

LICENSING SUB-COMMITTEE A

A meeting of the Licensing Sub-Committee A was held on 30 November 2015.

PRESENT: Councillors J A Walker (Chair), L Lewis and T Mawston

ALSO IN ATTENDANCE: S Punyani – Applicant.
S Pauchal – Applicant’s agent.
Sergeant P Higgins – Cleveland Police (making representations),
PC Arbuckle – Cleveland Police.

OFFICERS: C Cunningham, J Dixon and J Hodgson.

DECLARATIONS OF INTERESTS

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

15/1 **LICENSING ACT 2003 - APPLICATION FOR PREMISES LICENCE: CUMBERLAND FOOD & WINE, 57-59 CUMBERLAND ROAD MIDDLESBROUGH, TS5 6PN.**

A report of the Assistant Director of Improving Public Health had been circulated outlining an application for a Premises Licence in relation to Cumberland Food and Wine, 57-59 Cumberland Road, Middlesbrough, TS5 6PN, Ref No. OL/15/14.

Summary of Proposed Licensable Activities and Hours

Sale of Alcohol (off sales) - 7.00am to 11.00pm daily.

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.

The applicant and his agent and representatives from Cleveland Police (making representations), were in attendance at the meeting and confirmed that copies of the report and Regulation 6 Notice had been received.

The Senior Licensing Officer advised that the Police had been in discussions with the applicant outside of the meeting room and Sergeant Higgins was asked whether an agreement had been reached with the applicant which would allow the Police to withdraw its representation.

The Council’s legal representative referred to case law (Taylor v Manchester City Council) which stated that any application for a new licence (or a variation of a licence) where conditions that were not on the original operating schedule to the application were agreed between a body making representations (in this case, Cleveland Police) and the applicant, the Licensing Sub Committee’s discretion was triggered and it was for the Licensing Sub Committee to make a judgment on the information before it as to whether those proposed amendments would promote the licensing objectives.

Therefore, where an objection was received and, thereafter formally withdrawn before a meeting, the application must be granted in accordance with the operating schedule without amendment, an applicant could not amend his application to this extent. Where an objection was received but a compromise was reached between the parties, for example, the reduction of hours or imposition of conditions, original representations should not be withdrawn but the proposals put before the Licensing Sub Committee. The Licensing Sub Committee must then make a judgement / decision as to whether to grant the licence, subject to those conditions if the Committee considered the conditions would promote the licensing objectives. If the parties agreed that a Hearing was not necessary, then the Sub Committee would consider the written representations before coming to a decision.

Details of the Application

The Senior Licensing Officer presented the report in relation to an application for a Premises Licence in respect of Cumberland Food and Wine, 57-59 Cumberland Road, Middlesbrough, TS5 6PN. The application was received on 8 October 2015 and was advertised in the Evening Gazette on 22 October 2015, as required by the Licensing Act 2003.

It was noted that the premises consisted of a convenience store situated in a primarily residential area in close proximity to residential properties. Prior to the introduction of the Licensing Act in 2005, the premises had operated with the benefit of a justice's licence which was surrendered in February 2011. A fresh application for a premises licence was submitted by the current licence holder on 9 May 2011. Cleveland Police initially made a representation in relation to the application, however that representation was withdrawn following an agreement with the application in relation to the imposition of conditions upon the licence. The licence was then granted on 17 June 2011. On 2 March 2015 Cleveland Police submitted an application to review the licence which was considered by Members on 22 April 2015. The licence was subsequently revoked and full details could be found at Appendix 2.

On 4 November 2015, a representation was received from Cleveland Police objecting to the application on the grounds of the prevention of crime and disorder. A copy of this representation was attached at Appendix 3.

Representations - Cleveland Police

Sergeant Higgins stated that the Police's concerns related to the previous running of the premises. The current situation was that the landlord of the premises had agreed a tenancy with the applicant and the Police had concerns that, should the applicant vacate the premises in the future, the licence would remain in force and be transferrable. There would be a potential for the landlord to allow the previous operators of the business to return and it was highlighted that the previous concerns were in relation to Class A drugs being supplied from the premises.

Sergeant Higgins advised that negotiations with the applicant had taken place prior to the meeting and that the applicant had agreed to a number of conditions, the main one being that, should the applicant vacate the premises, he must surrender the Premises Licence prior to leaving the premises.

Sergeant Higgins confirmed that the applicant had provided him with a copy of the lease agreement at the premises, made between himself and the property owner. The lease agreement was for a length of 15 years. A copy of the agreed conditions was circulated to all parties.

Applicant in Attendance

The applicant was in attendance at the meeting accompanied by his agent. The applicant's agent presented the case in support of the application and advised Members in relation to the applicant's training menu which would be used to train staff working at the premises. All staff would be trained in accordance with the requirements of the Licensing Act 2003 and this training would be refreshed every three months and recorded accordingly. A pocket-sized guide would also be issued to staff.

The applicant's agent confirmed that the applicant had agreed conditions with the Police prior to the meeting and confirmed that the applicant was happy with the condition in relation to surrendering the premises licence should he no longer wish to operate the store. The applicant's agent stated that the applicant acknowledged the concerns of the Police and the Committee and assured Members that the applicant was working with the Police.

