

Minutes of	Licensing Act 2003 Sub-Committee
Meeting date	Wednesday, 23 November 2022
Committee Members present:	Councillor Matthew Lynch (Chair), and Councillors Gordon France and John Walker
External attendees:	PC Stephen Connolly, Lancashire Constabulary - applicant Ms Andrea Forrest, Forrest Solicitors – representing the Premises Licence Holder Mr. Verkaria Bharat – Premises Licence Holder Mrs Bharat – Spouse of the Premises Licence Holder Mr Jeff Bamber – Interested party
Officers:	Nathan Howson (Enforcement Team Leader (Licensing)), Alex Jackson (Legal Services Team Leader) and Clare Gornall (Democratic and Member Services Officer)
Apologies:	Councillor Dedrah Moss

A video recording of the public session of this meeting is available to view on [YouTube here](#)

20.15 Declarations of Any Interests

There were none.

20.16 Procedure

The Chair outlined the procedure that would be followed during the hearing.

20.17 Determination of Application for the Review of a Premises Licence- Tony's Off Licence, 50 Bolton Road, Chorley

The Director of Planning and Development submitted a report for the Licensing Act 2003 Sub-Committee advising members of an application for the review of a premises licence served by Lancashire Constabulary, in respect of the premises Tony's Off Licence, 50 Bolton Road, Chorley, PR7 3ET.

The Sub-Committee were asked to approve the requests received under Regulation 8, allowing eligible parties to the hearing to speak. These requests were approved by the Sub-Committee.

Mr. Nathan Howson (Enforcement Team Leader – Licensing), presented the Committee report which informed members that on 6 October 2022, an application for

the review of a premises licence was received from PC 6884 Connolly, for and on behalf of the Chief Constable of Lancashire Constabulary.

Mr Howson advised members that following the application for review representations had been received from Lucy Collier, who stated she is a member of staff at the premises; Scot Schilz, a member of the public and Jeff Bamber, a member of the public.

Further to the report, Mr Howson (Enforcement Team Leader - Licensing), advised members that additional evidence in the form of audio and video recordings had been submitted by the applicant and which had been circulated to the Sub-Committee.

He also informed members that the applicant and the licence holder had agreed to modified conditions to be imposed on the premises licence, and these were presented to members for consideration, together with further supporting evidence in the form of refusal records relating to the premises and certificates obtained from premises staff having completed courses for sale of age restricted products.

The Applicant for Review, PC Connolly for and on the behalf of the Chief Constable of Lancashire Constabulary, explained that an application for review of the premises licence was submitted on the grounds that the licensing objectives of the prevention of crime and disorder, public safety and the protection of children from harm were being undermined at the premises.

PC Connolly informed the Sub-Committee of the circumstances which brought about the application which were that on Monday 5 September 2022 Lancashire Constabulary received a 999 call from a member of the public stating that they had assaulted a staff member on duty, alleging that her 16 year old son had been sold nitrous oxide by the staff member. PC Connolly in his statement said it was his honestly held belief that on 5th September 2022, the cashier sold the Nitrous Oxide cannister knowing that it was intended for misuse. The assistant described the product as "balloons" to the police which is how the substance is consumed for psychoactive effects.

Further to the above, PC Connolly said that on 15 September 2022 he attended the premises in company with Lancashire Trading Standards and Chorley Borough Council Licensing to undertake an inspection of the premises licence and discuss the incident with the Premises Licence Holder. PC Connolly stated that during the inspection he noted a 'slushed ice' machine by the counter which was currently switched off. Attached to the side of the machine was a hand written notice advertising "adult slushies" made with a double measure of vodka or gin. PC Connolly questioned Mr Bharat about this, specifically his process around measuring out the alcohol and he advised that he used to have a plastic cup which he measured out two shot glasses of alcohol, poured them into a plastic cup and drew a line on it with a marker pen to determine the measure when serving the "adult slushies". He advised Mr Bharat that this was not a correct means of measuring out the alcohol.

PC Connolly also stated that Mr Bharat advised that staff were trained on selling nitrous oxide but was unable to provide any evidence as to which staff were trained, by whom and when. PC Connolly in his statement said that Mr Bharat claimed that he had been selling nitrous oxide cannisters recently to takeaways, and when asked where he purchased them he initially stated "AMAZON" but then denied having an

account, and then claimed that someone had bought them for him before changing to buying them from a catering supplier.

