

SHEFFIELD CITY COUNCIL

Licensing Sub-Committee

Meeting held 4 January 2016

PRESENT: Councillors David Barker (Chair), Josie Paszek and Cliff Woodcraft

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1. APOLOGIES FOR ABSENCE

1.1 No apologies for absence were received. Councillor Geoff Smith attended the meeting as a reserve Member, but was not required to stay.

2. EXCLUSION OF PUBLIC AND PRESS

2.1 No items were identified where resolutions may be moved to exclude the public and press.

3. DECLARATIONS OF INTEREST

3.1 There were no declarations of interest.

4. LICENSING ACT 2003 - RHYTHM & BOOZE, 8 MIDDLEWOOD ROAD, SHEFFIELD, S6 4GX, 13 BROOKLANDS AVENUE, SHEFFIELD, S10 4GA AND 783-785 ABBEYDALE ROAD, SHEFFIELD, S7 2BH

4.1 The Chief Licensing Officer submitted reports to consider applications made by Sheffield City Council Trading Standards, under Section 51 of the Licensing Act 2003, for reviews of the Premises Licences in respect of the premises known as Rhythm & Booze, 8 Middlewood Road, Sheffield, S6 4GX, 13 Brooklands Avenue, Sheffield, S10 4GA and 783-785 Abbeydale Road, Sheffield, S7 2BH.

4.2 Present at the meeting were David Palmer and Kenneth Webb (Trading Standards, Applicants), Julie Hague (Sheffield Safeguarding Children Board), Martin Swaine (Managing Director, Barnsley Beer Company Ltd., prospective Premises Licence Holder (PLH) for 8 Middlewood Road), Doreen Edwards (Barnsley Beer Company Ltd., prospective Designated Premises Supervisor (DPS) for 8 Middlewood Road), Jayne Gough (Licensing Enforcement and Technical Officer), Marie-Claire Frankie (Solicitor to the Sub-Committee) and John Turner (Democratic Services).

4.3 Marie-Claire Frankie outlined the procedure which would be followed during the hearing.

4.4 Jayne Gough presented the reports to the Sub-Committee and it was noted that representations in respect of all three premises had been received from the Sheffield Safeguarding Children Board and were attached at Appendix 'B' to the reports. It was reported that, on 30th

December 2015, the Premises Licence Holder (PLH) for all three premises had surrendered all three Premises Licences and that following this action, he would no longer be attending this meeting. It was further reported that Martin Swaine, Barnsley Beer Company Ltd., had submitted an application, on this day, for the transfer of the Premises Licence in respect of the premises at 8 Middlewood Road, into his Company's name, following the surrender of the Licence, together with an application for a new Designated Premises Supervisor (DPS) at the premises.

4.5 Marie-Claire Frankie clarified the legal position following the recent action which had been taken in respect of the Premises Licences, indicating that, despite the surrender of the Licences, there was still a requirement for the Sub-Committee to determine the three reviews.

4.6 783-785 Abbeydale Road, Sheffield, S7 2BH

4.6.1 David Palmer reported that on 20th August 2015, Trading Standards officers carried out a routine inspection at the Rhythm & Booze store on Abbeydale Road. Officers found 7 x 70 cl bottles labelled as Teacher's whiskey, which they suspected to be illicit as the rear labels were self-adhesive and contained a spelling mistake. Officers also found 11 x 70 cl bottles labelled Bell's whiskey, which they also suspected to be illicit, due to the self-adhesive labels. All the suspect bottles were seized, and the Trade Mark owners of the two products confirmed that the contents were genuine, but that the rear labels were counterfeit and falsely depicted a duty paid logo, which constituted an offence. Mr Palmer stated that counterfeit and illicit spirits were known to contain dangerous industrial chemicals and contaminants, and were made without the quality control measures employed by genuine brand manufacturers. Such products had no genuine batch codes, which makes traceability impossible, which also constituted an offence. He stressed that the public's safety was at risk when consuming illicit spirits, particularly during binge drinking and even when being consumed more responsibly, on a regular basis. Specific reference was made to the fact that children and young people were put at risk of harm, over and above the effects of under-age drinking, due to the likely effects of the illegal chemical content and the potential inaccuracy of the declared strength (ABV).

