

LICENSING SUB COMMITTEE A

A meeting of Licensing Sub Committee A was held on 20 March 2012.

PRESENT: Councillor J Walker (Chair); Councillors Brady and Kerr.

OFFICERS: B Carr, J Hodgson, S Morris and S Vickers.

ALSO IN ATTENDANCE: P Kumar – Applicant
A Forrest – Applicant's Legal Representative
J Olley – Lodore Residents Association
Councillor R Arundale

**** DECLARATIONS OF MEMBERS' INTERESTS**

There were no Declarations of Interest made by Members at this point of the meeting.

LICENSING ACT 2003: APPLICATION FOR PREMISES LICENCE – 271A ACKLAM ROAD, MIDDLESBROUGH - REF. NO. MBRO/PRO148

A report of the Assistant Director Community Protection had been circulated outlining an application for a Premises Licence in relation to 271a Acklam Road, Middlesbrough, Ref No. MBRO/PRO148.

Summary of Proposed Licensable Activities

Sale of Alcohol (Off Sales) Monday – Sunday 8.00am – 11.00pm

Full details of the application and accompanying Operating Schedule were attached at Appendix 1 to the submitted report.

The Chair introduced those present and outlined the procedure to be followed at the meeting. Councillor Arundale advised Members of the Committee that he wished to make comments on the application. Members were advised that it was a requirement of the Licensing Act 2003 that any representations in respect of licensing applications were required to be made in writing within 28 days of receipt of the application by the local authority. The Council's legal representative advised Members that as Councillor Arundale had not submitted any written representations prior to the specified deadline according to the requirements of the Licensing Act 2003 he would not be permitted to make comments on the application.

Details of the Application

The Licensing Officer presented the report in relation to an application, received on 27 January 2012, for a Premises Licence in relation to 271a Acklam Road, Middlesbrough, Ref No. MBRO/PRO148 as outlined above. A copy of supporting documentation from the applicant in respect of the application had been circulated to Members of the Committee prior to the meeting.

The report provided background information in relation to the premises which, operated as a post office and confectionary store situated in a retail block on Acklam Road between the junctions of Church Lane and Coniston Grove in close proximity to residential properties.

Details of correspondence, received from Cleveland Police on 17 February 2012 advising that they had agreed with the applicant that the operating schedule be amended to include a number of conditions was attached at Appendix 2 to the report. Representations had also been received from Mr T Carey, a local resident received on 21 February 2012 (attached at Appendix 3), Lodore Residents Association received on 21 February (attached at Appendix 4), V Walkington, a local resident received on 23 February 2012 (attached at Appendix 5) and M Brownlee, a local resident received on 23 February 2012 (attached at Appendix 6) were circulated with the submitted report.

Officers highlighted that the representation received from Mrs Brownlee did not relate to one or more of the licensing objectives and as a consequence clarification was sought from the objector with regard to the grounds of her objection. On 29 February Mrs Brownlee clarified which licensing objectives related to her objection.

Members were advised that several of the representations referred to the availability of other licensed premises in the vicinity of 271a Acklam Road however Members were reminded that the 'need' for licensed premises in any particular area was not a material consideration under the Licensing Act 2003.

Applicant in Attendance

The applicant's legal representative presented the case in support of the application.

The legal representative referred to Appendix 6 of the report and requested that Members disregard the objection as the original representation did not refer to any of the licensing objectives and as such the objection was inadmissible.

The Council's legal representative advised Members that he concurred with the view of the applicant's legal representative that the representation attached at Appendix 6 to the report be disregarded. Members subsequently agreed to disregard the above representation.

Members were advised that the applicant had been responsible for the operation of the premises for over 11 years and during that time he had not received any complaints regarding anti social behaviour either inside or outside his premises. The premises were currently operated as a post office which also sold cards and confectionary. The applicant wished to continue to operate the post office but recognised that in order for the premises to remain viable there was a need for the premises to revise the offer for customers.

The legal representative advised that the applicant currently employed 5 post office staff and 4 shop staff and 8 out of the nine employees were all over the age of 40 and all of the staff lived locally. Should the application be successful it was intended that the premises would be refurbished and the post office would be incorporated into the shop which could result in the applicant employing an additional 3 members of staff. The applicant also intended the premises to be part of the Bargain Booze franchise.

