

LICENSING SUB-COMMITTEE A

A meeting of the Licensing Sub-Committee A was held on 15 May 2018.

PRESENT: Councillors J A Walker (Chair) and R Arundale and Brady.

ALSO IN ATTENDANCE: Applicants Representatives:

Y Taylor
B Hodgson
D Lester

P Higgins - Cleveland Police

Objector
Councillor T Higgins

OFFICERS: J Dixon, F Helyer, J McCluskey, N Williams

DECLARATIONS OF INTERESTS

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

17/20 **LICENSING ACT 2003 - APPLICATION FOR PREMISES LICENCE: CAROL'S CONVENIENCE STORE, 31-33 SALTERSGILL AVENUE, MIDDLESBROUGH, TS4 3LD. REF NO: OL/18/08**

1. On the 15 May 2018, the Committee considered an application for a Premises Licence under Section 18 of the Licensing Act 2003 ("the Act") to sell alcohol off the premises in respect of premises at 31- 33 Saltersgill Avenue Middlesbrough known as Carol's Convenience Store, between the hours of 9.00am until 10.00pm daily. The Applicant is Carol Nivens who is also named as the Designated Premises Supervisor.

2. The Committee noted that as relevant representations had been received to the Application a hearing must be held. The Committee noted under Section 18 of the Act that it must, having regard to the representations, take such steps if any as it considers appropriate for the promotion of the licensing objectives. The steps are to grant, to grant with conditions and /or modify conditions in the operating schedule, exclude a licensable activity, refuse the Designated Premises Supervisor or reject the application.

3. The Licensing Objectives under Section 4 of the Act are the promotion of the prevention of crime and disorder, public nuisance, the protection of children from harm and public safety.

4. The Committee carefully considered the Application on its own merits, it carefully considered the representations by the Applicant, the Responsible Authorities and the Councillors who made relevant representations, the Council's Statement of Licensing Policy and Guidance under Section 182 of the Act.

Decision

5. The Committee decided it was appropriate to reject the Application for the promotion of the prevention of crime and disorder and in the interests of public safety.

Summary

6. The Applicant informed the Committee in summary and including but not limited to, the following:

- That the Applicant and all staff have received training and refresher training in all matters in relation to the sale of alcohol

- That the conditions on the operating schedule will mean that the sale of alcohol from the shop will not add to the problems in the area
- That the shop serves the community, is wanted by the community and a petition in support was submitted.
- That the display of alcohol will be as shown on the plan and may be 25 to 30 percent of the overall convenience goods sold.
- That there are no issues directly related to the Premises.
- That the Applicant will be running the business separately to the owner of the building and received a character reference supporting her ability to do so.

7. The Responsible Authorities informed the Committee in summary and including but not limited to, the following:

- Previous problems at the premises, purchase and sale of cheap illicit alcohol with no duty paid which posed a risk to public safety
- Previous continued breaches of the conditions on the licence
- That the Applicant is acting as a front for the owner who was involved in the unlawful activities
- That the Applicant was involved in the operation when the lawful activities took place
- The unlawful activities and breaches of conditions led to the licence recently being revoked
- That the area suffers from high levels of alcohol harms including crime and disorder, anti-social behaviour and high alcohol related hospital admissions
- That the area is subject to a Cumulative Impact Policy because of the problems in the area
- The Applicant's lack of experience, knowledge of the business and the cumulative impact policy.

8. Ward Councillors informed the Committee in summary and including but not limited to, the following:

- The management of the premises will be the same as that which lead to the revocation
- That the area is deprived
- There are already licensed premises in the area
- That residents are scared to go out on a night because of the problems in the area

Reasons

9. The Premises is situated in Saltersgill within Longlands and Beechwood ward which is an area covered by a special cumulative impact policy. The Policy states that there is a relationship between the density of off licensed premises, crime and disorder, anti-social behaviour and alcohol attributable hospital admissions. The five wards which are subject to the special policy out of 20 wards in Middlesbrough account for 61 % of all crime and disorder and 61 % of all the off licences in Middlesbrough.

10. The Policy states that the licensing authority is satisfied there is good evidence that crime and disorder or nuisance occurring in the ward is being caused by customers of off licensed premises, and the cumulative impact of off licensed premises in the ward is evident.

11. The high number of licensed premises in the area are having a cumulative impact leading to problems that undermine the promotion of the prevention of crime and disorder and public nuisance, public safety and the protection of children from harm.

