

LICENSING SUB-COMMITTEE A

A meeting of the Licensing Sub-Committee A was held on 9 July 2019.

PRESENT: Councillors R Arundale (Chair), S Dean and T Higgins

PRESENT AS OBSERVERS: J Cain - BBC Local Democracy Reporter
G Duce - University Work Experience Student

ALSO IN ATTENDANCE: K Aidross - Applicant

Those making representations:-

Councillor Lewis - Central Ward Councillor
J Smith - Legal Counsel for the Responsible Authorities
C McNamara - Trading Standards
F Helyer - Public Health
S Wearing - Licensing
PC J Arbuckle - Cleveland Police
K Dale - Trainee Legal Executive, Cleveland Police

OFFICERS: C Cunningham, J Dixon and T Hodgkinson

DECLARATIONS OF INTERESTS

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

19/1 **LICENSING ACT 2003 - APPLICATION FOR A PREMISES LICENCE - EUROPEAN DELI, 242-244 LINTHORPE ROAD, MIDDLESBROUGH, TS1 3QP.**

A report of the Director of Culture and Communities had been circulated outlining an application for a Premises Licence in relation to European Deli, 242-244 Linthorpe Road, Middlesbrough, TS1 3QP, Ref No. PRO150.

Summary of Proposed Licensable Activities and Hours

Sale of alcohol (off sales) - 9.00am to 10.00pm Daily.

A copy of the application and accompanying operating schedule were attached at Appendix 1.

The Chair introduced those present and outlined the procedure to be followed at the meeting. It was confirmed that all parties had received a copy of the Regulation 6 Notice and a copy of the report and accompanying documents, in accordance with the Licensing Act (Hearings) Regulations 2005.

Details of the Application

The Licensing Manager presented the report outlining the application for a Premises Licence in respect of European Deli, 242-244 Linthorpe Road, Middlesbrough, Ref PRO150.

The applicant intended to operate the premises as a shop with an off-licence and bakery, selling a range of products including groceries, sweets, soft drinks, milk and tobacco.

Members were reminded that as part of its overall Statement of Licensing Policy, the Council had established a Cumulative Impact Policy (CIP) in relation to off-licence premises in Middlesbrough town centre which covered certain wards including Central, the area within which the premises were situated.

Work had been carried out to identify the location of off-licence premises and links to crime,

disorder, anti-social behaviour and alcohol attributable admissions to James Cook University Hospital. The evidence showed there was a relationship between the density of off-licence premises, crime and disorder/anti-social behaviour and alcohol attributable hospital admissions.

Evidence showed that the Wards of Central, Newport, Park, Longlands and Beechwood and North Ormesby had the highest level of crime and antisocial behaviour, the highest number of off-licence premises and alcohol attributable hospital admissions.

The Licensing Authority considered that the density of off-licence premises in these wards had a negative impact on crime and disorder. Whilst maintaining public health was not a licensing objective, many of the hospital admissions arose from alcohol related crime and disorder.

The Cumulative Impact Policy had been applied to this designated area due to the number, type and density of the premises selling alcohol for consumption off the premises. The Licensing Authority was satisfied that there was good evidence that crime and disorder or nuisance occurring in this location was being caused by the customers of off-licence premises and that the cumulative impact of off-licence premises in this location was evident.

The Licensing Authority agreed that the Cumulative Impact Policy should be applied to:-

- New premises licences for the sale of alcohol off the premises.
- Material variations to existing off licence premises.

The premises had previously had the benefit of a premises licence under the Licensing Act 2003. It had operated as a convenience store with a premises licence permitting 'Off Sales' from 21 May 2012 until 27 July 2015 until the licence was revoked by the Council's Licensing Sub Committee following an application for review brought by Middlesbrough Council's Trading Standards. The application was made following the discovery of a large quantity of counterfeit and illicit tobacco at the premises and following concerns about poor management of the premises.

Representations

Between 10 April and 7 May 2019, five representations were received objecting to the application:-

- Central Ward Councillors - Councillors Lewis, Storey and Uddin - on the grounds of the four licensing objectives and the fact that the premises were located in the Cumulative Impact Area. A copy was attached at Appendix 2.
- Director of Public Health - copy attached at Appendix 3.
- Trading Standards - copy attached at Appendix 4.
- Licensing Section, acting as a Responsible Authority - copy attached at Appendix 5.
- Cleveland Police - copy attached at Appendix 6. The Police also submitted further evidence in support of their representation, copies of which were circulated to Members and interested parties prior to the hearing.

