

LICENSING SUB-COMMITTEE A

A meeting of the Licensing Sub-Committee A was held on 28 November 2013.

PRESENT: Councillors J A Walker (Chair); Loughborough and McTigue

ALSO IN ATTENDANCE: Applicant - Mr Mohan Palani Samy
Applicant's Legal representative - R Botkai
Cleveland Police - PC J Bryan
Cleveland Police Legal representative - J Constable
MBC Environmental Protection - P MacGregor
MBC Environmental Protection - C Pitcher
Ward Councillor - Councillor D Budd

OFFICERS: B Carr, C Cunningham and J Hodgson

DECLARATIONS OF INTERESTS

There were no relevant Declarations of Interest at this point of the meeting.

13/1 **APPLICATION FOR VARIATION OF PREMISES LICENCE - TUDOR LODGE SERVICE STATION, MARTON ROAD, MIDDLESBROUGH, TS4 3SE - REF NO: PRO143/082194**

A report of the Assistant Director of Development and Planning Services had been circulated outlining an application for a Variation of the Premises Licence in respect of Tudor Lodge Service Station, Marton Road, Middlesbrough, TS4 3SE - Ref No: MBRO/PR0/143/082194.

Summary of Existing Licensable Activities

Sale of Alcohol (off sales) 600am to 11.00pm daily
Late Night Refreshment - 11.00pm - 12 midnight

A copy of the existing Premises Licence was attached at Appendix 1 to the report.

The Chair introduced those present and outlined the procedure to be followed.

The applicant's legal representative advised that the applicant wished to revise his initial application which was for the sale of alcohol to 24 hours daily and an extension of the hours for the provision of late night refreshment from 12 midnight to 5am (including a number of new conditions).

For clarification, the applicant's legal representative stated that the revised application was for the following:-

Sale of Alcohol (off sales) 600am to 12.00 midnight daily - including a number of new conditions
Late Night Refreshment - 11.00pm - 5.00am daily - including a number of new conditions

The suggested new conditions were detailed at "M" (a - e) of the application form.

The Senior Licensing Officer presented the report in relation to an application for a variation of Premises Licence in respect of Tudor Lodge Service Station, Marton Road, Middlesbrough, received on 4 October 2013, as revised and outlined above.

The applicant had advertised the application, as required by the Licensing Act 2003, in the Evening Gazette on 8 October 2013. It was highlighted that the premises consisted of a convenience store which operated in association with a petrol filling station situated at the junction of Marton Road and Ladgate Lane in close proximity to residential premises. The premises had benefitted from a Premises Licence since November 2005 and the licence was transferred to the applicant on 9 July 2013.

On 10 October 2013, an objection to the variation of the licence on the grounds of the prevention of crime and disorder, public safety and the prevention of public nuisance was received from Councillor Budd and Councillor Carr, the local Ward Councillors. A copy of the representation was attached at Appendix 4 to the report.

On 14 October 2013, a representation was received from Mr D Tom, objecting to the application on the grounds of the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm. A copy of the representation was attached at Appendix 5 to the report.

On 29 October 2013, a representation was received from Cleveland Police objecting to the application on the grounds of the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm. A copy of the representation was attached at Appendix 6 to the report.

On 1 November 2013, a representation was received from the Council's Environmental Health (Noise) Officer objecting to the application on the grounds of the prevention of public nuisance. A copy of the representation was attached at Appendix 7 to the report.

The applicant's legal representative advised that the late night refreshment licence would only be used to facilitate the sale of hot drinks and sandwiches through the night pay window. He advised that he had discussed the revised application with the Police and they offered no objections to the revised application. Members were advised that there would also be additional conditions added to the current premises licence as suggested by the applicant.

The Council's legal representative advised the Chair that the people that had submitted representations against the application should be given the opportunity to consider the revised application.