Finally in his statement PC Connolly said he and Mr Bharat discussed the CCTV footage of the incident. It transpired that CCTV at the premises had only held records for 5 days and that a copy of the incident had not been made despite a staff member being assaulted. He stated that there was very little signage as regards the Check 25 policy for age restricted products.

Representations were also made in PC Connolly's statement that during this visit Lancashire Trading Standards seized a large quantity of noncompliant e-cigs from the premises. The inspection also uncovered that Mr Bharat had failed to notify Greenwich Council that he had changed his address.

In conclusion PC Connolly stated that the decision to review was due to the serious nature of what had taken place in that that sale of psychoactive substances was prohibited for sale for human consumption, there had been 716 deaths in England and Wales related to their use and that of those psychoactive substances had been mentioned on 56 certificates. PC Connolly stated that North West England had the worst record of deaths related to psychoactive substances.

The Audio and Video recordings were played to the Sub-Committee. PC Connolly read out in full the transcripts provided in police statements.

In the questions to the applicant by the Sub Committee it was stated that no reason had been given by the premises licence holder as to why the CCTV footage in connection with the sale had not been provided. During questions to the applicant by the licence holder's representative PC Connolly agreed that there were very few conditions on the current premises licence and further that by not providing the CCTV footage no breach of licence conditions had taken place. PC Connolly also agreed that the imposition of the proposed licence conditions would promote the licensing objectives.

Mr Jeff Bamber made verbal submissions to the Sub Committee in support of his written representations. He stated that he had never witnessed staff sell age restricted items to any customers without the appropriate identity checks taking place, and indeed on occasions had seen staff politely refuse to sell restricted items if ID was not presented. Mr Bamber also stated that he frequented the shop 4-5 times a week usually in the evenings.

Ms Andrea Forrest, on behalf Mr Bharat the Premises Licence Holder, made submissions to the Sub-Committee. She made the following representations in support of the premises licence holder:-

- No representations have been made by other responsible authorities following the application for review.
- The only written representations received by interested parties have been in support of the premises licence holder.
- The sale of a product containing nitrous oxide leading to an assault was alleged.
- In their police statement the officer merely states that it is their "honest belief" the sale of the nitrous oxide product was knowingly sold for misuse.

- Despite the seizure of e-cigarettes/vapes, Trading Standards have not made any representations.
- There is no condition on the licence in respect of training records so there has been no breach in that regard. Training undertaken many years ago would not have included e-cigarettes/vapes.
- It is difficult to identify non-compliant e-cigarettes/vapes from legitimate products.
- All premises staff have now undertaken Trading Standards courses in relation to sale of age restricted products.
- A test purchase relating to e-cigarettes carried out in August 2022 was passed.
- There have been a number of successful test purchases ranging from 21 July 2016 – 8 August 2022.
- Retention on CCTV footage was not a condition of the premises licence.
- There has been no discussion by the police with the premises licence holder to address these issues prior to applying for review. Section 182 Guidance states that with instances of concerns regarding a premises it is good practice to give the licence holder early warning in respect of those concerns (paragraph 11.10 refers).

The licence holder also stated through his wife that the Amazon account in question was hers. An exchange of excess stock was arranged where a case of champagne was exchanged for 12x cannisters with a value of £220.

PC Connolly in summing up, indicated that he had submitted the application for review due to the serious matter concerning the alleged sale of a nitrous oxide cannister which potentially may have led to a child's death. He requested that the Sub-Committee consider imposing the conditions which had now been agreed by the licence holder. It was his view that these were a reasonable way to promote the licensing objectives.

Ms Andrea Forrest, on behalf Mr Bharat the Premises Licence Holder, also referred to the agreed conditions and requested members consider these when making a decision.

RESOLVED:

Members took account of the application and relevant representations, the Council's Statement of Licensing Policy, the Section 182 guidance, the Licensing Act 2003, the Licensing Objectives and the Human Rights Act 1998.

