

LICENSING SUB-COMMITTEE C

A meeting of the Licensing Sub-Committee C was held on 24 November 2017.

PRESENT: Councillors T Higgins (Chair), D Branson and S Biswas.

OFFICERS: C Breheny, C Cunningham and S Wearing.

DECLARATIONS OF INTERESTS

No declarations of interest were made by Members at this point in the meeting.

16/11 **LICENSING ACT 2003 - APPLICATION FOR REVIEW OF PREMISES LICENCE:
NEWSMARKET, 123 PARLIAMENT ROAD, MIDDLESBROUGH, TS1 4JE**

Review

1. The Committee considered an Application to Review a Premises Licence in relation to Newsmarket, 123 Parliament Road, Middlesbrough, TS1 4JE ("the Premises") which authorises the off sales of alcohol daily from 6.00am to 11.00pm.

Preliminary Matter - Absent Parties

2. As a preliminary matter, the Premises Licence Holder ("PLH") was not present at the hearing due to illness, the PLH's representative who was the PLH's wife and had been running the shop was present. The Representative confirmed the PLH had received the papers and knew about the hearing but was ill and had given her permission to represent him in his absence. The Representative produced a letter from the PLH confirming this. The Representative confirmed she was happy for the hearing to proceed in the PLH's absence. The Representative for the Applicant and the Responsible Authorities confirmed she had no objection to the matter proceeding in the PLH's absence if the Committee is satisfied the PLH was aware of the proceedings and had given authority to his Representative. The Committee considered Regulation 20 of the Licensing Act 2003 (Hearings) Regulations 2005 ("the Regulations") and decided that the hearing could proceed in the PLH's absence. It considered the PLH had been served with the Application to Review his Premises Licence in accordance with the legislation. It considered that he had been served with the Notice of the Hearing in accordance with the Regulations. The Agenda Report and Appendices were sent to the PLH and his Representative confirmed he had received all the papers. The Committee was satisfied on the basis of the information provided by the Representative and the letter produced from the PLH that she had authority to proceed on behalf of the PLH.

Decision

3. The Committee carefully considered the Application and Appendices, the representations of the Responsible Authorities and of the PLH's representative, the Licensing Act 2003 ("the Act"), Government Guidance issued under Section 182 of the Act, the Councils Statement of Licensing Policy ("the Policy") and the licensing objectives set out in the Act. The matter was considered on its own merits.

4. The Committee decided it was appropriate to revoke the Premises Licence for the sale of alcohol at the Premises in order to promote the prevention of crime and disorder and in the interests of public safety.

5. The Applicant and the Responsible Authorities informed the Committee, in summary, of the following matters: that criminality and irresponsible management had occurred at the Premises. During a joint inspection with the Responsible Authorities and HMRC on the 21 June 2017, HMRC seized alcohol for which no duty had been paid. The alcohol seized was not purchased from a registered approved wholesaler. The alcohol was purchased from a "man in a white van". The production chain of the alcohol could not be traced and therefore there was a possibility of a risk of that it was unsafe (however, this was not tested). The Committee was informed the alcohol seized was high strength cheap alcohol, that conditions

on the Licence had been breached, a three litre bottle of white cider was given to a customer in exchange for the woman leaving her mobile phone, who appeared to be vulnerable and Prescription medicine appeared to be for sale at the Premises. That the area where the premises is situated is subject to a Cumulative Impact Policy and there are problems in the area.

6. The PLH's Representative informed the Committee, in summary that she apologised for not understanding that she was required to purchase the alcohol from a registered wholesaler. The Representative informed the Committee that she is not prevented from selling high strength beers and ciders in her licence, nor did she consider she breached any of the conditions. The Representative informed the Committee that her prices are not cheap compared to other Premises in the area. The Representative told the Committee the inhaler belonged to the PLH and was simply left on the shelf by mistake, it was not for sale and did not have a price tag on it. The Representative said that the problems relating to the area was society as a whole and that the PLH had ran the premises for many years without problem.

7. The Committee was satisfied on balance that alcohol was displayed and sold at the Premises which had no duty paid. It considered that neither the PLH nor his Representative who worked at the premises purchased the alcohol from a Registered and approved Wholesale Retailer which was a legal requirement. The alcohol was purchased from a man in a white van. There were no invoices. The Committee was informed by the Applicant that these were criminal offences. Therefore it considered that the promotion of the prevention of crime and disorder at the Premises was not being upheld as offences were being committed.

8. The following are factors which the Committee considered added to the seriousness of the problems at the Premises:

9. That although not all of the alcohol was unlawful, a vast amount of alcohol had been purchased from an unknown source and without duty being paid, 358 litres had been seized and the excise duty to be paid was £1,708.

10. There had been at least three purchases from the unknown source, that the PLH holder knew about the last two purchases but in any event authorised an inexperienced person to purchase the alcohol.

11. It was accepted that the requirement to only purchase from a registered wholesaler (approved by HMRC) came into force in April 2017, and the Committee noted the Representative claimed she was not aware of the requirement. However, during a visit in May 2017 (prior to the HMRC inspection) the Representative was told of the requirement to only purchase alcohol from a registered wholesaler.

12. That the alcohol seized and much of the stock included high strength beers / lagers / ciders. The Responsible Authorities stated that such alcohol is considered high risk because it is attractive to problem drinkers who then either cause harm to themselves or others or cause disorder crime or nuisance.

