

LICENSING SUB-COMMITTEE A

A meeting of the Licensing Sub-Committee A was held on 9 August 2018.

PRESENT: Councillors J A Walker (Chair), J Goodchild and T Higgins

PRESENT AS OBSERVERS: J Cain - Local Democracy Reporter

ALSO IN ATTENDANCE: A Hynes and P Hynes (LBH Bars) - Applicants.
F Farooqi - Applicants' Planning Agent

Present as objectors:
Councillor T Mawston - Marton East Ward Councillor
Mr S Brock - Local Resident

OFFICERS: J Dixon, C Holland (legal adviser) and S Wearing.

DECLARATIONS OF INTERESTS

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

18/3 **LICENSING ACT 2003 - APPLICATION FOR A PREMISES LICENCE - 38 STOKESLEY ROAD, MARTON, MIDDLESBROUGH, TS7 8DX, REF NO. OL/18/11**

DECISION – BLOC, 38 STOKESLEY ROAD, MARTON

1. The Sub Committee considered an application for the grant of a new premises licence in respect of 38 Stokesley Road, Marton, Middlesbrough TS7 8DX ("the premises").
2. The premises consisted of a unit within a well-established district centre in a residential location. There were residential properties on "The Croft" immediately opposite the premises, albeit they were separated from it by The Croft road itself, the A712 Stokesley Road and a service road outside the district centre.
3. The applicant was LBH Bars Limited, a company incorporated in England and Wales with CRN 11209466. The company's directors were Anthony Hynes and Paul Hynes, both of whom attended the Sub Committee hearing, along with their planning consultant, Mr Farooqi. The Sub Committee was assisted by the clear and straightforward manner in which the presentation was made and questions were answered.
4. The proposal was to operate the premises as a tapas / wine bar. The application sought a licence authorising the sale by retail of alcohol and the provision of regulated entertainment.
5. Initially the application sought a terminal hour for the sale of alcohol until 1 am seven days a week. Unsurprisingly, this led to objections to the application from responsible authorities and residents. Following discussions between the applicant and the responsible authorities, the terminal hour for the sale of alcohol was scaled back to 11.00 pm, with a closing hour of 11.30 pm, and a suite of conditions was agreed. On this basis the responsible authorities withdrew their representations. A significant proportion of residents withdrew their objections, but others did not.
6. Hence the matter proceeded to a hearing before the Sub Committee. The Sub Committee's statutory task was to consider the representations and, having regard to them, to take such specified steps as it considered appropriate for the promotion of the licensing objectives.
7. In undertaking that function, as statute required, the Sub Committee had regard to Middlesbrough Council's Licensing Policy and to the guidance issued by the Secretary of State under Section 182 of the Licensing Act 2003.
8. The Section 182 guidance points out in paragraph 1.4 that in addition to the promotion of

the licensing objectives, the legislation supported a number of other key aims and purposes which were vitally important and should be the principal aims for everyone involved in licensing work. They included:

- protecting the public and local residents from crime, anti-social behaviour and noise nuisance caused by irresponsible licensed premises;
- giving the police and licensing authorities the powers they need to effectively manage and police the night-time economy and take action against those premises that were causing problems;
- recognising the important role which pubs and other licensed premises played in our local communities by minimising the regulatory burden on businesses, encouraging innovation and supporting responsible premises;
- providing a regulatory framework for alcohol which reflected the needs of local communities and empowered local authorities to make and enforce decisions about the most appropriate licensing strategies for their local area; and
- encouraging greater community involvement in licensing decisions and giving local residents the opportunity to have their say regarding licensing decisions that may affect them.

9. The Council's Policy recognised (at paragraph 1.8) that residents need to live and work in a safe and healthy environment. Also, that it was important that licensed premises were safe and well run and that they added to both the local economy and vibrancy of the town. The Licensing Authority's aim was to facilitate well managed premises and to support licence holders displaying sensitivity to the impact of their premises on local residents. The Policy wished to encourage diversity of operations (paragraph 1.9).

10. The question of what was appropriate to promote the licensing objectives was a matter for the Sub Committee's evaluative judgement, having in mind that the Sub Committee was tasked with promoting the public benefit. The legal adviser referred the Sub Committee to the leading case of R (on the application of Hope and Glory Public House Ltd v. City of Westminster Magistrates' [2011] EWCA Civ 31 where Toulson LJ said:

"Licensing decisions often involve weighing a variety of competing considerations: the demand for licensed establishments, the economic benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand, the effect on law and order, the impact on the lives of those who live and work in the vicinity, and so on. Sometimes a licensing decision may involve narrower questions, such as whether noise, noxious smells or litter coming from premises amount to a public nuisance. Although such questions are in a sense questions of fact, they are not questions of the "heads or tails" variety. They involve an evaluation of what is to be regarded as reasonably acceptable in the particular location. In any case, deciding what (if any) conditions should be attached to a licence as necessary and proportionate to the promotion of the statutory licensing objectives is essentially a matter of judgment rather than a matter of pure fact."