The Police's legal representative advised that the applicant had already previously received a two hour extension to his licence and the additional hour, if granted today, would mean that the premises licence had been extended by three hours in the past fifteen months. He stated that if the application was to be agreed that Members should specify that no further extensions to the licensable hours would be considered for a considerable time.

The applicant's legal representative advised that it would not be lawful to place a condition on a premises licence prohibiting any further applications for an extension to the licensable activities as every application had to be treated on its own merits.

The Chair suggested that the Committee adjourn at this point of the meeting to afford those that had made representations in respect of the application, the opportunity to consider the revised application and to determine if the interested parties could come to an agreement with regard to the application. The meeting adjourned.

At this point of the meeting all the interested parties returned to the room. The Police legal representative advised that new information had come to light with regard to the fact that there was another garage located a mile and a half away from the premises and the licensable activities for those premises ceased at 11.00pm. He stated that because of this new information, the Police were no longer happy to withdraw their objections to the application.

As it appeared that the people who had made representations against the application had not involved the applicant and his legal representative in the discussions with regard to the revised application, the Chair suggested that the Committee adjourn for a further ten minutes to enable all the parties to discuss the revised application. The meeting adjourned.

At this point of the meeting all the interested parties returned to the room. The Council's legal representative queried whether all the interested parties were in agreement to proceeding with the determination of the revised application or whether additional time was required to consider the revised application. As there were no objections with regard to the Committee hearing the revised application, the Council's legal adviser requested the applicant's legal representative to confirm for the minutes the details of the revised application.

The Applicant

The applicant's legal representative advised that the terminal hour for the sale of alcohol would be twelve midnight. In terms of the late night refreshment licence, the applicant was requesting a terminal hour for late night refreshment of 5.00am however he stated that if Members wished to restrict the Late Night Refreshment Licence to the sale of hot drinks then this would be acceptable to his client.

The applicant's legal representative clarified that under the old "Justices Off Licence" his client had been permitted to sell hot coffee. However when the licensing rules changed in 2005, petrol stations were included in the Late Night Refreshment licensing rules. He explained that if a customer entered the premises and obtained a cup of coffee from a vending machine, the premises would not require a Late Night Refreshment Licence. It was the fact that the transaction for the cup of coffee took place through the till that the licence was required.

The applicant's legal representative emphasised that the Committee could not hear or consider any applications in relation to the premises that had been dealt with in the past - he stated that it would be unlawful for Members to take this into consideration. The legal representative stated that the Council had a policy that appeared to have been drafted with public houses in mind. He commented that the Government Guidance stated that the hours that shops should be allowed to sell alcohol should match the premises opening hours.

The applicant's legal representative stated that the Environmental Health Officer had pointed out that the premises were situated in a residential area however residents in the area used the premises. The applicant's legal representative stated that the premises were also well used by ambulance drivers for hot drinks. He stated that the noise involved in selling a person alcohol was no different to the noise associated with customers purchasing petrol. He stated that the customers would not be consuming the alcohol on the premises.

The applicant's legal representative noted that the Environmental Health Officer had not produced a list of complaints about noise at the premises and the Police had only produced evidence with regard to incidents in the vicinity of the premises and only 5 or 6 of the incidents had occurred after 11pm at night.

The applicant's legal representative stated that there were premises in Ormesby that had a 24 hour licence and they had operated without any problems. The legal representative emphasised that there had been no specific complaints from the Police, Environmental Health or residents with regard to the applicant's premises.

In response to a query from a Member the applicant confirmed that the premises were open 24 hours a day for the sale of petrol and the shop was open from 6am - 10pm. The applicant's legal representative clarified for the Police that the planning consent for Late Night Refreshment was currently until 12 midnight. If the application was to be approved then the applicant would need to seek a revision of his planning consent to include the additional hours. He stated that that the doors to the premises would close at 11pm if the application was approved and alcohol and hot drinks would be sold from the night pay window after 11pm. The sale of alcohol would cease at 12 midnight.

