

LICENSING SUB-COMMITTEE C

A meeting of the Licensing Sub-Committee C was held on 23 December 2015.

PRESENT: Councillors B E Taylor (Chair); R Arundale and T Lawton

ALSO IN ATTENDANCE: Designated Premises Supervisor - 199 Borough Road
Councillor Lewis - Ward Councillor
Representing Cleveland Police: PC Bryan and Sgt Higgins

OFFICERS: B Carr, F Helyer, J Hodgson, A Symon and S Upton

APOLOGIES FOR ABSENCE Councillor Z Uddin.

DECLARATIONS OF INTERESTS

There were no Declarations of Interest made by Members at this point.

15/5 **APPLICATION FOR REVIEW OF PREMISES LICENCE - 199 BOROUGH ROAD, MIDDLESBROUGH TS4 2BN: REF.NO. OL/15/16**

A report of the Assistant Director of Improving Public Health had been circulated which outlined an Application to Review the Premises Licence in relation to 199 Borough Road, Middlesbrough, TS4 2BN. Ref No. OL/15/16.

Summary of Current Licensable Activities:

Sale of Alcohol - 8am to 11pm - Daily

Full details of the application for review of the Premises Licence were attached at Appendix 1 and the current Premises Licence and accompanying operating schedule were attached at Appendix 2.

The Chair introduced those present and outlined the procedure to be followed at the meeting. The Designated Premises Supervisor confirmed that he had received a copy of the report.

The Senior Licensing Officer presented the report in relation to an Application to Review the Premises Licence in relation to 199 Borough Road, Middlesbrough, TS4 2BN, as outlined above. The Police confirmed that copies of the application had been submitted to all other responsible authorities and the Premises Licence holder on 28 October 2015. A notice giving details of the application was displayed close to the premises by a Licensing Officer on 29 October 2015.

Representations

A representation was received from the Councillors for Central Ward on 18 November 2015. The representation supported the application to review the Premises Licence on the grounds of the prevention of crime and disorder and the protection of children from harm. A copy of the representation was attached at Appendix 4 to the report together with an email setting out the concerns of a local community centre manager in relation to issues in the area.

On 25 November 2015, a representation was received from Middlesbrough Trading Standards which supported the application to review the Premises Licence on the grounds of the protection of children from harm and the prevention of crime and disorder. A copy of the representation was attached at Appendix 5 to the report.

On 25 November 2015 a representation was received from the Director of Public Health

(Middlesbrough Council) supporting the application for a review of the Premises Licence on the grounds of the prevention of crime and disorder, public safety and the protection of children from harm. A copy of the representation was attached at Appendix 6 to the report.

The Chair invited the Police to present their case for the review of the Premises Licence.

Sgt Higgins advised that the main concerns regarding the operation of the Premises Licence were as follows:-

- the lack of control of management on a day to day basis at the premises;
- the breaches in the licensing conditions;
- the failed Under 18 sale of alcohol test;
- anti social behaviour in the vicinity of the premises.

PC Bryan and PC Taylor had submitted statements in support of the review together with one of the Council's Licensing Officers.

Sgt Higgins advised that the current Premises Licence Holder had held the Premises Licence since March 2014 and her current address was in Essex. On 21 January 2015, the premises had failed a Test Purchase because a member of staff had served two fifteen year old Test Purchase volunteers with four cans of Stella Artois. The person who had made the sale had advised PC Bryan and PC Craig that his daughter owned the premises and that he worked there on a regular basis. When PC Bryan questioned him about the sale, he stated that he needed an interpreter. The person had given PC Bryan a contact telephone number but when she later tried to use the contact telephone number, it was not recognised.

On 24th January 2015, PC Bryan attended the store to request a copy of the CCTV footage with regard to the underage sale that had occurred at the premises. The person on duty at the store advised that he was unable to operate the CCTV system as it was a new system that had been installed the day before and the old hard drive had been destroyed. He explained that he was looking after the premises whilst the people who usually ran the shop were away in London. The failure to produce the CCTV footage was a breach of the licensing conditions.

PC Bryan was still unable to trace the person who carried out the under-age sale as the phone number and the address given by the person were untraceable.