11. The legal adviser also referred the Sub Committee to R (on the application of Chief Constable of Nottinghamshire) v. Nottingham Magistrates' Court [2009] EWHC 3182, per Moses L.J.:

"...the decision in relation to the appeal as to the licence, or as to conditions on the licence, is not a decision similar to that which [the judge] would be accustomed to resolving in the course of ordinary litigation. There is no controversy between parties, no decision in favour of one or other of them, but the decision is made for the public benefit one way or the other in order to achieve the statutory objectives."

12. In arriving at its decision the Sub Committee also had regard to the principles of good regulation as set out in s.21 of the Legislative and Regulatory Reform Act 2006, which were:-

(a) regulatory activities should be carried out in a way which was transparent, accountable, proportionate and consistent;

(b) regulatory activities should be targeted only at cases in which action was needed.

13. The Sub Committee was also obliged (by s.17 of the Crime and Disorder Act 1998) to have due regard to the likely effect of its decision on, and the need to do all that it reasonably could to prevent (a) crime and disorder in the area (including anti-social and other behaviour adversely affecting the local environment); (b) the misuse of drugs, alcohol and other substances in the area and (c) re-offending in the area.
14. Taking this as its approach, the Sub Committee decided the case on its individual merits.
15. The Sub Committee listened carefully to the presentation made by Mr Farouki and the way in which he and his client's directors answered questions.
16. The Sub Committee gave careful consideration to all written representations that had not been withdrawn, and to what the resident present at the Hearing, and Ward Councillor (speaking on behalf of residents) had to say at the hearing.
17. One theme of the representations was that there was no demand or need for the premises. This was not a matter for the Licensing Sub Committee. Paragraph 14.19 of the Section 182 guidance provides:-
"There can be confusion about the difference between the "need" for premises and the "cumulative impact" of premises on the licensing objectives, for example, on crime and disorder. "Need" concerns the commercial demand for another pub or restaurant or hotel and is a matter for the planning authority and for the market. This is not a matter for a licensing authority in discharging its licensing functions or for its statement of licensing policy."
18. The Council's Policy corresponded with the guidance. Paragraph 1.9 provides:-
"The Licensing Authority will not take into consideration, in its decision making, whether there is a need or demand for a particular type of licensed premises. The commercial demand for another pub, restaurant or hotel is a matter for the planning authority and the market, and it is not considered to be a matter for the Licensing Authority."
19. Furthermore, regulation 21(1)(e)(i) of the Provision of Services Regulations 2009 prohibited making access to a service activity subject to proof of the existence of an economic need or market demand.
20. Planning permission for the proposed operation was granted on 27 July 2018. All questions of demand and need, insofar as they were questions for state interference, were planning questions. The Sub Committee placed no reliance at all on representations based on a perceived lack of need or demand for the premises.
21. A condition of the planning consent was to restrict the hours of opening and use between 8.00am and 11.00pm. As stated above, the revised hours sought were in line with this restriction. That was a sensible concession.
22. The Sub Committee was encouraged by the ready concessions made by the applicant during the hearing. Concerns were been raised by the presence of an outside area with tables and chairs in the front of the premises, and part of the suite of conditions agreed with the responsible authorities sought to restrict the use of the premises for licensable activities or the consumption of alcohol after 8.00pm. When asked, the applicant went further. It was indicated that there would be no issue with closing the outside area for all activities at 8.00pm. Nor, when it was pointed out that the conditions did not provide for it, was any objection made by the applicant to a condition that the bi-folding doors at the front of the premises should close at 8.00pm. Furthermore, when the applicant's assertions that the premises would be very much food-led were tested by a question as to whether the applicant would agree to a condition that alcohol was only to be consumed by seated persons, the applicant readily said he would submit to such a condition.
23. The content of these concessions, and the manner in which they were made, encouraged the Sub Committee that the applicant intended to trade the premises in the manner indicated to it: namely as a high-end, food-led, boutique tapas bar.

