

LICENSING ACT 2003 SUB-COMMITTEE

Friday, 15 January 2016

Present: Councillors S Niblock J Salter
C Meaden

38 APPOINTMENT OF CHAIR

Resolved – That Councillor S Niblock be appointed Chair for this meeting.

39 MEMBERS' CODE OF CONDUCT - DECLARATIONS OF INTEREST

Members of the Sub Committee were asked to declare any disclosable pecuniary and non pecuniary interests in connection with any application on the agenda and state the nature of the interest.

Councillor S Niblock declared a personal interest by virtue of him being a Member of Merseyside Fire and Rescue Authority.

40 APPLICATION TO REVIEW A PREMISES LICENCE - THE OFFY, 235 SEABANK ROAD, NEW BRIGHTON

The Assistant Chief Executive reported upon an application that had been received by Trading Standards to review the Premises Licence in respect of 'The Offy', 235 Seabank Road, New Brighton.

The Premises currently hold a Premises Licence.

The Assistant Chief Executive advised that the Sub- Committee may, having regard to the application for review and any relevant representations, take such of the following steps as it considered appropriate for the promotion of the licensing objectives:

- Modify the Conditions of the Licence
- Exclude a licensable activity from the scope of the Licence
- Remove the Designated Premises Supervisor
- Suspend the Licence for a period not exceeding three months.
- Revoke the Licence.

The Licensing Authority may decided that no action would be appropriate if it found that the review did not require it to take any steps that would be appropriate to promote the licensing objectives.

The application had been received from Trading Standards who advised that the grounds for review were regarding breaches of licensing conditions and it was reported that items were found at the premises which were found to be duty diverted and counterfeit.

A representation had been received from Public Health as they considered that all four licensing objectives were being undermined by the Premises Licence Holder. A representation had also been received from the Licensing Authority who had reported that the annual Premises Licence Fee had not been paid by the date specified to the owner and that the premises had sold alcohol whilst the licence was suspended. Environmental Health had also submitted a representation to raise concerns surrounding the failures of the owner of the premises, the Premises Licence Holder and Designated Premises Supervisor to promote the licensing objectives.

Heidi Jones, Trading Standards attended the meeting together with her witness, Joanne Moran, Merseyside Police. Tricia Cavanagh, Public Health, Andrew Bushell, Licensing Authority and Jon Hardwick, Environmental Health were also in attendance.

The Premises Licence Holder, Mrs Sherry attended the meeting together with the Designated Premises Supervisor, Mr Sherry. Members were informed that Mr Sherry would be addressing the Sub-Committee on behalf of the Premises Licence Holder.

The Licensing Manager confirmed that all documentation had been sent and received.

Heidi Jones, Trading Standards addressed the Sub-Committee and advised that on 28 July 2015, as part of a multi-agency operation with Trading Standards, Environmental Health and Merseyside Police, 7 bottles of Smirnoff Vodka and 31 Royal Mail stamps were seized on suspicion of Trade Mark Act 1994 offences. Members also heard how during this visit, following discussions with Licensing Officers, it was identified that conditions of the premises licence had been breached and the following was identified:

- No refusals register available
- No risk assessment manual available
- No first aid kit available
- No signage for Challenge 25
- No premise licence displayed.

It was further reported that following investigation, it was confirmed that the Smirnoff Vodka was genuine, however, it was not for the UK market and counterfeit back labels had been attached to the bottles, to give the impression that duty had been paid when in fact it had not. It was therefore classed as smuggled alcohol. Stamps seized were also identified as counterfeit.

Joanne Moran, Interventions Officer, Merseyside Police then addressed the Sub Committee after being called upon as a witness by Trading Standards. She informed Members of the Sub Committee that she had been involved in the multi-agency operation and had also identified a breach of Licensing Conditions. Furthermore, she reported that the premises was in disarray and the member of staff present during the visit could not operate the CCTV when requested to. Members of the Sub-Committee heard how, during the visit, the DPS was not present.

Tricia Cavanagh, Public Health then addressed the Sub Committee and outlined how the management of the premises had lead to the four licensing objectives being

undermined. Members heard how Public Health support the revocation of the Premises Licence.

Andrew Bushell, Licensing Operations Manager then addressed the Committee and outlined concerns following the identification of a breach of a number of licensing conditions. He informed Members that in addition to identified breaches, there had been a failure in the management of the premises, as the Annual Licence Fee had not been paid by the specified deadline. As a result the premises had been selling alcohol illegally. It was then reported that during a planned visit which took place on 19 November 2015 the DPS was able to demonstrate that he had gone some way to rectify previous breaches but some concerns were still raised regarding the management of this premises. Members heard how it was the view of the Licensing Authority that the premises cannot continue to be operated in the current manner and various conditions were suggested as a means to improve the management of the premises.