Questions to the Applicant

All parties were afforded the opportunity to ask questions of the applicant and the following

issues were raised:-

- In response to a query, the applicant confirmed that the premise was a convenience store and that alcohol sales would form part of the offer. A plan of the store was considered and the applicant provided details in relation to the layout. It was confirmed that cigarettes/tobacco would be kept behind the counter and no alcohol would be displayed within three metres of the entrance/exit door. The applicant added that alcohol would not exceed more than 20% of the display. Sergeant Higgins confirmed that he was happy with this.
- A Panel Member made reference to page 27 of Sergeant Higgins's report which referred to the applicant being the DPS and premises licence holder of the Boro 24 shop, Linthorpe Road, and that a number of condition breaches were discovered at the premises in 2013. Sergeant Higgins confirmed that all of those issues had been rectified and that he was now satisfied that all of the conditions in respect of the licence at that premise were now being complied with.
- A Member highlighted that the conditions proposed by Cleveland Police included "no sales of lager, beer or perry products with an ABV of above 6.5%" but cider was not mentioned. Sergeant Higgins advised that this condition was agreed as part of the negotiations with the applicant and that the concerns of the Police were around the supply of drugs. Sergeant Higgins confirmed that the Police had wished to include cider in the condition but the applicant was not in agreement for cider to be included. The Police had no evidence to support the inclusion of cider as part of the condition.
- The applicant was asked why he was not willing to include cider products as part of the condition. The applicant responded that some of his customers bought cider. He stated that there were at least 20 types of cider above ABV 6.5% and that he only stocked one of those types - which was 7.5%.

Summing Up

Applicant

The Applicant's agent summed up by stating that the applicant was in agreement with Cleveland Police on a number of conditions to be applied to the Premises Licence that would robustly promote the four licensing objectives. The applicant was happy to work with the responsible authorities and to ensure staff were trained appropriately. The applicant understood the Council's Licensing Policy and the requirement to ensure the licensing objectives were met.

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

ORDERED that the application for a Premises Licence in respect of Cumberland Food and Wine, 57-59 Cumberland Road, Middlesbrough, TS5 6PN, Ref No: OL/15/14, be granted on the basis of the conditions agreed between Cleveland Police and the applicant:-

1. A digital CCTV system will be installed and maintained in good working order and be correctly time and date stamped.
2. The system will incorporate sufficient built-in hard-drive capacity to suit the number of cameras installed, whilst complying with Data Protection legislation.
3. CCTV will be capable of providing pictures of evidential quality in all lighting conditions, particularly facial recognition.
4. Cameras will encompass all ingress and egress to the premises, outside areas and all areas where the sale/supply of alcohol occurs.
5. There will be a minimum of 31 days recording and the system will record for 24 hours a day.
6. The system will incorporate a means of transferring images from the hard-drive to a

- format that can be played back on any desktop computer.
7. The digital recorder will have the facility to be password protected to prevent unauthorised access, tampering, or deletion of images.
 8. There will be, at all times, a member of staff who is trained in the use of the equipment and, upon receipt of a request for footage from a governing body, such as Cleveland Police or any other responsible authority, be able to produce the footage within a reasonable time, eg 24 hours, if routine, or less if urgently required for investigation of a serious crime.
 9. The premises will not stock, display or sell any lager, beer or Perry product with an ABV content above 6.5%.
 10. The store will not sell single cans of alcohol.
 11. A Challenge 25 policy will be implemented with all staff insisting on evidence of age from any person appearing to be under the age of 25 years of age attempting to purchase alcohol. There shall be notices at all points of sale and at all entrances and exits informing customers and reminding staff that the premise is operating a Challenge 25 Policy.
 12. Staff will be fully trained and re-trained on a six-monthly basis and the training must include the laws relating to the sale of alcohol to under-aged persons, persons buying on behalf of under-18s (proxy sales) persons appearing to be under the influence of alcohol and also the operation of the associated Challenge 25 Policy.
 13. Training records must be signed by both the members of staff and the DPS/Store Manager/Business Owner and will be retained for future reference and must be updated at least every six months. All training records must be made available to Police and/or a responsible authority upon request.
 14. A refusals book to be maintained and kept on the premises at all times and be made available to Police and other responsible authorities upon request.
 15. There must be a minimum of four signs on the premises stating that it is an offence to sell alcohol to persons under 18 years of age. The signs must be visible in the public areas of the store.
 16. An incident book must be maintained and kept on the premises at all times. It must be made available to Police and any other responsible authority upon request.
 17. No alcohol must be stocked within 3 metres of the entrance/exit door.
 18. In the event that the current premises licence holder, Surjit Singh Punyani, ceases to operate from the premises, the premises licence shall be surrendered and will no longer be in effect.
 19. The premises shall display a sign informing customers that staff will not serve alcohol to street drinkers.

The Committee also considered it appropriate to request the following additional condition:-

1. That alcohol be displayed in accordance with the agreed plan, as discussed in Committee, (attached) and the area for display of alcohol shall not be increased without the approval of Cleveland Police.

The Committee's reason for requesting the above additional condition was on the basis that the premise was a convenience store where alcohol was only part of the whole convenience.

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

1. The case was considered on its own merits taking into account the four licensing objectives of The Licensing Act 2003.
2. The Licensing Act 2003 (and Amended Government Guidance issued under Section 182 of the Act).
3. Middlesbrough Council's Licensing Policy.
4. The application and representations submitted by Cleveland Police.
5. The conditions proposed by Cleveland Police and agreed by the applicant.

The Chair advised the applicant that a letter, with full, detailed reasons for the decision, would be sent to him within five working days.

