

DURHAM COUNTY COUNCIL

At a Meeting of **Statutory Licensing Sub-Committee** held in Council Chamber, Council Offices, Spennymoor on **Friday 29 July 2016 at 10.00 am**

Present:

Councillor L Marshall (Chair)

Members of the Committee:

Councillors C Hampson, D Hicks and B Kellett

Also Present:

K Robson – Senior Licensing Officer

Y Raine – Senior Licensing Officer

S Grigor – Legal Officer

Hayer Convenience Store

Mr C Cooper – Local Weights and Measures Authority

Mr S Barry – Public Health

Mr S Mooney – Force Solicitor, Durham Constabulary

PCSO M Haigh

G and M Convenience Store

Mr G Singh – Licence Holder

Mrs Hundall – proposed DPS

Mr Assam Khan – Licence Holder's Solicitor

Mr J Burnside

Mr S Barry – Public Health

Mr S Mooney – Force Solicitor, Durham Constabulary

PCSO M Haigh

1 Apologies for Absence

There were no apologies for absence.

2 Substitute Members

There were no substitute Members.

3 Declarations of Interest

There were no declarations of interest.

It was agreed that the order of business be amended to consider Agenda item numbered 5 first.

5 Application for the Review of a Premises Licence - Hayer Convenience Store, (Formerly Westlea Foodstore), 4 West Grove, Seaham

Members:

Councillor L Marshall (Chair)
Councillors D Hicks and B Kellett

Consideration was given to the report of the Interim Corporate Director, Neighbourhood Services regarding an application for the review of a Premises Licence in respect of Hayer Convenience Store (formerly Westlea Foodstore), 4 West Grove, Seaham (for copy see file of Minutes).

A copy of the application and supporting documents had been circulated to Members. Y Raine, Senior Licensing Officer advised that since the papers had been distributed the Licensing Authority had been informed that the premises had been sold and the Premises Licence had been surrendered. In accordance with the Licensing Act 2003 there was a 28 day period during which the Premises Licence could be resumed, and in light of this the applicant had requested that the review application be heard.

Mr C Cooper from the Local Weights and Measures Authority advised that a review of the Premises Licence was sought as it was believed that this was an appropriate course of action to uphold the licensing objectives 'prevention of crime and disorder' and the 'protection of children from harm'.

Members were provided with the background history to the premises which included details of the failed test purchases, of a visit which found a person to be working illegally in the store, and of an incident reported by the mother of a 14 year old girl who had been able to purchase alcohol from the premises.

Issues with the premises were ongoing, and despite the sale of the business and the surrender of the Premises Licence the Local Weights and Measures Authority remained concerned. Mr Cooper asked that the Premises Licence be revoked.

Mr S Mooney of Durham Constabulary fully supported the review application and shared the views of the Local Weights and Measures Authority. The premises had had a number of owners in recent years and with each new owner problems had been experienced.

Mr K Singh had taken over the premises in April 2016 and had failed a test purchase on 17 May 2016, staff were not trained in Challenge 25 and an overstayer had been found working on the premises for over a month which gave rise to a number of criminal offences. The licensing objectives had been undermined and he asked that the Premises Licence be revoked to allow a new owner to come forward with a new application that would provide assurances that the premises would be well-managed.

At 10.22am the Sub-Committee retired to deliberate the application in private. After re-convening at 10.25am the Chair delivered the Sub-Committee's decision.

In reaching their decision the Sub-Committee had taken into account the report of the Senior Licensing Officer and the verbal and written representations of the applicant and Durham Constabulary. Members had also taken into account the Council's Statement of Licensing Policy and Section 182 Guidance issued by the Secretary of State.

Resolved:

That the Premises Licence be revoked.

4 Application for the Review of a Premises Licence - G and M Convenience Store, 26 Fox Street, Seaham

Members:

Councillor L Marshall (Chair)

Councillors C Hampson and B Kellett

Consideration was given to the report of the Interim Corporate Director Neighbourhood Services regarding an application for the review of a Premises Licence in respect of G and M Convenience Store, 26 Fox Street, Seaham (for copy see file of Minutes).

A copy of the application and supporting documents had been circulated to Members. K Robson, Senior Licensing Officer informed the Sub-Committee that on 27 July 2016 an application had been received to vary the DPS at the premises from Mr Singh to his wife Mrs Hundall. This application was currently the subject of a 14 day consultation period.

Additional information had been provided by the Applicant regarding a failed test purchase on 22 July 2016 and this had been circulated to all parties.

Mr S Mooney of Durham Constabulary addressed the Sub-Committee and advised that the Police concerns related to the licensing objectives 'prevention of crime and disorder', 'public safety' and the 'protection of children from harm'.