4.6.2 Mr Palmer stated that, following the seizure of the bottles, officers immediately visited another store operated by the PLH, Mr Jigar Patel, at Middlewood Road, only to find it closed, with the shutters down, even though it was the middle of the day. A follow-up visit to the Middlewood Road store was made on 24th August 2015, when officers found the store open. Although officers did not find any illicit alcohol, they did find outer packaging for a Bell's whiskey, showing an obliterated duty paid stamp, which indicated that the whiskey was released from a bonded warehouse and intended for export. It should not be possible to find packaging marked in this way in a retail

premise. Only six weeks before this seizure, on 9th July 2015, Mr Patel pleaded guilty at Sheffield Magistrates' Court to three specimen offences under the Trade Marks Act 1994, relating to the possession of 176 bottles of illicit spirits, which were seized from three other premises in Sheffield, for which he was also the PLH and DPS. Mr Patel was fined £240 and was ordered to pay £617 costs, plus a £20 surcharge. During the proceedings, the duty evaded was calculated to be £1,638. During an interview following the seizures in November 2014, Mr Patel admitted buying the products from an itinerant seller and that by showing no due diligence, he understood that he could have put the safety of his customers at risk. Although the spirits seized were found to be the genuine product, but with counterfeit 'duty paid' labels applied to the bottles, he could not have known this, and it was only his good fortune that he did not buy a contaminated or counterfeit product. Mr Palmer referred to a report prepared by Dr Subhashis Basu, Speciality Registrar in Accident & Emergency in Sheffield, which was appended to the report now submitted, and contained details of the potential health effects of common contaminants in illicit alcohol. Mr Palmer concluded by stating that, in the view of Sheffield Trading Standards, Mr Patel had demonstrated by his latest actions that he was not competent to be the PLH or the DPS of the premises at 783-785 Abbeydale Road.

4.7 13 Brooklands Avenue, Sheffield, S10 4GA

4.7.1 David Palmer reported that, on 19th November 2014, Trading Standards officers carried out an inspection at the Rhythm & Booze store at 13 Brooklands Avenue, and found 7 x 70 cl bottles labelled High Commissioner whiskey, which they suspected to be illicit. The suspect bottles were seized and the Trade Mark owners of the products subsequently confirmed that the contents were genuine, but the rear labels were counterfeit and falsely depicted a duty paid logo, which constituted an offence. On 9th July 2015, Jigar Patel pleaded guilty at Sheffield Magistrates' Court, to the three specimen offences under the Trade Marks Act 1994, relating to the possession of a total of 176 bottles of illicit spirits, seized on 19th November 2014, from this and two other premises in Sheffield, for which he was also the PLH and DPS. He was fined £240 and was ordered to pay £617 costs plus £20 surcharge. During the proceedings, the duty evaded was calculated to be £1,638. Mr Palmer stated that counterfeit and illicit spirits were known to contain dangerous industrial chemicals and contaminants, and were made without the quality control measures employed by genuine brand manufacturers. Such products had no genuine batch codes, which made traceability impossible, which also constituted an offence. He stressed that the public's safety was at risk when consuming illicit spirits, particularly during binge drinking and even when consumed more responsibly, on a regular basis. Children and young people were put at increased risk of harm, over and above the effects of under-age drinking, due to the likely effects of the illegal chemical content and the potential inaccuracy of the

declared strength (ABV).

4.7.2 Mr Palmer added that, on 20th August 2015, only six weeks after prosecution, Trading Standards officers discovered and seized 18 more bottles of illicit spirits at another store, at Abbeydale Road, for which Mr Patel was the PLH and DPS. Following this, officers immediately visited another store operated by Mr Patel at Middlewood Road, only to find it closed, with the shutters down, even though it was the middle of the day. A follow-up visit to the Middlewood Road store on 24th August 2015, when the store was open, found no illicit alcohol, but officers did find outer packaging for Bell's whiskey, showing an obliterated duty paid stamp, which indicated that the whiskey was released from a bonded warehouse and intended for export. It should not be possible to find packaging marked in this way in a retail premise. Officers also examined the CCTV and discovered that there was no recording for 20th August 2015, even though there was normal footage for the days before and after. During an interview following the seizures in November 2014, Mr Patel admitted buying the products from an itinerant seller and that by showing no due diligence, he understood that he could have put the safety of his customers at risk. Although the spirits seized were found to be the genuine product, but with counterfeit 'duty paid' labels applied to the bottles, he could not have known this and it was only his good fortune that he did not buy contaminated or counterfeit products. Mr Palmer referred to a report prepared by Dr Subhashis Basu, Speciality Registrar in Accident & Emergency in Sheffield, which was appended to the report now submitted, and contained details of the potential health effects of common contaminants in illicit alcohol. Mr Palmer concluded by stating that, in the view of Sheffield Trading Standards, Mr Patel had demonstrated by his latest actions that he was not competent to be the PLH or the DPS of the premises at 13 Brooklands Avenue.