The legal representative for the applicant stated that the conditions suggested in the operating schedule were not currently included within the premises licence however the applicant was willing to incorporate the additional conditions on his licence should the application be approved.

The Environmental Health Officer stated that there were no conditions with regard to public nuisance included in the suggested additional conditions and he queried whether the applicant had addressed the issue of public nuisance. The applicant's legal adviser queried whether the Environmental Health Officer had received any complaints regarding the slamming of doors. The Environmental Health Officer advised that as part of a planning application he had taken readings from a number of resident's houses and they had expressed concern about the noise levels.

The Council's legal adviser clarified that at this point of the meeting, interested parties were allowed to ask questions of the applicant with regard to the evidence presented; the other parties would be given the opportunity to present their case later in the meeting.

The applicant's legal representative stated that the applicant would be willing to have a condition on his licence which would require him to place notices at the premises reminding customers to behave in a responsible and quiet manner when leaving the premises.

A Member commented that six incidents of anti-social behaviour in the vicinity of the premises was six incidents too many and asked if they could make a statement. The Council's legal adviser reminded Members that they were only allowed to ask questions of the applicant and his legal representative with regard to the evidence produced.

The applicant's legal representative requested that it be included in the minutes that he had expressed concern that it appeared that "minds appeared to have been made up" with regard to the outcome of the application; before the full case and evidence in support of it had been heard by the Committee. He stated that the applicant was entitled to a fair hearing.

The Chair asked for clarification with regard to the current conditions on the licence. The applicant's legal representative clarified that the conditions suggested in the operating schedule were in addition to those already included on the premises licence. He emphasised that if the application was to be approved then there would be more restrictions on the licence. The legal representative stated that one of the new conditions would include that any alcohol served after 11pm could only be served through the night pay window as the door to the shop of the premises would be closed at 11pm.

Cleveland Police

The legal representative for the Police referred to the statement submitted by PC Bryan. He stated that the Police were particularly concerned with regard to the additional trade that could be generated by the increase in trading hours. He asked Members to consider the Police evidence with regard to anti-social behaviour in the vicinity of the premises over an eight month period and the fact that the premises were situated in close proximity to residential premises.

The Police had produced a detailed plan which demonstrated where the incidents of anti-social behaviour had occurred. The Police legal representative emphasised that sixteen of the incidents included in the Police evidence referred to alcohol and in one of the incidents, it had been queried whether a young man was fit to drive.

Members were advised that the evidence submitted only referred to reported incidents and it was likely that some incidents of anti-social behaviour had not been reported. The premises were situated on a busy crossroads with a high volume of traffic. The Police legal representative stated that it was possible that by extending the hours for the sale of alcohol that drivers purchasing the alcohol from the night pay window could consume the alcohol and then drive under the influence of alcohol. PC Bryan was invited to go through her statement but declined as the Police legal representative had already made reference to the incidents contained in the statement.

The applicant's legal representative stated that he had met with the Police on a number of occasions and the likelihood of customers drink/driving because of the increase in trading hours had never been raised. The Chair emphasised that the Committee had to deal with the facts of the case and the facts were that the applicant wanted to extend his hours for licensable activities and that he wanted to be allowed to sell alcohol for an additional hour from 11pm - 12 midnight. It was not up to the Committee to speculate what happened to the alcohol that was sold in that hour.

The applicant's legal representative reiterated that the purpose of the extension of the Late Night Refreshment Licence was for the sale of hot drinks.

It was commented that the Tesco store had a garage which was situated just over a mile away from the premises and that store closed at 11pm. The Chair pointed out that the applicant's application would be treated on its own merits.

Environmental Health

The Environmental Health Officer pointed out that the premises were situated in a predominantly residential area and one of the properties was particularly in close proximity to the premises. He stated that the issue with noise was in relation to people arriving at the premises in cars; slamming doors and shouting at each other.