After careful consideration members resolved to add the conditions in the addendum to the report to the premises licence as well as an additional condition prohibiting the sale or offering for sale of nitrous oxide cannisters for the following reasons:

1. Staff at the premises were confused about the sale of nitrous oxide cannisters which is a crime if the seller is reckless as to whether it will be used to produce psychoactive effects. This undermines the licensing objective of the prevention of crime and disorder and if the potential end consumer is a young person the prevention of harm to children.
2. The grounds for members' concerns are as follows:

The assistant described the product as “balloons” to the police which is how the substance is consumed for psychoactive effects.

The seller referred to feeling bad about selling the cannisters which pointed to an awareness of a risk that the substance was possibly being used for psychoactive effects.

However it was a single incident and the larger cannisters being sold did not point towards deliberate supply to the public for psychoactive effects.

3. Members attached significant weight to the police concerns but also attached weight to the fact that the police view was that the imposition of the conditions in the addendum would promote the licensing objectives.
4. The current licence was very thin and conditions relating to CCTV were appropriate considering that the system in place in September 2022 automatically wiped footage after 5 days.
5. The premises had failed an underage alcohol test purchase in 2021 and the police gave evidence that the measures to minimise sale of alcohol to minors were wanting. However Trading Standards had not submitted an application for a review so evidently did not have serious concerns about underage alcohol sales and the premises provided evidence that it has successfully passed other test purchases. Recently the Premises Licence Holder/DPS and his wife had attended training courses aimed at preventing underage alcohol sales.
6. Trading Standards did not submit a representation concerning sale of non compliant e-cigarettes/vapes.
7. The damage from abuse of nitrous oxide was very high, resulting in many deaths nationally. Members viewed the consequences of the risks at the premises as serious and merited additional conditions including a prohibition on sale and offering for sale given the serious harm to users and to the rest of society.
8. Members attached limited weight to Mr Bamber's representations because he accepted he was only in the premises sporadically.

The following conditions shall be added to the Premises Licence:

1. The premises shall operate and maintain a CCTV system which shall be in use during all times licensable activities are taking place at the premises and comply as follows: - a) The system shall have cameras which cover all areas of the internal areas of the premises and the immediate external areas which customers use for access/egress to the premises. b) As a minimum, the CCTV shall capture a “head and shoulders” image of any person who enters the premises through one of the public entrances and shall be of a quality that would enable their identification. c) All recordings shall be stamped with the correct time and date d) All recordings shall be retained for 30 days and shall be produced to an authorised officers upon lawful request e) Signage advising that CCTV is in operation will be displayed f) The DPS shall undertake an inspection of the CCTV system at least once monthly to ensure that

it complies with the above. The date of the inspection shall be recorded in the premises log.

2. An incident log shall be kept on the premises which shall be used to record any notable incidents, such as a report of crime or disorder or refusal of any age-related product. All entries in the log shall record the date and time, the nature of the incident and the person recording it, the outcome or action taken and a police log number if appropriate. Entries shall be completed as soon as possible and, in any case, no later than the close of business on the day of the incident. The DPS shall inspect the log at least once every two weeks and record with signature the date which the inspection took place.

3. Any person who is authorised by a personal licence holder to sell alcohol under the premises licence shall be authorised in writing. Such authorisation shall include, as a minimum, the name and signature of the person being authorised, the name and signature of the personal licence holder and the date of the authorisation. The log of persons authorised shall be kept up to date and on the premises and shall be produced to a responsible authority on reasonable request.

4. A documented Challenge 25 Scheme will be the adopted Age Verification Policy. The Challenge 25 Scheme will be actively promoted and advertised at the premises and suitable signage will be in place. Any person purchasing alcohol, who appears to be under 25 years of age, shall be asked to provide acceptable identification to prove that they are 18 years of age or over. Failure to supply such identification will result in no sale or supply of alcohol to that person and the refusal shall be recorded in the premises log that must be kept to record details of any refused sales. This record shall be made available for inspection by any responsible authority upon request. Acceptable forms of identification shall be: - (a) A PASS accredited holographic proof of age card (b) Photo Driving Licence (c) Passport (d) National, including EU Identity Cards

5. A documented training scheme shall be introduced for all staff in a position to sell alcohol. Training reviews shall be carried out every 6 months with all members of staff in order to reinforce this training and to promote best practice. All training records shall be kept at the premises for a minimum of 12 months from the date of training and be made available for inspection by any responsible authority upon request.

6. The sale or offering for sale of nitrous oxide cannisters shall be prohibited at the premises.

Chair

Date