4.8 8 Middlewood Road, Sheffield, S6 4GX

4.8.1 David Palmer reported that, on 19th November 2014, Trading Standards officers carried out an inspection at the Rhythm & Booze store at 8 Middlewood Road, finding 51 x 70 cl bottles of spirit labelled Gordon's gin, 54 x 70 cl bottles labelled Teacher's whiskey and 63 x 1 litre bottles labelled High Commissioner whiskey, which they suspected to be illicit. On 9th July 2015, Jigar Patel pleaded guilty at Sheffield Magistrate's Court to three specimen offences under the Trade Marks Act 1994, relating to the possession of 176 bottles of illicit spirits, seized on 19th November 2014, from this and two other premises in the City, for which he was also the PLH and DPS. He was fined £240 and ordered to pay £617 costs plus a £20 surcharge. During the proceedings, the duty evaded was calculated to be £1,638. Mr Palmer stated that counterfeit and illicit spirits were known to contain dangerous industrial chemicals and contaminants, and were made without the quality control measures employed by genuine

brand manufacturers. Such products have no genuine batch codes, which made traceability impossible, which was an offence. He stressed that the public's safety was at risk when consuming illicit spirits, particularly during binge drinking and even when being consumed more responsibly on a regular basis. Children and young people were put at increased risk of harm, over and above the effects of under-age drinking, due to the likely effects of the illegal chemical content and the potential inaccuracy of the declared strength (ABV).

- 4.8.2 Mr Palmer added that, on 20th August 2015, only six weeks after prosecution, Trading Standards officers discovered and seized 18 more bottles of illicit spirits at another store, at Abbeydale Road, for which Mr Patel was also the PLH and DPS. Following this, officers immediately visited the Middlewood Road store, only to find it closed with the shutters down, even though it was the middle of the day. A follow-up visit to the Middlewood Road store on 24th August 2015, when the store was open, revealed no illicit alcohol, but officers did find outer packaging for Bell's whiskey, showing an obliterated duty paid stamp, which indicated that the whiskey was released from a bonded warehouse and intended for export. It should not be possible to find packaging marked in this way in a retail premise. Officers also examined the CCTV, and discovered that there was no recording for 20th August 2015, even though there was normal footage for the days before and after. During an interview following the seizures in November 2014, Mr Patel admitted buying the products from an itinerant seller and that by showing no due diligence, he understood that he could have put the safety of his customers at risk. Although the spirits seized were found to be the genuine product, but with counterfeit 'duty paid' labels applied to the bottles, he could not have known this and it was only his good fortune that he did not buy contaminated and/or counterfeit products. Mr Palmer referred to a report prepared by Dr Subhashis Basu, Speciality Registrar in Accident & Emergency in Sheffield, which was appended to the report now submitted and contained details of the potential health effects of common contaminants in illicit alcohol. Mr Palmer concluded by stating that, in the view of Sheffield Trading Standards, Mr Patel had demonstrated by his latest actions that he was not competent to be the PLH or the DPS of the premises at 8 Middlewood Road.
- 4.9 In response to questions from Members of the Sub-Committee, Mr Palmer stated that, whilst he was not certain, he believed that shop retailers could purchase alcohol from other retailers as long as the transaction was carried out in the proper manner, in that invoices were provided, duty paid and there was an element of traceability. It was confirmed that the visits to the premises in August 2015 were routine, and not carried out following any intelligence, and that Mr Patel had clearly admitted, under interview, that he had purchased the alcohol from an itinerant seller.
- 4.10 Julie Hague, representing the Sheffield Safeguarding Children Board