24. The Sub Committee gained further comfort from the small size of the premises. It could not see how a premises of such size, with the conditions agreed and the further conditions suggested, could trade other than as a food-led premises.
25. The Sub Committee was reminded that paragraph 9.12 of the Section 182 guidance provides:-
"Each responsible authority will be an expert in their respective field, and in some cases it is likely that a particular responsible authority will be the licensing authority's main source of advice in relation to a particular licensing objective. For example, the police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area. The police should usually therefore be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective. However, any responsible authority under the 2003 Act may make representations with regard to any of the licensing objectives if they have evidence to support such representations. Licensing authorities must therefore consider all relevant representations from responsible authorities carefully, even where the reason for a particular responsible authority's interest or expertise in the promotion of a particular objective may not be immediately apparent. However, it remains incumbent on all responsible authorities to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing."
26. The Sub Committee placed much weight on the withdrawal of objections from the responsible authorities, particularly the police, who had the most expertise in matters of crime and disorder and antisocial behaviour in the area. The Sub Committee was not persuaded by the suggestion that the police somehow lacked knowledge about this.
27. From their own local knowledge, Members of the Sub Committee were aware that there were issues with antisocial behaviour in the area, however, it appeared to them that a well-run quality premises of this nature was more likely to reduce than increase such behaviour. A premises attracting a mature and responsible customer base of an evening, it seemed, was more likely to dissuade youths from gathering in the area than the premises remaining as a bank or becoming a void.
28. There was much focus on the outside area in representations, both written and verbally presented at the hearing. The Sub Committee was of the view that the 8.00pm closing time for the outside area was a sensible precaution to prevent its use becoming a nuisance as the hour became later and background noise from the road separating the premises from residential users reduced. The Sub Committee was of the view that the trading of the outside area within these hours was a potentially civilising influence for the wider area of the district centre and did not consider that the suggestion that the area should close at 6.00pm to be an appropriate manner of promoting the licensing objectives: this seemed to the Sub Committee to be a step that would cause harm to the applicant, the customers of the premises and, potentially, the ambiance of the wider area, without any corresponding licensing gain.
29. The Sub Committee relied on the information provided by the authority's highways department as to the width of the pavement (3.5m) and the width of pavement typically required to be kept free (1.5m). Members were not persuaded by representations that the outside area would cause an obstruction.
30. The Sub Committee considered imposing a condition requiring the tables and chairs in the outside area to be cleared away once the area was closed, however, it decided that to do so would be to attempt to micromanage this operation by way of condition. The Sub Committee expected a good operator to have appropriate management procedures in place to deal with the proper securing and storage of outside furniture.
31. The Sub Committee heard much about incidents at another premises close by. The Sub Committee heard that there was some particular dispute involving those particular premises and did not consider that issues at those premises went on to establish that there would be incidents at the premises being considered.
32. The option of refusing the application altogether was urged upon the Sub Committee,

however, it did not think refusing the application would be appropriate for promoting the licensing objectives, and indeed it seemed to Members to be a draconian - and therefore unrealistic - step.

33. As an alternative, it was suggested that the outside area should close at 6.00pm. The Sub Committee had already explained why it did not think it was appropriate to close this area at 6.00pm as opposed to 8.00pm.

34. In the round, in the Sub Committee's judgement, these premises, if granted a suitably conditioned licence, were capable of being operated in such a manner that promoted the licensing objectives and achieves licensing aims, including the aims of encouraging innovation, supporting responsible businesses, and increasing diversity of operations.

35. The Sub Committee's decision, therefore, was to grant the application, for the hours sought (all licensable activities ceasing at 11.00 pm and, therefore, with no late-night refreshment) with an 11.30pm closing time.

36. The Sub Committee imposed the conditions agreed between the applicant and the responsible authorities (attached to this decision), with the following modifications and additions.

37. Condition 13 will now read:-

"The provision of an outdoor/outside area for the use of customers shall be limited to between 11.00am until 8.00pm seven days a week."

38. Condition 14 will now read:-

"All empty glasses/receptacles and bottles will be removed from the outdoor/outside area during permitted hours and at 8.00pm, when this area ceases to be used."

39. The Sub Committee considered imposing a condition requiring the tables and chairs in the outside area to be cleared away once the area was closed but decided that to do so would be to attempt to micromanage this operation by way of condition. The Sub Committee would expect a good operator to have appropriate management procedures in place to deal with the proper securing and storage of outside furniture.

40. Addition of a new condition at 15:-

"The bi-folding doors will be kept closed after 8.00pm."

41. The applicant said he would submit to a condition limiting the consumption of alcohol to those seated. A concession of this nature does not necessarily mean it was appropriate for such a condition to be imposed. The Sub Committee considered the matter carefully, and resolved to impose a further condition, having considered that it would be a substantial manner of ensuring that the premises would operate in the fashion described. Accordingly, there would be a new condition, condition 20:-

"Alcohol will only be consumed by persons who are seated."

42. There were further conditions, numbered 20-27, which were consistent with the operating policy, but which were not insisted upon by the responsible authorities. It seemed to the Sub Committee that these conditions either duplicated existing regulatory requirements, or were aspirational and not capable of enforcement, or represented what should be matters of good management. The Sub Committee did not wish licences to be over-burdened with unnecessary conditions (and were cognisant of the Section 182 guidance on this). It seemed that the more conditions a licence had, the less likely those conditions were to be adhered to. The Sub Committee did not impose conditions 20-27 on this licence.