He referred Members to the Bundle of Evidence and stated that of great concern was the employment of a suspected overstayer who had been left in sole charge of the shop. Mr Singh at the hearing on 7 June 2016, which considered an application to vary the Premises Licence to specify Mr Singh as DPS in respect of Westlea Foodstores, had denied that he knew that the male was a suspected overstayer and that the individual was not in paid employment but was being trained until he could provide his passport.

A further concern was the general failure in management. On a visit on 4 May 2016 the suspected overstayer had said that there was no refusals register and that the CCTV system had not been working for 3 months, both of which were potential breaches of conditions of the Premises Licence imposed by the Licensing Authority following a review hearing in 2012. Mr Singh had advised that refusals slips were kept in the bottom of the till which had been stolen during a burglary. Mr Singh had

also advised that he did not keep training records, that the overstayer had lied about the CCTV, and that the hard drive had been stolen in the burglary.

The additional information showed a further failed test purchase as recent as 22 July 2016, following a catalogue of failings and under the spotlight of the review hearing. Conditions on the Premises Licence stated that the DPS must be present from 4pm Friday, Saturday and Sundays.

Taking these factors into account there was sufficient evidence that the premises was still being poorly managed and no evidence had been produced by Mr Singh to show that steps had been taken to improve management at the store. The Police therefore sought revocation of the licence.

PCSO Haigh took Members through his statement in the Bundle of Evidence and Members were shown footage of the failed test purchase on 22 July 2016.

PCSO Haigh concluded that the roles of Premises Licence Holder and Designated Premises Supervisor should not be taken lightly. There had been little regard shown of the licensing objectives by Mr Singh.

Mr S Barry of Public Health referred to their representations included in the Bundle of Evidence which supported the application. The recent failed test purchase reinforced their views.

Mr Assam Khan, the Licence Holder's representative requested an adjournment of the proceedings as there had been a number of statements made regarding the hearing of 7 June 2016 which he had not been aware of and which had not been included in the papers. It would therefore be wholly prejudicial to proceed.

At this point the hearing adjourned to allow Mr Singh and his Solicitor to consider the Notice of Determination.

After reconvening at 11.45am Mr Khan confirmed that he had been provided with the Notice of Determination and had a brief opportunity to discuss the matters contained therein with his client. Some of the issues which were raised at the hearing Mr Singh would now wish to address, such as evidence of the purchase of a new till and the serious matter of the employment of a suspected overstayer. Mr Khan argued that in certain parts the Notice related wholly to G and M Convenience Store and was therefore relevant. Mr Singh was not legally represented at that time and this was an opportunity for him to put his case forward.

S Grigor, Legal Officer made the point that Mr Singh had been provided with a copy of the Notice of Determination.

At 12.05pm the Sub-Committee adjourned to consider the request for an adjournment.

After re-convening at 12.08pm the Chair informed all parties that the request for an adjournment was refused as it was not considered to be necessary.

Mr Khan addressed the Sub-Committee. With regard to the employment of a suspected overstayer Mr Singh maintained that he was not aware that the individual was an illegal immigrant. The individual was from a similar cultural background and spoke the same language and he trusted him. Mr Singh was training the individual until he produced all his documents. This provided an assurance for Mr Singh as he believed that no-one would work unpaid if they could not produce documentation. It had been apparent to Mr Singh that the person had good retail experience and was good with customers. Mr Khan would have liked to have dealt with this issue in greater detail but invited the Sub-Committee to accept that Mr Singh did not knowingly employ an illegal worker and accept that he was naive, duped and did not knowingly breaking the law.

With regard to the visit in May 2016 when the suspected overstayer was encountered, at that time there was no CCTV in place and he invited the Sub-Committee to accept that there had been a burglary on 24 April 2016 when a substantial amount of cash, cigarettes, scratch cards and the CCTV hard drive had been stolen. The store was a small owner operated business and replacing the stolen stock was extremely expensive. The shop had been left in a mess and the effect this had on the business was devastating; the cash flow available to him was decimated and he did not have any money to invest in the business. Mr Singh had a support network he could rely upon. Mr Khan provided invoices regarding the supply of the new CCTV, and from a company who had attended the building following the burglary to make it secure.

Mr Singh accepted that as the CCTV had not been working he should have stopped selling alcohol and he was sorry for this but he had found himself in an unusual situation and was out of his depth. At the forefront of his priorities at the time had been re-stocking the shop to meet his monthly commitments.

In terms of the Refusals Register, this constituted a receipt produced by the till each time that he or a member of staff had refused to sell alcohol. Mr Singh had invested in a till which he had been told was sufficient to comply with that duty. Mr Khan provided Members with the till receipts from 5 June to 6 July 2016.

Mr Khan addressed the matter of staff training. Mr Singh had in place a rudimentary arrangement for training of employees. Mr Khan supplied evidence of training that had taken place by an external training provider. The premises now operated Challenge 25 with posters and stickers displayed around the premises.