(SSCB), stated that the reason for the Board's representations was that the three premises had been evidenced to have been operating in an irresponsible and illegal way that undermined the core objective for the protection of children from harm, under the Licensing Act 2003. Ms Hague stated that the evidence submitted by Sheffield City Council Trading Standards demonstrated that counterfeit and illicit alcohol products had been sold at the three premises. The Board was concerned that these products, which were expected by the public to be legitimate and regulated products, may cause physical harm if consumed by persons under the age of 18. There was a potential for children and young people to easily access these products, for example, if the products had been legally consumed in a domestic setting, or the products were accessed by underage or 'proxy sales'. In terms of the individual premises, relating first to 8 Middlewood Road, Ms Hague stated that when visiting the premises on 21st December, 2015, on arrival, the premises appeared to be closed or ceased to be operating and therefore, she was unable to access the premises. With regard to the visit to 783-785 Abbeydale Road, on 21st December, 2015, on arrival at the premises, the shop assistant, Mr Harroi Patel, informed her that the manager was not on site. She discussed the age verification scheme with Mr Patel, and was informed that the Challenge 25 scheme was in operation. However, she was concerned to note that there was no evidence of the scheme, specifically in terms of signage, and the shop displayed only one notice indicating that it was illegal to sell alcohol to under 18's. There was no reference to the signage, the need to produce ID or any staff training records available for inspection. Ms Hague was concerned that Mr Patel appeared to have responsibility for the shop, but was not a Personal Licence Holder, and had received little training. Mr Patel stated that he had only received verbal training from Mr Jigar Patel, which related mainly to his responsibility to check the customer's age by asking for their ID, date of birth and address. It was stated that she had noted that Mr Harroi Patel was able to demonstrate how to use till prompts, and that he had an understanding that this process related to the prevention of selling age-restricted goods. With regard to 30 Brooklands Avenue, Ms Hague stated that when visiting the premises on 21st December, 2015, on arrival, the shop assistant, Ms Ann Hirst, informed her that the manager was not often on site as he lived outside the City. Ms Hague discussed the age verification scheme with Ms Hirst and noted again, that whilst the Challenge 25 scheme was in place, there was no related signage, with the exception of one small shelf sign in the shop. There were no staff training records available for inspection and it was noted that Ms Hirst was not a Personal Licence Holder. Ms Hirst confirmed that she had not received any training in the 12-month period since the Premises Licence Holder had commenced. However, she stated that she had received alcohol sales training previously, when working for other companies. Ms Hague noticed that till prompts were in place, however, Ms Hirst stated that she preferred to use the refusals book, and was able to evidence this and, on inspection, the refusals book

was appropriately completed, with the most recent entry being on 18th October 2014.

- 4.11 Ms Hague stated that she was concerned that the lack of signage and training records at the two premises she gained entry to, indicated that the age verification scheme operated as a minimal standard, and did not currently meet the criteria for a recognised scheme, as agreed by the SSCB, in conjunction with South Yorkshire Police and the Council's Trading Standards. She also noted, with concern, that neither of the staff she spoke to on 21st December 2015, had made reference to proxy sales and the issue of fake ID being included in the 'verbal training' they had received. Ms Hague stated that these issues were commonplace and an accepted aspect of the general standards that were expected in Sheffield in terms of an operator evidencing due diligence to prevent underage sales. She concluded by stating that if the determination of the Sub-Committee was that the premises were to continue to operate, she would recommend that the licences be conditioned to meet these standard requirements.
- 4.12 In response to questions raised by Members of the Sub-Committee, Ms Hague confirmed that the SSCB, in conjunction with the police, would arrange for free training to be offered to the operator and for a test purchase to be undertaken at any premises if it received evidence of underage sales being made. In terms of the signage and training records kept at the premises concerned, it was expected that there should have been something more recent and more detailed, and that the DPS had checked records to identify any staff training needs. In terms of training requirements, Ms Hague stated that she would expect, at a minimum, for all members of staff to receive individual training in terms of underage sales, including training regarding ID, and for staff to receive regular six-monthly refresher training. There should be little or no excuse for licence holders/DPSs failing to arrange relevant training for staff as the Challenge 25 systems were fairly standardised now and the Sheffield Safeguarding Children Board delivered regular free training and provided signage at no cost. There was also an expectation that Premises Licence Holders would wish to have all the relevant systems in place, and provide relevant training to staff, in order to protect themselves and their businesses.
- 4.13 The Sub-Committee heard evidence from Martin Swaine, Managing Director, Barnsley Beer Company Ltd., who had submitted an application for the transfer of the Premises Licence, in respect of the premises at 8 Middlewood Road, under Section 50 of the Licensing Act 2003, to his Company. The application had been submitted to the Licensing Service's and South Yorkshire Police's offices on this day, together with an application for a new DPS. Mr Swaine stated that neither himself or his Company had any connection to the previous PLH, and that he was a fit and proper person to re-open the store at Middlewood Road. Mr Swaine stated that he had been in the licensing trade since 1987, and had held nearly 100 Premises

Licences, currently holding three Licences in Barnsley. He used to own Rhythm & Booze, prior to losing the business in March 2012, and was currently trying to build the business back up. He made reference to Doreen Edwards, who had accompanied him to the meeting, who had been a DPS in various outlets during the last 10 years and, subject to the application submitted being successful, would be the DPS at 8 Middlewood Road.