The Environmental Health Officer referred to paragraph 7.5 of the Council's Licensing Policy which stated that "in predominantly residential areas, the Licensing Authority will normally expect all licensable activities to cease at 11pm with the premises closing no later than 11.30pm. He stated that in his view, residents would be concerned if the premises were allowed to trade later than 11pm.

Councillor D Budd

Councillor Budd stated that the issue with regard to the application was very straight forward. What was acceptable in terms of noise in a residential area at one hour of the day was not acceptable at night time; in particular after 11pm. He stated that there were only two ways to access the premises and that was either by foot or by car. Councillor Budd stated that he found it hard to believe that residents would want to utilise the premises Late Night Refreshment licence up to 5.00am. He stated that there would be additional noise and disruption if the application was to be granted and for these reasons, in his view the sale of alcohol and the facilities for Late Night Refreshment should cease at 11pm.

A Member stated that she would like to make the same comments as Councillor Budd. The Chair of the Committee advised the Member concerned that she was not able to make these comments.

In response to a query Councillor Budd advised that he had received telephone calls from two different residents objecting to the application and the application had also been discussed at various other meetings with residents.

SUMMING UP

Environmental Health

The Environmental Health Officer advised that he had nothing further to add but he requested that he be allowed to discuss if conditions could be placed on the licence at a later stage. The Council's legal adviser stated that it was up to the Members of the Committee if they wished to place conditions on the licence.

Cleveland Police

The Police legal representative advised that the essence of the Police case was contained in the statement of PC Bryan and he referred again to the incidents of anti-social behaviour.

Applicant

The applicant's legal representative advised that none of the incidents of anti-social behaviour referred to in the Police evidence had occurred at the applicant's premises. The Police had also raised the matter of people being more inclined to drink/drive if they bought alcohol from the premises between 11.00pm and 12 midnight but had offered no evidence to support this assertion. Members were advised that this scenario was no more likely to occur at a petrol station than any other licensed premises and as a consequence there was no evidence to suggest that the increase in the sale of alcohol by one hour would increase instances of drink/driving.

The applicant's legal representative stated that there was a 24 hour licensed premises nearby and none of the interested parties had raised any issues associated with those premises. The applicant's premises were not situated in a "Cumulative Impact" area and as a consequence it was up to the objectors to the application to prove, on the grounds of evidence, that the application would have an adverse effect on the licensing objectives if granted.

The legal representative stated that the Committee had not received any information in relation to the sixteen incidents that involved alcohol of where the alcohol had been purchased. The Police had not provided any evidence of complaints regarding anti-social behaviour that were directly linked to the applicant's premises.

The legal representative reminded Members that the applicant already had a Late Night Refreshment Licence until 12 midnight and he asked the Committee to extend the hours of the licence for Late Night Refreshment until 5.00am. Members were asked to consider the evidence they had received and to consider the additional conditions offered by the applicant which could be placed on his licence to restrict the sale of certain types of alcohol. He reminded Members that the application had been advertised and that it had received relatively few objections to the application.

The legal representative reminded Members that they could if they wished restrict the Late Night Refreshment Licence after 12 midnight to the sale of hot drinks only.

A Member stated that he wished to reassure the applicant's legal representative that he had not predetermined the decision with regard to his client's application.

A Member commented that the applicant's legal representative had stated that he was not aware of any complaints in relation to the premises with 24 hour opening in close proximity to his clients premises. The applicant's legal representative stated that the 24 hour opening premises had not been reviewed.

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

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

The applicant was advised that in accordance with the guidance, the full decision and the reasons would be forwarded in five working days.

In reaching the decision Members had considered the following:-

1. The Licensing Act 2003 and amended Government Guidance issued under Section 182 of the Act.
2. Middlesbrough Council's Licensing Policy.
3. The case presented by the Applicant.
4. The relevant representations received from the Police.
5. The relevant representations from the Ward Councillors and Mr D Tom.
6. The relevant representations from the Council's Environmental Health Officers.

