for the licensing authority to attempt to go beyond any finding by the courts, which should be treated as a matter of undisputed evidence before them.

15. Mr Kareem gave his explanation about being found in possession of so many cigarettes for the first time at the hearing. He could have served an earlier statement, but he did not. He said that the vehicle was not his, it was a friend's, and he was driving it because some arrangement had been made whereby his friend would drive his van. He said he did not know, until he was stopped by police, that the vehicle contained 81,600 cigarettes. However, the committee notes that the statement of PC Andrew Pickering (which was agreed) states that "in the middle of the rear vehicle was a large holdall. I could see into the holdall without having to open it. I could see that it was full of sealed cigarettes".

16. The second occasion on which cigarettes were found was on the very day, 26 February 2015, that a multi agency operation being conducted at both premises to investigate the possibility of illicit tobacco sales. At best, the timing would be a very unfortunate coincidence. However, the Committee does not consider that it is a coincidence that further cigarettes were found on a further occasion.

17. Mr Abbasi was witnessed leaving Polski Sklep with a shopping basket containing a black bag which was placed in a vehicle parked nearby (which turned out to be a vehicle in his custody but registered to Mr Kareem). He was asked by a uniformed police officer what was in the basket. His answer was "Just shopping". As he confirmed at the hearing, this answer was

not true, and Mr Abbasi (as he accepted in the hearing) knew it was not true. The basket contained 2,700 cigarettes. A further 11,780 cigarettes were in the vehicle. So a total of 14,480 in total. The cigarettes were brought to the hearing and covered the surface of a large table in several large sacks. None of them displayed the statutory health warnings required to be displayed on packets of cigarettes sold in this country. Some of them (the brand "Mayfair") are confirmed to be counterfeit, which as well as being in breach of the Trademarks Act 1994, is more worryingly an invitation to persons who purchase and smoke those cigarettes to consume a produce where there is no guarantees of what it might contain.

18. Again investigations are ongoing in relation to this matter. Again, the Committee has had regard to the Guidance, and considers that it is able to consider the matter now.

19. Mr Abbasi's explanation for having these cigarettes in his custody was given, for the first time, at the hearing. He could have served an earlier statement, but he did not. Essentially he asserted that he lent his (or more accurately Mr Kareem's) van to a third party, a friend of his called Mohammed Sultan. Mr Sultan said that he wanted to use the van to attend an auction. Mr Abbasi said this would be fine but it had to be back by a certain time so he could go to a cash and carry. The van was returned slightly late and Mr Sultan put a black bin bag behind the shop counter. Mr Abbasi subsequently checked the bag, realised it contained cigarettes, which he said were nothing to do with him, and decided to remove it from the premises and place it in the van. Coincidentally, he says, this was at the same time as the multi-agency operation.

20. The Committee did not hear from Mr Sultan. Whilst there was a suggestion during the course of the hearing that the Committee may be provided with a statement from him, in the event, no statement was lodged. The Committee failed to understand why, if Mr Abbasi's explanation was to be believed, Mr Sultan would have left some of the cigarettes in a black bin liner in the shop.

21. The explanations given for each incident, taken separately, were of themselves unconvincing. Taken together, they were unbelievable. Where two premises connected in the way these two premises are connected are found on two separate occasions with nearly 100,000 illicit cigarettes, and the second occasion just happens to be the day a multi-agency operation is conducted, then a complete and convincing explanation is called for. This is particularly so when a licence-holder lies to a uniformed police officer. The explanations were neither complete, nor convincing. They stretched credulity well beyond breaking point.

22. The Committee had regard to paragraph 11.27 of the s.182 Guidance, which provides that there is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. That includes the use of licensed premises "for the sale or storage of smuggled tobacco and alcohol".

23. The Committee considers that the storage of tobacco at Polski Sklep and in vehicles in the custody of the premises licence holders / designated premises supervisors of both Polski Sklep and Princess Food Store evidences (at the very least) the storage and transportation of smuggled (and sometimes counterfeit) tobacco in connection with the two licensed premises.

24. Paragraph 11.28 of the Guidance goes on to provide:

It is envisaged that licensing authorities, the police and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence - even in the first instance - should be seriously considered.