PC Taylor - the local beat officer had produced a statement which stated that he had concerns regarding alcohol fuelled anti-social behaviour incidents which had occurred in the vicinity of the premises. PC Bryan had provided a copy of the incident logs in respect of the above incidents.

PC Higgins referred to a number of the incidents involving youths drinking alcohol, or under the influence of alcohol throwing stones.

Sgt Higgins referred to Page 31 of the Committee papers and advised that when a routine inspection was carried out by the Police on 18 March 2015, it appeared that the DPS had changed as the person who had identified himself as the DPS at the time of the visit was different to the person named in the Council records. This new DPS was advised that an application was required to Vary the Designated Premises Supervisor and transfer the licence. The "new" DPS had later written to the Council on 23 July 2015 to confirm that he was no longer acting in that role.

Sgt Higgins advised that the Council's Licensing team had received a letter from the original DPS on 2 February 2015 to advise that all the previous breaches in licensing conditions had now been rectified. The Police had carried out an inspection on 1 July 2015 and it was confirmed that the premises were now complying with all the conditions that had been listed on the inspection report.

Sgt Higgins advised that the current DPS had taken over the premises on 24 August 2015.

PC Bryan visited the premises on 20 October 2015 in order to carry out a Licensing

inspection. During the visit PC Bryan had identified several breaches of the licensing conditions which included:

- No training records were present for staff members;
- Unable to access CCTV system to demonstrate 31 days of recording;
- Two brands of "perry" products were on sale at the premises;
- Refusals book had not had any entries since February 2014;
- The incident book had not had any entries since May 2014 however there had been incidents reported to the police since that time.

From 14 June 2014 - 13 June 2015, 22 incidents of anti-social behaviour had taken place and general nuisance. There had been 13 alcohol related incidents in the vicinity of the store. The majority of incidents had occurred at the North Ormesby flyover and the adjacent residential area which was a short walk from the premises.

PC Bryan had stated that the staff at the premises had been evasive and obstructive in relation to the CCTV footage of the underage sale. It was unclear who was responsible for the running of the shop as staff advised that they were "minding the premises" for the owner.

It was the view of Cleveland Police that due to the underage sale at the premises and also the evidence of ASB and alcohol related incidents in the area, that the review of the premises licence was necessary as the protection of children from harm and the prevention of crime and disorder objectives had been undermined.

The DPS produced the premises refusals book and advised that he was unable to find the previous book. There were no entries in the book for the period May 2015 - October 2015. The next date in the book where a refusal had been recorded was following the visit of PC Bryan in October 2015.

The DPS advised that he now knew how to operate the premises CCTV system and that there were no longer any problems with the premises. Sgt Higgins advised that there were still problems with anti social behaviour in the area.

The Chair asked what had happened to the old hard drive for the CCTV system. PC Bryan advised that the Police were not aware of what had happened with the old hard drive.

The DPS produced a copy of the staff training record.

The Chair queried whether the Police had ever spoken to the Premises Licence Holder and the Police confirmed that they had been unable to speak to the PLH as she lived in Essex.

The Chair queried whether the Police could pinpoint which premises the youths were purchasing the alcohol from. The Committee was advised that the Police had evidence to say that the alcohol was being sold from the premises but it pre-dated the period that the DPS had been in charge of the premises. The Police incident logs produced for the Committee detailed alcohol related incidents in the area, but it could not be attributed directly to the premises.

The Chair queried whether the Police carried out test purchases in respect of all the licensed premises. The Police advised that they usually carried out test purchases at problem premises.

A member queried whether the Police had details of any more recent incidents. The Committee was advised that the date of the Review was the cut off date for recording of incidents.

Councillor Lewis advised that she had been made aware of anti-social behaviour in the area from the Breckon Hill Community Enterprise Manager and the Saltwells Road play area had been vandalised. The Councillor advised that the Breckon Hill area and she advised that the St John's Gate area also suffered from anti-social behaviour. The Committee was advised that young children should be protected and under-age sales should be prevented. An email had been included within the report from the Breckon Hill Community Enterprise Manager detailing

issues of anti-social behaviour in the area and the effect it was having on residents.

A Member queried whether the Councillor had received any complaints specifically about the premises. The Councillor advised that she could not say that the incidents were directly linked to the premises. The Committee was advised that the premises had held a licence for four years and residents had been prepared to give the shop a chance but over the period that the premises had held a licence, anti-social behaviour in the area had increased.