- 4.14 In response to questions raised by Members of the Sub-Committee and Marie-Claire Frankie, Mr Swaine stated that he was no longer trading as part of Rhythm & Booze as the company got into financial difficulties, and consequently went into liquidation. The business was transferred to Costcutter supermarkets and after around two years, during which time business had not been successful, the stores were purchased by other companies. The plan was for Doreen Edwards to be the DPS, until such time she moved on to be replaced by another DPS. In terms of training, all staff at the store would receive personal training on all aspects of the business, and receive refresher training every three months, with all details of such training being recorded. The store would operate the Challenge 25 scheme, having appropriate signage, and would have till prompts and maintain a refusals log. Staff in the store would only be able to serve customers if they had successfully completed the training. Mr Swaine stated that Barnsley Beer Company Ltd. started off as a small business, supplying bottled beer to shops and other businesses. Mr Swaine confirmed that, other than failing the odd test purchase, following which lessons had been learnt, he had not had any problems with Trading Standards. The Company was based in Barnsley, although there were stores around the Yorkshire and Lincolnshire area, with the majority being in South Yorkshire. Mr Swaine also confirmed that, other than the odd test purchase failure, he or any other company he had been involved in had never been cautioned or prosecuted for doing anything wrong. It was standard business practice for any members of staff who had failed a test purchase not to be allowed back on the tills until they had received full refresher training on this issue. The members of staff would also be disciplined.
- 4.15 David Palmer and Julie Hague summarised their cases.
- 4.16 RESOLVED: That the public and press and attendees involved in the application be excluded from the meeting before further discussion takes place on the grounds that, in view of the nature of the business to be transacted, if those persons were present, there would be a disclosure to them of exempt information as described in paragraph 5 of Schedule 12A to the Local Government Act 1972, as amended.
- 4.17 Marie-Claire Frankie reported orally, giving legal advice on various aspects of the application.
- 4.18 At this stage in the proceedings, the meeting was re-opened to the

public and press and attendees.

4.19 RESOLVED: That, in the light of the information contained in the reports now submitted, the additional information now circulated and the representations now made, the Sub-Committee:-

(a) agrees to revoke the Premises Licences in respect of the premises known as (i) Rhythm & Booze, 13 Brooklands Avenue, Sheffield, S10 4GA (Ref. No. 02/16) and (ii) Rhythm & Booze, 783-785 Abbeydale Road, Sheffield, S7 2BH (Ref. No. 03/16), for the following reasons:-

(A) in considering what those steps were, Members took into account Section 11.20 of the Licensing Act 2003 Guidance, which states that action taken should be directed at the cause or causes of concern. Members identified that these were the persistent availability of illicit alcohol and lack of management due diligence at the premises.

(B) Members were satisfied that the management had failed to demonstrate due diligence for the protection of children from harm and the prevention of crime and disorder and public safety and therefore looked at whether removing the DPS would resolve the problem. Members looked to the shop assistants submission that the DPS is rarely at the premises in any event and therefore determined that this would not sufficiently address the problem; and

(C) Members looked at steps that had been taken by Sheffield Trading Standards, including resorting to prosecuting Mr Patel for having illicit alcohol, and determined that it was appropriate to remove this licensable activity from the licence. As this is the only licensable activity on the licence and having looked at all of the alternatives, Members determined in this instance, taking into account all of the evidence heard, that they had no choice but to revoke the Premises Licence; and

(b) agrees to modify the conditions of the Premises Licence in respect of the premises known as Rhythm & Booze, 8 Middlewood Road, Sheffield, S6 4GX (Ref. No. 01/16), following the submitted transfer application, subject to the following conditions:-

(i) The Challenge 25 scheme will be in operation at all times, with a refusals log kept on the premises, for use at all times, and made available to officers;

(ii) All staff must receive training on underage sales to a standard agreed with the Sheffield Safeguarding Children Board (SSCB) before being authorised to sell alcohol.

Staff will sign to confirm they have been trained;

- (iii) Staff refresher training will be carried out at three-monthly intervals, with records of the training and confirmation signatures being kept on the premises and made available to officers on request;
- (iv) A colour CCTV system, to the specification of South Yorkshire Police, will be fitted, maintained and in use, at all times whilst the premises are open. The CCTV images will be stored for 31 days, and police and authorised officers of the Council will be given access to them for purposes in connection with the prevention and detection of crime and disorder. CCTV footage shall be downloaded and provided to South Yorkshire Police on request. Members of the management team will be trained in the use of the system. A copy of the specification, dated July 2012, will be available at all times for inspection by the police and authorised officers.

(The full reasons for the Sub-Committee's decision will be included in the written Notices of Determination.)