

# COMMITTEE REPORT

## LICENSING COMMITTEE

24 APRIL 2024

### REPORT OF THE DIRECTOR OF ENVIRONMENT & COMMERCIAL SERVICES

**Applicant:** Cleveland Police

**Ref.No.** PR0139

**Premises:** The Empire, Corporation Road, Middlesbrough, TS12RT

**Premises Licence Holder:** The Middlesbrough Empire 2008 Limited

**Designated Premises Supervisor:** Ashley Wem

**Application received:** 27 March 2024

#### **Summary of Current Licensable Activities:**

Live music, recorded music, films, plays, performances of dance, sale of alcohol

#### **Hours for Licensable Activities:**

Monday to Sunday : 11am to 3.30am                      Sale of Alcohol

Boxing Day : 11am to 5.30am

New Years Eve : 11am to 5.30am

Monday to Sunday : 11am to 4am                      All other licensable activities

Boxing Day : 11am to 6am

New Years Eve : 11am to 6am

#### **1. Summary of Application:**

Members will recall that at it's meeting held on 28 March 2024, the Licensing Sub-Committee considered an application for a summary review of the premises licence for The Empire following a submission made by Cleveland Police.

A copy of the application made by Cleveland Police is attached at Appendix 1, and a copy of the existing premises licence for The Empire is attached at Appendix 2.

Having considered the summary review application at the above meeting, the Licensing Sub-Committee decided to suspend the Premises Licence as an interim step pending a full review hearing. The full decision and reasons are as follows:-

- 1. The Committee considered an application from the Police for a summary review of a Premises Licence in respect of the Empire, Corporation Road Middlesbrough which operates as a nightclub 11.00am until 4.00am daily.*
- 2. Under Section 53A(2)(a) of Act, on receipt of such an application, the relevant licensing authority must within 48 hours of the time of its receipt, consider under section 53B whether it is necessary to take interim steps pending the determination of a review of the premises licence.*
- 3. Under Section 53B(3) The interim steps the committee must consider taking are– (a) the modification of the conditions of the premises licence; (b) the exclusion of the sale of alcohol by retail from the scope of the licence; (c) the removal of the designated premises supervisor from the licence; (d) the suspension of the licence.*
- 4. Section 53B(2) states the consideration of interim steps may take place without the holder of the premises licence having been given the opportunity to make representations, however, to ensure fairness, the premises licence holder was given the opportunity to make representations at this stage.*
- 5. The Committee carefully considered the application, certificate and representations of the police and the representations and information provided by the Premises Licence Holder and its representatives.*

### **Decision**

- 6. The Committee decided that the suspension of the licence is a necessary interim step to alleviate the risk and to promote public safety and prevention of crime and disorder.*
- 7. It did not consider that conditions proposed by the PLH or any additional conditions would immediately resolve the risk.*
- 8. A very serious incident occurred at the premises, it was considered just luck that the customer did not suffer very serious injury if not worse. The perpetrator was the head door supervisor leading a team. A person in that position, whilst in his position of trust, forcibly threw a customer onto his head.*
- 9. The Committee does not accept the PLH's representations that the management had no role, that it was fully compliant and it was only down to an unexpected out of character incident.*
- 10. The premises was suspended after a full review in September 2022, the reasons included violent incidents in the premises as result of management failings and some involved door staff, there has been a subsequent violent incident in December 2023 where a door supervisor was arrested.*

11. After this violent incident, the footage showed the head door supervisor and other door supervisors manhandling the customer from the road who appeared to be unconscious, which was dangerous, the perpetrator appeared to go back and forth, he did not appear to be challenged by staff. There appeared to be no system for aftercare, despite supervisors being first aid trained.

12. The DPS and business owner did not act appropriately, he was shown to come out twice but failed to intervene, take control, and appropriately manage the situation. This appears to be a pattern as shown in the previous review.

13. The incident record was severely lacking, it was not a true account, it did not have details of the assault or any aftercare, or signed and stated police action was not required.

14. The Committee did not accept the conditions proposed, It did not accept that a condition simply removing Hyena who have ran the security prior to the original review and up to a day or so before this hearing would immediately resolve the risk. There appeared to be no plan in any detail regarding how the operation will be ran in light of the incident, for this weekend.

15. The only material change is that Mr xxxxxx would replace the owner of Hyena with the same door staff remaining to provide security for the weekend, Mr xxxxxx actually consulted for Hyena in May 2022 which was a few months prior to the premises having to be reviewed in September 2022.