The decision of the Committee was as follows:-

- To grant the variation for the sale of alcohol until 12 midnight daily;
- To grant the variation to provide late night refreshment until 5.00am subject to late night refreshments being restricted to the sale of hot drinks only;

The conditions proposed relating to the following will be modified to ensure that the conditions are clear, enforceable and appropriate to prevent crime and disorder, public nuisance and to protect children from harm and will be applied to the Licence:-

- Staff training;
- Refusals book;
- Incident record;
- Restriction on single sales and specific alcohol strengths;
- Closing of the shop and service only through the night pay window

Current conditions relating to CCTV will be modified to cover the forecourt and service window.

Challenge 25 condition will be updated.

The modification of the current conditions were as follows:-

Licensing Objective - Prevention of Crime and Disorder

CCTV - CONDITION 4 - DELETE CONDITION 4 AND REPLACE WITH

4. The CCTV system will incorporate a camera covering the entrance door, alcohol display areas, forecourt and night pay window and will be capable of providing an image regarded as identification standard.

Licensing Objective - Protection of children from harm

CHALLENGE 25, DELETE CONDITION AND REPLACE WITH

1. Staff must require ID in the form of a current ten year passport, photo card driving licence or PASS logo Identity card from any customer who appears to be under the age of 25 and verify the customer is over 18 before any sale of alcohol is made.

2. All sales tills shall prompt the member of staff making the sale to verify the customer is aged 18 or over.

The new conditions to be placed on the licence were as follows:-

1. Training in relation to Challenge 25 policy, underage sales, sales to adults purchasing alcohol on behalf of a minor (proxy sales), sales to intoxicated persons, refusal registers, incident records and all other conditions on the Premises Licence must be provided and undertaken by all members of staff (whether paid or unpaid) before he / she makes a sale, supply or delivery of alcohol and at least every six months thereafter.

2. Documented training records must be completed in respect of every member of staff (whether paid or unpaid) and must include the name of the member of staff trained, date, time and content of the training and must be signed by the member of staff who has received the training, Designated Premises Supervisor and the Premises Licence Holder

3. Documented training records must be kept at the Premises and made available to the police, trading standards or licensing officers on request and / or during an inspection.

4. A Refusals Register must be kept at the premises and maintained up to date at all times recording the date, time, reason for every refusal to sell alcohol to a customer, details of the alcohol the person attempted to purchase and the identity of the staff member refusing the sale.

5. The Refusals Register must be made available to police, trading standards or licensing officers on request and / or during an inspection.

6. An incident register must be kept at the premises and maintained up to date at all times recording the time date and details of all incidents of crime and disorder at the premises or directly outside of the premises and details of occasions when the police are called to the premises.
7. The incident book must be made available to the police, trading standards and licensing officers on request and / or during an inspection.
8. There shall be no sale of single cans of beer, lager, cider or Perry and single bottles of beer, lager or cider in vessels of less than 500 ml from the Premises.
9. No super-strength beer, lagers or Perry of 5.5% ABV (alcohol by volume) or above shall be sold at the Premises.
10. There shall be no self-service of spirits.
11. The entrance door to the shop will be closed to customers between the hours of 2300 and 0600. Any sales between these hours will be made through the night pay window.

The reasons for the decision are that although police evidence showed incidents of anti-social behaviour, none were attributed to the premises themselves and there have been no other specific complaints about the actual premises.

The Committee have departed from the Policy because they did not consider that sales of alcohol until 12 midnight and the sale of hot drinks until 5.00am through the serving hatch would have a negative impact on the objectives in view of the fact that petrol was sold on a 24 hour basis from the premises.

However, In light of the concerns raised by the objectors, evidence of incidents of anti-social behaviour in the area and the close proximity of residential premises, the Committee considered the above new conditions and modification to the CCTV condition and Challenge 25 condition to be appropriate to deter crime and disorder and public nuisance and protect children from harm.

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