The legal representative referred Members to the documentation in relation to Bargain Booze, in particular:-

- Page 6 in relation to proactive policies and training;
- Page 9 in respect of the refusal and challenge system;
- Page 14 in respect of the internal training manual;
- Page 17 in respect of the Challenge 25 policy;
- Page 18 in respect of underage sales;
- Page 19 in relation to proxy sales of alcohol;
- Page 20 to highlight that a reward was offered for information regarding proxy sales which lead to a conviction;
- Page 21 regarding refusals of sales;
- Page 23 & 24 regarding training aids.

Members were advised that discussions had taken place with the Police and the applicant and as a consequence the Police had agreed with the applicant the conditions listed at Appendix 2 to the report and had discussed placing a camera outside the premises in case of any instances of anti social behaviour. The legal representative highlighted that if the Police had held any concerns regarding crime and disorder at the premises it was likely that they would have objected to the application. The applicant had also suggested that he operate the Challenge 25 policy rather than the Challenge 21 policy.

Members were advised that the applicant had held a Personal Licence for over 4 years. The legal representative reiterated that the 'need' for premises and the fact that there were other outlets selling alcohol in the vicinity of the premises were not material factors in considering the

application. The legal representative referred to the High Court case ruling in respect of Thwaites v Wirral Borough Magistrates Court case 2008, in particular the reference to the importance of evidence as opposed to speculation presented in Licensing Act 2003 hearings particularly in relation to representations received from residents.

A copy of the plan for the refurbished premises was circulated to Members of the Committee. The applicant advised members that the Government were encouraging post offices to modernise and become open plan. He explained that additional competition from other premises for the sale of national lottery products and greetings cards had impacted on the viability of his business. The Council's legal adviser reminded Members that the viability of a business was not a matter for the Committee and the applicant's legal adviser advised that she concurred with that view.

In response to a query with regard to the planned layout of the refurbished premises in relation to the location of the beer stacks, the applicant advised that there would be a hard partition around the stacks and the area would also be covered by CCTV. Members queried whether the planned location of the stacks would contravene one of the suggested conditions of the police with regard to alcohol being stocked near to the entrance/exit door. The applicant was advised that the current proposed location of the beer stacks near to the entrance was not acceptable. The applicant advised that he would be happy to revise the plan to ensure that it complied with licensing conditions.

The Chair of the Committee referred to the training manual submitted by the applicant and suggested that a list of licensing objectives be included as part of the manual.

Relevant Representations

The representative from Lodore Residents Association advised that she was representing the 280 houses situated within Lodore Residents Association. The representative advised that she had lived in the area for over 50 years and was aware of the problems with the estate however she pointed out that residents did value and support the post office.

Members were advised that two cut through walk ways between Acklam Road and Trimdon Avenue were used as drinking dens and were strewn with broken glass. Gardens were used as urinals, cans and bottles were dumped and vehicles were often damaged. Elwick Avenue was full of glass and the Bluebell Beck was used as a drinking area by youths. Trees were destroyed and the beck was used as a dumping ground.

Ms Olley advised that she could not envisage that the refurbishment of the post office would be a profitable venture. Members were advised that the Police already had enough trouble dealing with the premises that already held a licence. Ms Olley advised that the Police were already making provision for the revelries at the end of term. The area already suffered from alcohol related anti-social behaviour and underage drinking problems.

The Chair advised Mrs Olley that the Committee could not consider the fact that there were already a number of licensed premises within the area.

The applicant's legal adviser advised that the applicant wanted to work with the residents in the area and she queried whether Mrs Olley had reported the incidents of anti social behaviour to the Police. Mrs Olley advised that she was sure that the incidents would have been reported to the Police.

The Chair asked Mrs Olley if she had advised the Police that the Residents Association were making representations against the application or whether the application had been discussed at the Community Council. Mrs Olley advised that she did not advise the Police about the association's representations and the issue had not been raised at the Community Council because of timing issues.

The applicant's legal adviser asked Mrs Olley that should the licence be granted if she would be able to approach the applicant about any issues with the operation of the licence. Mrs Olley confirmed that she would contact the applicant if any issues arose.

Summing Up

The Applicant's legal representative

The Applicant's legal representative advised Members that all steps would be taken to comply with the conditions should the licence be granted. Members were reminded that the Police were happy to agree conditions with the applicant and the applicant had agreed to operate the Challenge 25 policy rather than the Challenge 21 policy suggested by the Police. The applicant would ensure that staff received ongoing training in respect of the licensing objectives and would operate the premises in a mature and professional manner. The legal representative reminded Members of the relevance of the Thwaites v Wirral Borough Magistrates Court case 2008 and requested that Members grant the application.