16. The Committee considers that a proposed condition to say Mr X will not be deployed at the premises to provide security is simply not sufficient. Nor was it clear what formal action (if any) was taken regarding Mr X immediately after the incident.

17. The Committee considered that having the DPS in the vicinity of the front of the premises would have little impact given he failed to act properly and take control on the night of the incident and that it appears the problems at the premises are management issues.

18. The Committee considered that no other conditions would be possible to reduce the risk.

19. The Committee did carefully consider the detriment to the operation but have decided to remove the risk to public safety and promote the prevention of crime and disorder by suspending the licence.

## **2. Legislation**

The Licensing Act 2003 requires the Licensing Authority to carry out its functions with a view to promoting the four licensing objectives:

- The Prevention of Crime and Disorder
- Public Safety

- The Prevention of Public Nuisance
- The Protection of Children from Harm

The Licensing Authority must also have regard to its Licensing Policy and any guidance issued by the Secretary of State.

The Licensing Act 2003 provides a procedure for a summary review of a premises licence by the Police for an expedited or 'fast track' review of a premises licence which authorises the sale of alcohol in cases where a senior police officer of the rank of superintendent or above gives a certificate indicating that in his/her opinion the premises are associated with serious crime and disorder or both. The procedure allows the licensing authority to respond by taking interim steps quickly, where appropriate, pending a full review.

Should interim steps be imposed by the Licensing Authority the Licensing Act 2003 provides that the premises licence holder may make representations against the interim steps taken by the Licensing Authority. In this instance the premises licence holder has not made any further representations in respect of the interim steps taken to suspend the premises licence and the premises has remained closed since the hearing on 28 March 2024.

The Licensing Act also provides that the Licensing Authority must hold a full review of the premises licence and determine the review within 28 days after the day of the application for Summary Review made by the Police.

### **3. Consultation on review application**

The premises licence holder, any responsible authority or any other person are permitted to make representations in respect of the review application following publication of a notice.

In response to the publication of the notice on 27 March 2024, 2 further representations were received.

On 4 April 2024 a representation was received from Fiona Helyer, Public Health Officer from Middlesbrough Council (Appendix 3).

On 3 April 2024 a representation was received from Jason Arbuckle, Licensing Enforcement Officer from Middlesbrough Council (Appendix 4).

Cleveland Police, Public Health and Middlesbrough Council Licensing have indicated that further evidence in support of their representation will follow shortly.

### **4. Background**

These premises operate as a popular night club situated in Middlesbrough Town Centre in the hub of the night time economy. The premises have had the benefit of a premises licence under the provisions of the Licensing Act 2003 since 2005 and a Justices Licence and Public Entertainment Licence for many

years prior to that date.

On 05 May 2022 Cleveland Police submitted an application for Review of the Premises Licence following concerns in relation crime and disorder and underage sales at the premises.

Between 15 and 16 September 2022 the Licensing Committee considered the application, along with representations from a number of other Responsible Authorities and interested parties before deciding to suspend the premises licence for a period of 4 weeks with the addition of a number of additional conditions.

The Premises Licence holder subsequently appealed this decision to Teesside Magistrates Court, however, on 10 February 2023 a consent order was agreed between the Premises Licence holder and the Council which resulted in the premises licence being suspended for a period of 4 weeks with the addition of conditions. These conditions are detailed in the Premises Licence at Annex 3 (Appendix 2).

## **5. The Licensing Policy**

Members are referred to the following relevant sections of the Council's Licensing Policy.

Prevention of Crime & Disorder	Pages 20-24
Reviews	Pages 47-50

And any other sections of the Policy which Members consider to be relevant.

## **6. Guidance to the Licensing Act 2003**

Members are referred to the following relevant sections of the Guidance.

Prevention of Crime and Disorder	Starting at Paragraph 2.1
Summary Reviews	Starting at Paragraph 12.1

And any other sections of the Guidance which Members consider to be relevant.

## **7. Members' Options**

Members may consider the following options:

- To modify the conditions of the licence.
- To exclude a licensable activity from the scope of the licence.
- To remove the Designated Premises Supervisor
- To suspend the licence for a period of not exceeding 3 months.
- To revoke the licence.

- Alternatively, Members may consider that it is not necessary to take any of the above steps and may issue an informal warning and/or or recommend improvement within a certain time period.

Any party to the hearing who may be aggrieved by the decision taken by the Licensing Sub-Committee would have a right of appeal to the Magistrates' Court.

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