25. In the Committee's view, the use of Polski Sklep and vehicles associated with it and Princess Food Stores for the storage and transportation of smuggled tobacco is sufficient of itself to revoke the licences. The Committee has had regard to paragraph 11.23 of the s.182 Guidance and appreciates that revocation of the licences will have a detrimental financial impact on the premise licence holders, but it considers that no less than revocation is

appropriate and proportionate to the promotion of the licensing objectives. Licensed premises should not be used to further crime and those who use licensed premises for that purpose can have no guarantee that their licences will remain in place.

26. The Police representation did draw further matters to the Committee's attention.

27. The Committee preferred the evidence of Fiona Helyer, Public Health Officer, where it differs with the evidence called by the licence holders. She recounted how on 2 October 2014 she had witnessed in Polski Sklep (where Mr Kareem was then present, saying his "brother" was the licence holder and designated premises supervisor) the sale a single can of high strength alcohol to one of a group of 3 male customers who appeared to be under the influence of alcohol. That individual opened the can and started drinking from it as he was leaving the shop. She further recounted how a week later, on 9 October 2014 she witnessed in Princess Food Store (where Mr Kareem was again present) the sale of a number of cans of Polish lager to a group of approximately 4 males who appeared to be drunk. The males were very loud and aggressive in their demeanour, their speech was slurred, and there was a very strong smell of intoxicating liquor. They divided the cans amongst them before they left the shop. The Committee accepts that Ms. Helyer was told by the female sales assistant, Ms. Jagoda Waliszek-Pietras, that it was easier to sell alcohol rather than refuse a sale as she felt intimidated by the group in question and feared for her safety.

28. Sale of alcohol to any person who is drunk is an offence under s.141 of the Licensing Act 2003 and plainly does not promote the licensing objectives.

29. The Committee also came to the view that there is compelling evidence of problems in the area of the two premises with persons drinking high strength beers in the street and public areas - in particular, in Ayresome Gardens, where there are play and sports facilities laid out for children to enjoy. The distressing, antisocial effect of this is detailed in the witness statements, which the Committee accepts. There have also been serious crimes committed in the vicinity of the premises by persons under the influence of alcohol. The Police have had occasion to deal with the street-drinking situation by the issuing of dispersal notices. Whilst the Committee accepts that there are other "off-licences" in the area, the Committee is concerned by Ms. Helyer's evidence (which it accepts) of the sale in Polski Slep of high strength beers in single cans at low prices. An individual can of super strength lager was sold for 75p - 17p a unit. The Committee does not consider that this is responsible retailing. An attempt to investigate the prices of alcohol sold at Princess Food Store was thwarted by the failure of that store to display prices. The Committee further accepted the evidence of PC Hilton as to the use antisocial drinkers make of Polski Slep and Princess Food Store.

30. The Committee was also concerned that on 28 January 2015, Mr Abbasi had been discovered with perry products on sale at Polski Sklep despite there being a condition prohibiting this. This condition is designed to restrict the availability of cheap, high strength alcohol and Mr Abbasi had not on this occasion adhered to. His explanation was that the stocking of such products was a mistake on his part; however, the Committee expects licensing conditions to be adhered to.

31. In the Committee's view, these further matters confirm the Committee's view arising out of the incidents with the cigarettes that the appropriate step to take in relation to the review of both these licences is revocation.

32. There were applications in relation to Princess Food Store for a transfer and a variation to change the designated premises supervisor. In the event, the Committee having indicated its decision to revoke the licences and having given an oral summary of its reasons, those applications were withdrawn. In the circumstances, the Committee makes no ruling on them.

The applicants were advised that would be notified in writing, of the Committee's decision and advised of their right of appeal to the Magistrates Court within 21 days.

14/21

APPLICATION TO TRANSFER PREMISES LICENCE - 39 PRINCES ROAD; REF: OL/15/7

The applicant's Legal Representative requested that the application to Transfer the Premises

Licence in respect of 39 Princes Road be withdrawn.

The Sub Committee noted that the above application had been withdrawn.

14/22 **APPLICATION TO VARY PREMISES LICENCE BY CHANGE OF DESIGNATED
PREMISES SUPERVISOR - REF: OL/15/5**

The applicant's Legal Representative requested that the application to Vary the Premises Licence by Change of Designated Premises Supervisor in respect of 39 Princes Road be withdrawn.

The Sub Committee noted that the above application had been withdrawn.

14/23 **APPLICATION TO REVIEW PREMISES LICENCE - 9 PARLIAMENT ROAD - REF: OL/15/4**

See Agenda Item 3