13. The Committee noted that this was a general statement. It also noted that the sale of strong beer, lagers, cider was not prohibited by a condition on the licence. However, it was concerned that HMRC confirmed that some of the types of alcohol seized were not generally available through approved registered wholesalers. The Committee also were informed that the alcohol sold and seized was cheap alcohol based on the unit price and strength. It noted that the Representative said that her sales were not cheap in comparison to other outlets in the area who sell similar alcohol at much cheaper prices, and it noted there was no minimum price condition on the Licence.

14. However, the Committee considered that the fact the alcohol seized was high strength and high risk and that the unit price of the alcohol together with the strength made it cheap generally, aggravated the seriousness of the offences of selling alcohol from an unapproved source without duty being paid.

15. In addition to this, at the time of an inspection on the 9 November 2017 shortly before this review hearing, the Committee was informed by the Responsible Authorities that a customer entered the shop, was desperate for a 3 litre bottle of strong cider and appeared to be begging for the alcohol. The Representative allowed her the alcohol in exchange for her mobile phone as a deposit for her to return and pay for the alcohol. Although the Representative said she knew the lady and did not consider her to have a problem, the Committee noted that at the time she told the officer she gave the alcohol to the customer because she was going to cry. The Committee did consider this to be wholly irresponsible retailing of alcohol in an area which has serious problems relating to alcohol harms on crime and disorder, public nuisance and public safety.

16. It was confirmed the alcohol was not tested and therefore the Committee could not make any assumption about the actual safety of the alcohol. However it did consider that it was very irresponsible of a PLH to purchase or allow purchases of alcohol from an unregistered unapproved unknown source without any traceability to production as the PLH could not know for sure that the alcohol he was selling to the public was properly produced and safe. It is also irresponsible that the majority of the stock purchased in such a way and displayed in the store situated in such a problematic area is high strength, high risk, cheap (per unit) alcohol.

17. The Responsible Authorities informed the Committee that at a visit to the Premises on the 13 October 2017, the licensing conditions were not being complied with:

18. The Responsible Authorities informed the Committee that the Refusals book had not been completed since 2016 and Part A of the Premises Licence could not be produced. The Representative said after the visit the PLH had told her the up to date book and Licence were in the safe. The Condition was - "Refusals Register used for non-sales". The Committee considered it serious that the Representative running the store for some time did not know where the Refusals Register was kept and therefore would not be in a position to detail refusals, if any were actually made. The Production of part A of the Premises Licence is a legal requirement.

19. The CCTV was showing a picture, however, the Representative could not operate the system. The Representative said that it was being updated and the system is good. Although there was CCTV as required by the Condition, the Committee were concerned that a person tasked with running the premises did not know how to work the CCTV system or prove that the footage was being kept for one month and this showed irresponsible management.

20. There were no age verification notices displayed, although this is not specifically set out in the condition. A proof of age policy is required and the Committee considered it irresponsible to fail to have notices informing customers of the requirement to provide ID who appear to be underage when alcohol is being sold.

21. The Police and the Licensing Officer informed the Committee that during the visit a Ventolin Evohaler was displayed on the shelf behind the counter with other goods for sale. The Police Officer was of the opinion that the store was illegally displaying this prescription drug for sale. The Representative said it was her husband's and that he leaves them around everywhere and it should not have been there. The Committee considered the shelves to contain haphazard goods Rat Killer, Mosquito Repellent and Poppers. After listening to the Representative it could not be satisfied that the item was placed there to actually be sold. However, the Committee was very concerned that prescription medicine is left in a position on a shelf where other goods are clearly for sale and that it appeared to be for sale to customers.

22. The Committee were also seriously concerned that other goods such as "poppers" or legal highs were displayed for sale in such a way. Although it is not illegal to sell the items, there were no warnings as to use or age restriction notices which the Committee considered shows the PLH is unable to run the premises safely or responsibly.

23. The Applicant and Responsible Authorities explained that the Premises is within a cumulative impact area and the police informed the Committee that there are many different alcohol fuelled crimes, serious disorder and serious incidents in the area. The Committee considered that the direct area, namely, Parliament Road is a hot spot for crime and disorder.

It was noted, however, that the incidents could not be proven to be directly caused by the Premises.

24. The Committee considered that in accordance with the Guidance, its role in a review is to determine if there are problems at the premises which are undermining and detrimentally impacting the licensing objectives and decide what action if any should be taken to promote those objectives. The Committee also noted that the fact of a cumulative impact area should not be used as a ground for revoking an existing licence and has not used the special policy as a reason for revoking the Licence.

25. The Committee considered that the promotion of the prevention of crime and disorder has been seriously undermined by the Premises purchasing alcohol on at least three occasions from an untraceable, unregistered and therefore unapproved source. The objective has been seriously undermined because duty has not been paid, conditions have been breached and the unlawful alcohol and most of the alcohol sold is a type known to be super strength high risk alcohol. The objective has been further undermined because the Premises are being wholly irresponsibly managed in an area that already suffers from serious alcohol related harms. In view of the above reasons the Committee also considers that Public Safety is being undermined.

26. The Committee carefully considered whether any action less than revocation would uphold the objectives. However, the PLH is also the DPS and the only other person involved is the PLH's wife who has been running the premises without training. The Committee considered that the PLH could not comply with the small amount of limitations currently on the licence, run the Premises responsibly or comply with the law. The Committee could not be satisfied that further restrictions by way of conditions would be complied with nor would a suspension would uphold the objectives. The Committee have found that the Premises have been trading irresponsibly undermining the objectives and considers the appropriate way to tackle the problems is to revoke the licence and the ability to sell alcohol.