Jon Hardwick, Environmental Health Officer then addressed the Sub Committee and advised that upon visiting the premises on 28 July 2015, he had found the conditions of the premises to be wholly unacceptable and informed the Committee that he felt that the Licensing Objectives, namely Prevention of Crime and Disorder and Public Safety had been undermined through the management of this premises. Members heard that following his initial visit, another visit to the premises was conducted and it was found that conditions had visibly improved.

The representatives of the Responsible Authorities responded to questions from Members of the Sub-committee, Mr A Bayatti, Legal Advisor to the Sub Committee and Mr Sherry, Designated Premises Licence Supervisor.

A short adjournment took place.

Mr Sherry, DPS addressed the Committee and did not dispute any of the oral or written evidence presented to the Sub Committee. He informed the Sub Committee that following multi agency visits he had made changes to improve the management of his premises for example through displaying challenge 25 signage and ensuring the premises was cleaned regularly .He informed Members that he had not intentionally purchased duty diverted alcohol and that in the future he would make every effort to ensure sellers have a valid ID and provide receipts for any purchases made. Members were advised how he felt it had been a personal failure to put his trust in those whom he had believed to be genuine sellers. He also advised Members that he had been let down in the past by the actions of previous employees who had stolen from his business, therefore, he felt he had no choice but to run his premises solely. He acknowledged how he had been responsible for the ineffective management of his premises and put forward measures he had implemented in order to improve his business. He informed Members of the Sub-Committee how he is highly regarded within the community and presented a petition from local residents supporting him as an individual and his business.

Mr Sherry responded to questions from Members of the Sub-Committee, Mr A Bayatti, Legal Advisor to the Sub Committee and Officers of the responsible authorities.

In response to questions from Members, Mr Sherry acknowledged that he required further training. He also informed the Sub-Committee that approximately 80% of sales is alcohol and tobacco.

Members gave careful consideration to the application made by Trading Standards to review the Premises Licence at 'The Offy', 235 Seabank Road, New Brighton, and the representations made in writing and orally at the hearing by the responsible authorities (Public Health, the Licensing Authority and Environmental Health) as well as Mr Sherry, Designated Premises Supervisor.

In determining the review Members had regard to the licensing objectives in particular the prevention of crime and disorder and the protection of children from harm, as well as the Council's Statement of Licensing Policy and relevant guidance issued under section 182 of the Licensing Act 2003.

Members accepted the evidence provided by Trading Standards that on 28 July 2015 items, namely 7 bottles of Vodka and 31 stamps were seized at the premises which were found to be duty diverted and counterfeit respectively.

Members also had regard to evidence provided by Public Health, the Licensing Authority and Environmental Health regarding the poor management of the premises and breach of licensing conditions

Members heard from the Designated Premises Supervisor, on behalf of the Premises Licence Holder, in response to representations made that he had put measures in place in order to ensure that his business is managed in a more professional manner and assurances he made about the future management of the premises. The Premises Licence holder also advised Members that she would take a more involved role than the previous licence holder.

In determining the matter, Members of the Sub-Committee gave consideration to the views of the Responsible Authorities that the problems identified at the premises could be addressed through better management.

Resolved –

- (1) That in accordance with regulation 14(2) of the Licensing Act 2003, the public be excluded from the meeting during consideration of the application.**
- (2) That the conditions of the Premises Licence be modified as follows:**
 - From 1st May 2016, the Designated Premises Supervisor must hold a Level 2 Award for Designated Premises Supervisors and evidence must be provided upon request by a Licensing Officer.**
 - From 1st May 2016, any person involved in the sale of alcohol must hold a minimum of Level 1 Award in Responsible Alcohol Retailing and evidence must be provided upon request by a Licensing Officer.**
 - A CCTV system must be installed at the premises which complies with the minimum specification issues by Wirral Council.**

- **The premises must operate a Challenge 25 policy in relation to the sale of alcohol. All staff must be trained on the policy and receive refresher training at least every 6 months. A written record of the training must be kept at the premises and be made available for inspection by an Authorised Officer upon request.**
- **A challenge 25 Register must be kept containing details of all challenges for proof of age including those where proof of age is subsequently produced. This register must be kept on the premises and made available to an Authorised Officer upon request.**
- **An appropriate written or electronic till prompt system as agreed with Trading Standards and the Licensing Authority must be implemented at the Premises.**
- **Alcohol may only be sold by an individual who holds a Personal Licence.**