12. The ward in which the Premises is situated is ranked the 3rd highest ward in Middlesbrough for crime and the police confirmed there are serious issues with alcohol fuelled crime and disorder and anti-social behaviour in the area.
13. Public Health confirmed that there are very serious alcohol harms in this area which have led to or are a factor in very high hospital admissions where people including children are either harmed by alcohol consumption itself or harmed as a result through crimes, injuries or accidents including deaths. Middlesbrough itself is ranked within the top 10 of the Country for alcohol related harms
14. Therefore generally applications in this ward may only be granted if the Applicant can show the operation will not add to the cumulative impact.
15. The Committee considered the Applicant failed to demonstrate the activities would not add to that cumulative impact. The Committee considered granting the licence even subject to conditions would undermine and fail to promote the licensing objectives.
16. A Licensing Sub Committee decided to revoke the previous premises licence on the 27 February 2018 because the Premises was operated in a manner which undermined the promotion of the prevention of crime and disorder and public safety. The Applicant was involved in the previous operation when the objectives were being undermined.
17. Whilst the Applicant was involved with the premises, illicit alcohol was purchased and sold from the premises including high strength high risk alcohol. There was also a risk that the alcohol could be a risk to public safety because there was no overall traceability. In addition the Premises was selling alcohol in breach of the licence conditions. The breaches continued over a number of years despite warnings and advice given.
18. The previous decision was clear in that all involved in the operation including the Applicant were all intrinsically linked when the breaches took place. That decision also stated that there has been continuous management issues which resulted in the objectives being seriously undermined.
19. The full reasons for the revocation were set out in Appendix 2 to the report. The decision and reasons were not appealed.
20. The Responsible Authorities considered that the Applicant was put in place as a front for the owner of the building, Mr Finnegan. The Committee accepted this to be the case. Mr Finnegan is the Applicant's partner. Mr Finnegan previously ejected the Premises Licence Holder and DPS from the Premises. He appeared to be in charge and knew that illicit alcohol was bought and sold from the Premises and was involved and knew the conditions were being breached. At this time the Applicant was also involved in the operation.
21. At the hearing, the Applicant stated the monthly rent was £500, however, this contradicted the lease which states the annual rent is £10,000. The Applicant was very unclear and vague about outgoings, accounts and turnover of the business generally. The Committee therefore considered that in all likelihood the Applicant is acting as a front and the operation will be the same as that previously when the objectives were undermined.
22. The Committee was also seriously concerned that the Applicant was unaware that the premises was in an area subject to a cumulative impact policy and did not appear to understand the implications of this or the issues in the area. This is despite being involved in the premises previously, involved in the review hearing and receiving training.
23. The Committee considered the Applicant's representations to be inconsistent. The Applicant had previously informed the Committee during the review that she had "helped out" at the Premises for 6 or 7 months, however, informed this Committee she had helped out for three years. The police also confirmed they had on record in respect of an unrelated incident that the Applicant's place of work was the Premises since September 2015.

24. The Applicant told this Committee that she did not previously have a role in purchasing alcohol, however, at the previous hearing it was established that she did purchase goods and alcohol from a wholesaler.

25. The Committee was also concerned that the Applicant still relied on another person to operate and check the CCTV. The CCTV condition was previously breached on a number of occasions.

26. The Committee was concerned that the Applicant did not appear to have the amount of experience first claimed in the application in managing alcohol sales or within the trade.

27. The Committee noted that the Applicant stated there were no issues at the premises, however, although not general crime / Anti – social behaviour there were issues that could amount to crimes, in that the management allowed or arranged the purchase of illicit alcohol and breached conditions. The Committee considered that this added to the negative cumulative impact in the area.

28. The Committee noted that a petition had been submitted. However, the Committee considered that the risks to the objectives in a high risk area as shown by the track record of the operation outweighs the petition which may support the application. Also, it is not clear on the top of each page what the public are signing up to.

29. The Committee did not take into consideration any submissions that there may not be a commercial demand for another premises.

30. Looking at the Application on the whole on balance, the Committee decided it was appropriate to reject the Application. The operation previously undermined the licensing objectives in an area subject to a special cumulative impact policy which suffers from serious alcohol related harms. The Committee considered that the Applicant is a front for and was involved in the previous operation and was not a responsible retailer. The Committee considered that conditions would not address the inherent management / operational failings. The Committee considered the Applicant has failed to show that the new operation will not add to the negative cumulative impact in the area for the reasons stated. Therefore, the Committee considered there is no good reason to depart from the special policy in this case.

31. Any party to the hearing aggrieved by this decision may appeal to the Teesside Magistrates Court within 21 days beginning with the day on which the Party was notified by the licensing authority of the decision appealed against.