The Principal Trading Standards Officer advised that Trading Standards supported the Police's application to review the licence in particular because of concerns with regard to under-age sales of alcohol, the quality of the CCTV system and the way in which it was operated, the fact that the premises had failed to request ID from people purchasing alcohol and the way in which the business operated in general.

The premises had failed to retain training records, apart from those provided at the meeting and the refusals book had not been completed since 2014. There had been no access to the CCTV system, the premises had been selling perry which was attractive to young people and had failed to comply with the licensing objectives.

Trading Standards were also concerned about the increase in anti-social behaviour and alcohol related incidents which appeared to be indicative of children drinking alcohol. Trading Standards were not convinced that there were sufficient controls in place to prevent under-age drinking.

The Principal Trading Standards Officer advised that there were also concerns with regard to who was actually running the business, it appeared that there was a lack of control, incorrect information had been given to the police regarding who was responsible for operating the business and the department had little faith that the premises were complying with the crime and disorder and the protection of children from harm licensing objectives and as a consequence, they requested that the premises licence be revoked.

The DPS advised that the premises had been operating in the correct manner for over four months. The Principal Trading Standards Officer advised that the current DPS had been in charge since August 2015 but the books provided in respect of refusals of underage sales did not have any entries in it for a number of months, which was highly unusual for a premises. The responsible authorities usually looked at the refusals log as evidence that premises were complying with the licensing regulations with regard to under-age sales.

It was important that adequate training was provided and that staff were aware of the licensing legislation and challenge 21 or 25. The documentation provided by the premises did not demonstrate that the systems in place at the premises were operating correctly since the DPS had been in charge of the premises.

The representative from Public Health advised that the organisation had made representations in respect of the following:-

- Breaches in licensing conditions;
- Under-age sales;
- Lack of control at the premises

The Committee was advised that as far as Public Health were concerned, there was no evidence to prove that the premises had been operated in the correct manner over the previous twelve months. The sale of perry was of particular concern because the abv was 7.5% and children were attracted to this type of product. There had been a 47% increase in admissions to James Cook University Hospital which were alcohol related in the North Ormesby and Central Wards.

The DPS advised that he lived in the Middlesbrough area for over ten years and he had previously been responsible for the operation of 2 shops in Kings Road and Westbourne Grove in North Ormesby. He was now responsible for running the current premises. He stated that he did not have any issues whilst operating the two previous premises.

In response to a query the DPS advised that he had operated the Westbourne Grove shop for 2 years and the Kings Road for a period of 1 year. The representative from Public Health queried when the DPS had sold the premises and the DPS advised that he had sold the premises in June 2014. The Committee was advised that there had been a number of issues with the premises at Westbourne Grove over the years. There had been issues in the North Ormesby area with alcohol fuelled domestic violence and problem families.

A member queried why the DPS had not operated the premises correctly given that he had experience of operating previous premises. The member queried whether the DPS had trained the staff at the current premises. The DPS advised that he had trained the staff. The member advised that the date of the training had not been included in the training record.

The DPS advised that if his Premises Licence was revoked, he would close the shop as the sale of alcohol made the business viable. The DPS advised that he was currently leasing the premises from the Premises Licence Holder for a trial period of six months, so he was not yet financially committed to the premises. The DPS advised that he no longer sold perry and that the CCTV system was now operating properly.

In response to a query with regard to the type of cider that would be available for sale from the premises, the DPS advised that Frosty Jack, Three Hammers and Carling cider would be sold.

Summing Up

The Applicant

The DPS requested the Committee to grant the licence for at least a six month period during which the responsible authorities could carry out test purchases. The CCTV system was working and all the necessary log books in relation to refusals, training etc were now in place. The DPS advised that he had made a decision not to sell perry. The DPS advised the Committee that if, after the six month period, the premises were not complying with the conditions on the licence, the responsible authorities could review the licence. The DPS advised that without an alcohol licence, sales were around £80 a day and the business would not be viable.

The Police

Sgt Higgins advised that the Premises Licence Holder was key as they had overall responsibility for the store and they were the only person that had financial buy-in to the premises. The DPS had no financial commitment to the store and if they decided to walk away from the premises, the PLH could always appoint another DPS.