The representative from Lodore Residents Association

The representative from Lodore Residents Association requested that should Members decide to grant the licence if they could consider curtailing the hours in relation to licensable activities. Ms Olley advised that if the hours were not curtailed, youths could congregate outside the premises and intimidate residents.

It was confirmed that there were no further questions and all interested parties other than the Officers of Legal Services and the Members Office, withdrew whilst the Committee determined the application.

Subsequently all the parties returned and the Chair announced the Committee's decision.

Decision

That the Application for the Premises Licence in respect of 271a Acklam Road, Ref No: MBRO/PR0148 be granted in part subject to the following conditions:-

1. The hours for Licensable Activities shall be as follows:

Sales of Alcohol (Off Sales)	Mon – Sat	8.00am – 11.00pm
	Sun	9.00am – 10.30pm
2. That the premises be fitted with digital colour CCTV capable of monitoring the premises externally and internally including the area displaying alcohol for sale, the checkout / till area and the entrance and exits at all times. CCTV footage must be retained for a minimum of 31 days and CD Roms must be kept in a secure and locked cabinet at the premises.
3. The CCTV footage must be made available to members of the police and other responsible authorities upon request and if that is not possible it must be provided to the authorities within 24 hours.
4. That till prompts be incorporated into the checkouts which would prompt staff into requesting the proof of age whenever alcohol was purchased at the premises.
5. That only UK 'photo card style' driving licence, valid non expired passport and PASS approved proof of age ID to be accepted as a form of identification at the premises.
6. That a refusals record be kept at the premises and maintained at all times. The refusals record must show the date, time and reason for all refusals. The refusal record must specify if a refusal was made because an employee suspected a customer of buying alcohol for or on behalf of an underage person.
7. That a hard copy of the refusals records must be made available to the Police, Trading Standards or Enforcement Officers on request and or/during an inspection of the premises.
8. That the premises must operate a Challenge 25 policy. At least one notice to be placed in a prominent position advising customers of the Challenge 25 policy. All persons under the age of 25 must be challenged for identification and to be requested for proof of age. Ten

year passports, photo driving licences or PASS logo identify cards only, to be accepted as proof of age.

9. That prominent notices must be exhibited in the premises advising that it is illegal to sell alcohol to persons under the age of 18.
10. That at least 2 prominent notices be positioned in the area where alcohol is displayed and at the checkouts informing customers that anyone found purchasing alcohol for or on behalf of a person under the age of 18 would be prosecuted and fined.
11. That the display of alcohol for sale must not be near the entrances to or exits from the premises and must be in sight of the checkouts / tills.
12. That all staff receive training on a six monthly basis in relation to the conditions applicable to the premises and training specific to Challenge 25, proxy sales and underage sales of alcohol. Documented training records relating to every employee employed at the premises (paid or unpaid) to be kept on the premises. The records should include but are not limited to the nature, content and frequency of any training and the employee's signature confirming he / she had received the training. These records would be maintained at the premises and must be made available to the Police, Trading Standards or Enforcement Officers on request and / or during an inspection of the premises.
- 13 That an incident book be kept at the premises and maintained at all times recording the time, date and details of all incidents of crime and disorder which must be made available to the Police, Trading Standards or Enforcement Officers on request and /or during an inspection of the premises.

In reaching the above decision Members had considered the following:-

1. The application was considered on its own merits, taking into account the three licensing objectives of the prevention of crime & disorder, prevention of public nuisance and protection of children from harm.
2. Consideration was given to the Government Guidance, in particular paragraph 2.1 onwards relating to the prevention of crime and disorder, paragraph 2.32 onwards relating to the prevention of public nuisance and paragraph 2.41 onwards in relation to the protection of children from harm.
3. Consideration was also given to Middlesbrough Council's Licensing Policy, in particular page 23 - 29 in relation to the prevention of public nuisance, page 32 – 42 in relation to the prevention of crime and disorder and page 43 – 46 in relation to the protection of children from harm.
4. Consideration was given to the case made by the Applicant and the representative from Lodore Residents Association and the representations detailed at Appendix 2 – 5 of the report.

The applicant was reminded of the right to appeal to the Magistrates Court within 21 days of the date of the decision.