43. Finally, the Sub Committee observed that the grant of this licence did not necessarily fix matters indefinitely. If practice showed the premises to be well-run and not adverse to the licensing objectives and aims, and the operators wished to seek variations of hours or conditions, it was open to them to apply to do so. Conversely, if the premises were not well-run, or did not promote the licensing objectives, it was open to any person to apply for a review of the premises licence. On the evidence before the Sub Committee, to grant with the

conditions agreed with the responsible authorities and as modified by the Sub Committee, was, in the Sub Committee's judgement, the most appropriate way of promoting the licensing objectives in the public interest. The Sub Committee hoped that experience showed its judgement to be right, and that this premises would become an asset to the local community, but Members derived comfort from the ability of residents and responsible authorities to bring the matter back before them if, contrary to its hopes, any issues might arise.

Conditions

1 A digital Closed Circuit Television System (CCTV) will be installed and maintained in good working order and be correctly time and date stamped.

- The system will incorporate sufficient built-in hard-drive capacity to suit the number of cameras installed.
- CCTV will be capable of providing pictures of evidential quality in all lighting conditions, particularly facial recognition.
- Cameras will encompass all ingress and egress to the premises, outside areas and all areas where the sale/supply of alcohol occurs.
- The system will record and retain CCTV footage for a minimum of 31 days
- The system will record for 24 hours a day.
- 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.
- The digital recorder will be password protected to prevent unauthorised access, tampering, or deletion of images.
- There will be at all times, when the premises is open, a member of staff on duty with access to the CCTV system who is trained in the use of the equipment.
- Upon receipt of a request for a copy of CCTV footage from Police, Licensing Officers or any other Responsible Authority, the member of staff will produce the footage within 24 hours or less if urgently required for investigations of serious crime.
- CCTV footage must be made available to be viewed by the Police, Licensing Officers or other Responsible Authorities on request during an inspection of or visit to the Premises.

2. An incident book must be kept at the Premises and maintained up to date (no later than 24 hours after the incident) at all times and will record the following:

- Time, date and details of all incidents/complaints of crime and disorder or anti-social behaviour.
- All crimes reported to the venue.
- All ejections of patrons.
- All seizures of drugs or offensive weapons.
- Any faults in the CCTV system, searching equipment or scanning equipment.
- Any visit by a relevant authority or emergency service.

3. The incident book must be made available to Police, Licensing Officers and all other Responsible Authorities on request or during an inspection.

4. The Premises Licence Holder/ Designated Premises Supervisor will participate in any 'Responsible Retailing' scheme and any relevant training/campaigns which the Police or Local Authority provide or recommend.

5. The Premises Licence Holder/Designated Premises Supervisor will participate in any local On/Off Licence forums held by the Local Authority.

6. A Challenge 25 policy will be implemented at the premise.

7. Training in relation to Challenge 25, under age sales, sales to adults on behalf of minor (proxy sales), sales to intoxicated persons, refusals 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.

8. Documented training records must be completed in respect of every member of staff and must include the name of the member of staff trained, date, time and content of the training.

The record must be signed by the member of staff who has received the training, the Designated Premises Supervisor/Premises Licence Holder or external training providers.

9. Documented training records must be kept at the Premises and made available to the Police, Licensing Officers and all other Responsible Authorities on request or during an inspection.

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

11. The premise will keep and maintain a refusals book/electronic register which will be used to record all incidents/occasions of where the premise refuses to sell alcohol to an individual. The refusals book/electronic register will be used solely as a refusals book. It will be kept at the premise and will be made available for inspection by the Police or any other Responsible Authority.

12. The Premises Licence Holder/Designated Premises Supervisor must monitor the refusals book/electronic register on a monthly basis and must sign and date the register to confirm when this has been completed.

13. The provision of an outdoor/outside area for the use of customers shall be limited to between 11.00am until 8.00pm seven days a week.

14. All empty glasses/receptacles and bottles will be removed from the outdoor/outside area during permitted hours and at 8.00pm when the area ceases to be used.

15. The bi-folding doors will be kept closed after 8.00pm.

16. All external doors and windows shall be kept closed when regulated entertainment is being provided except for access or egress or in the event of an emergency.

17. Refuse such as bottles shall only be disposed of from the premises between the hours of 8.00am to 8.00pm Monday to Saturday, and 10.00am to 8.00pm Sunday and Bank Holidays.

18. Any music shall be played indoors only.

19. Noise coming from the premises or vibration transmitted through the structure of the premises shall be controlled so that it does not cause annoyance or disturbance to nearby occupiers.

20. Alcohol will only be consumed by persons who are seated.