The PLH had used family to run the premises and they had previously operated it badly. The PLH had unofficially allowed people to operate the store and this was a breach of licensing conditions. The new DPS had a lax approach to operating the premises as he had been in charge of the premises from August to October without knowing how to operate the CCTV system.

The PLH should have explained why the premises should be allowed to retain the licence, but no such explanation had been received.

Sgt Higgins advised that there were issues with regard to anti-social behaviour in the area and Councillor Lewis had advised that there were ongoing problems with anti-social behaviour. The premises were not complying with the conditions on the licence and by not complying with the conditions they could be contributing to the issues with anti-social behaviour in the area.

Councillor Lewis

Councillor Lewis advised that the authority must protect the children and the community in general and she requested that the licence be revoked.

Trading Standards

The Principal Trading Standards officer advised that the premises had breached a number of the licensing conditions throughout the year and the premises had not taken the necessary steps to prevent under-age sales.

The premises were still stocking strong strength ciders, which were attractive to young people. The Trading Standards team did not have any confidence in how the premises were currently being operated.

Public Health

The representative from Public Health advised that the PLH was not present at the Committee. The premises had made irresponsible sales of alcohol which undermined the four licensing objectives and had affected Public Health.

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.

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 Applicant and the DPS.
4. The representations made by the Police.
5. The representations made by Public Health.
6. The representations made by Trading Standards.
7. The representations made by the Ward Councillors.

The Committee **ORDERED** that in respect of the Application for a Review of the Premises Licence in respect of 199 Borough Road, Middlesbrough TS4 2BN: Ref.No: OL/15/16 that the Premises Licence be revoked for the following reasons:-

REASONS

1. The responsible authorities had for some considerable period of time been unable to establish who was in control of the premises, and this was an ongoing situation. As a result, the Premises Licence Holder (PLH) had failed to give the responsible authorities confidence that sales of alcohol had been or were being sufficiently regulated in accordance with the licensing conditions.
2. Having considered the application, representations by the Police, Public Health, Trading Standards and the Ward Councillors, and the representations/response of the Designated Premises Supervisor (DPS), the Committee considered that there was a lack of overall management control at the premises and (up to August 2015), a lack of clarity in respect of who was in day to day control at the premises.
3. The overall failure by the PLH and the DPS to comply with the premises licensing conditions was of major concern to the Committee. The PLH and the DPS did not appear to

recognise their responsibilities with regard to the licensing objectives, or to appreciate the importance of complying with the licensing conditions.

4. During a visit to the premises by the Police on Tuesday, 20 October 2015, the following breaches of licence conditions had been identified:-

- No training records were present for staff members;
- The DPS had been unable to access the CCTV system to demonstrate 31 days of recording;
- Two brands of “perry” products were on sale at the premises;
- The Refusals book had not had any entries since February 2014;
- The Incident book had not had any entries since May 2014 however there had been incidents reported to the police since this time.

The above breaches of conditions, coupled with previous underage sales of alcohol at the premises gave rise to serious concerns about the willingness and ability of both the PLH and the DPS, to ensure that the premises were operating in accordance with the premises licensing conditions to support the licensing objectives.

The Committee recognised that the current DPS had only taken over the premises in August 2015; however, the Committee considered that it was evident from the representations made, and from the Police visit on 20 October 2015, that the DPS had failed to implement robust systems to ensure adherence to the licensing conditions from the outset of his tenure.

Although the DPS produced copies of an Incident Book, Refusals Book and Training Records at the meeting, the records that were produced had periods where no incidents were recorded and the Training Record was not dated; in addition, the entries recorded were entered only after the Police visit on 20 October 2015.

The Committee had been advised by the Trading Standards Officer, as part of her evidence, that periods where no incidents had been recorded was unusual, and in the Committee’s view, this cast some doubt on the validity of the records.

5. The Committee considered the details of the Police Occurrence Incident Logs relating to anti-social behaviour and alcohol fuelled anti-social incidents and determined that although none of the incidents could be directly attributable to the premises, there was evidence of problems of anti-social behaviour and underage sales of alcohol in the vicinity of the premises.

The Chair informed the parties to the hearing of their right to appeal the decision within 21 days of receiving the notice and full details of the decision and reasons will be sent in writing to the parties within five working days.