The training provider would carry out test purchases using mystery shoppers which he hoped would reassure the Responsible Authorities. The till system at the store was very modern and could be programmed to issue warnings to staff as well as produce a receipt which documented the time, date, employee and reason for refusal. It also prompted staff to check ID. The Committee may prefer a refusals book which Mr Singh would be happy to produce.

Mr Khan advised that the suspected overstayer had been left alone in the premises when Mr Singh had been required to travel to Birmingham to visit his support network and on another occasion when he had received a call from his pregnant wife who had not been well. He appreciated that in accordance with the conditions

of the Premises Licence he ought to be present at the premises and this had never been a problem before as he had been the only person working in the store. Now he was aware that he should inform his employees not to sell alcohol in his absence or ensure that they were fully trained.

The Committee's role was not to punish the Licence Holder but to make sure that the licensing objectives were upheld. Mr Singh and his wife had gone some way to satisfy the Sub-Committee that they could be trusted to fulfil the licensing objectives. Mrs Hundall was an appropriate person to be DPS and this would remove some pressure from Mr Singh who was managing the business in tough economic conditions. Mrs Hundall would be the point of contact for all licensing matters. The separation of the role of Premises Licence Holder and DPS should satisfy Members that existing conditions and any additional conditions imposed would be adhered to.

A lot had been said about the failings of Mr Singh which he accepted but he asked for a degree of sympathy and that mitigation be applied. His circumstances had been unusual and he had not set out to deliberately flout the conditions but these became peripheral to his situation.

The consultation period in respect of the application to vary the DPS was ongoing and he understood from the Police that investigations were continuing and provided that Mrs Hundall was deemed to be suitable he urged Members not to punish Mr Singh but to give him an opportunity to put his house in order.

Turning to the recent failed test purchase by a member of staff he advised that this had been a mistake and Mr Burnside was very sorry. The employee had been out of work for 4 years and had commenced work in the store at the beginning of June 2016. Now that there was a new DPS in post, checks were more stringent.

Mr Singh was very much part of the community and since the earlier review hearings there had been no specific complaints about anti-social behaviour or a risk that alcohol was being sold to underage persons.

In response to a question from Councillor Kellett, Mr Khan outlined the arrangements for management of the store following the birth of Mr Singh's child which would ensure that the licensing objectives were upheld.

Following questions from Mr Mooney about the suspected overstayer, Mr Singh advised that the person had provided his NI number and driving licence and that he had informed him that he would provide his passport as soon as it was returned following the renewal of his visa. Mr Singh did not make inquiry with the Home Office at that time because he had not received all the documentation and he had no reason to doubt the individual.

Mr Singh did not know why the individual had given the Police his address and he was able to leave him alone in the store because he could supervise the premises using his phone or iPad. On his visit to Birmingham he had been absent between 8am and 4pm when the store was usually quiet.

Following further questioning by Mr Mooney, Mr Singh gave details of the training that was provided to staff.

In the light of the most recent test purchase he had told his staff to be very careful and each item had to be scanned so a warning flashed on the till if it was an age related product. He also told staff to look carefully at the customer. He advised that he had worked in off-licences since 2005.

All parties were then invited to sum up.

Mr Mooney stated that the Police had differing views about the proposed DPS but this would be addressed separately in response to the consultation. Having heard the proposed steps offered by the Licence Holder the Police were of the view that these should be in place as a matter of course in a responsibly managed premises.

The store had become a magnet for underage sales and there were already a number of conditions on the Licence which had been disregarded for years. The CCTV had been out of order for 3 months and the condition that the DPS should be present on Friday, Saturday and Sundays had been ignored. He had employed an overstayer and the Police believed that Mr Singh had been aware of this.

Businesses should be managed responsibly and not just on trust. It was not acceptable to leave someone in training in charge of the premises all day. He accepted that CCTV was now in operation but considered that till receipts were not an effective means of monitoring refusals. He acknowledged that training had taken place but this was too little too late. The Police sought revocation of the Premises Licence.

Mr Khan did not accept that the CCTV had been out of order for 3 months and the method of recording refusals was effective but Mr Singh could insert the receipts into a refusals book if this was preferred. The Sub-Committee should not punish the business for failings that had resulted from circumstances out of Mr Singh's control. It had been acknowledged that training could be improved and an external training provider had been employed at a cost to the business.

There was going to be a new regime managed by a DPS who was a more appropriate person to deliver and implement the licensing obligations. He urged the Committee to give the store an opportunity and consider the additional steps proposed by the Licence Holder.

At 1.30pm the Sub-Committee retired to deliberate the application in private. After re-convening at 1.45pm the Chair delivered the Sub-Committee's decision. In reaching their decision the Sub-Committee had taken into account the report of the Senior Licensing Officer, the verbal and written representations of the Licence Holder and his representative, the applicant and Public Health. Members had also taken into account the additional information, the Council's Statement of Licensing Policy and Section 182 Guidance issued by the Secretary of State.

Resolved:

That the Premises Licence be revoked.