The submitted report also referred to the relevant sections of the Council's Licensing Policy and relevant sections of the Government Guidance to the Licensing Act 2003.

Applicant in Attendance

The applicant presented the case in support of his application, highlighting the following:-

- He had met with the Responsible Authorities to discuss the application.
- He was aware that the Premises Licence previously in place at the premises had been revoked and stated that he had no association with the previous licence holder.
- The intention to provide an eastern European food and drink offer would provide a service to an increasing eastern European population in the area.
- Whilst he understood the requirement for the cumulative impact policy, the applicant considered it to be too harsh and felt that by occupying the premises, covering it with

- CCTV and sensor lighting, it would deter many of the issues raised in terms of rough sleepers, problem drinkers and drug taking in the area.
- Alcohol would only be on display next to the till and spirits would be kept behind the counter. There would be no sales of single cans.
 - All staff at the premises would be trained, with refresher training on a regular basis, and would require previous experience of working in a licensed premises.
 - The applicant provided details of his previous experience of working as a door supervisor at a licensed premises and explained that he was aware of how to assess people in terms of how much they had drunk and when they should be refused service.
 - In relation to homelessness in the area, the applicant stated that he would be willing to contribute food to those people and that he was not trying to add to the issues in the area.
 - He added that he would be providing employment for five to seven staff as he would need at least two to three employees to work each shift.
 - The applicant would be willing to work closely with all the Responsible Authorities.

The applicant responded to questions from the Responsible Authorities making representations, Members of the Committee and the Council's Legal Representative.

** ADJOURNMENT

Having heard all of the evidence from the applicant, the Committee adjourned at 11.20am and would reconvene at 11.40am.

** RECONVENED MEETING

At 11.40am the meeting reconvened.

Those Making Representations

Those making representations were invited to address the Committee, in turn:-

- Councillor L Lewis - Ward Councillor for Central Ward (appendix 2).
- C McNamara - Trading Standards (appendix 4).
- F Helyer - Public Health (appendix 3)
- S Wearing - Licensing (appendix 5).
- PC Arbuckle - Cleveland Police (appendix 6).

Each of the above named presented their case in opposition to the application. In summary, the objections referred to:-

- The premises was located in a deprived area of Middlesbrough with high levels of crime and disorder and anti-social behaviour, including alcohol and drug-related harms and assaults, prostitution and rough sleeping.
- Concerns expressed in relation to underage sales being made from two other premises in close proximity to the subject premises. Both premises were run by experienced operators and the concern was that the applicant was inexperienced.
- Concerns from Public Health regarding rough sleeping and drug use at the rear of the premises -photographs providing evidence were circulated.
- Details were provided in relation to a study, from 2014 to present time, of licensed premises selling alcohol. This demonstrated the types of alcohol sold, including ABV (strength) and price, and the impact this had on alcohol-related harms in the area and alcohol-related hospital admissions.
- Evidence was provided of assaults in the vicinity of the premises including assaults on employees at nearby premises. 61 incidents had been recorded, by the Police, occurring within a 300m radius of the premises.
- The applicant had provided no reassurance that, if the licence were granted, it would not add to the cumulative impact in the area.

Those making representations responded to questions from the applicant, Members of the

Committee and the Council's Legal Representative.

Summing Up

Those Making Representations

The Legal Representative for the Responsible Authorities summed up by stating that the application was being made for a premises located in a Cumulative Impact Area and that there was no evidence provided by the applicant of a substantially different offer to that already available in the area to demonstrate that, if granted, the licence would not add to the cumulative impact in the area.

All of the Responsible Authorities had expressed concerns regarding the application and the applicant's lack of experience and understanding of the serious concerns. None of the Responsible Authorities felt that any conditions proposed would be upheld or alleviate their concerns.

Applicant

The applicant stated he had little to add to his opening statement but advised that he would not allow the rear of the premises to be dirty and considered that rough sleepers would be deterred from using the rear of the premises if the shop was occupied permanently and well lit. He reiterated that he would adhere to any conditions placed on the licence.

It was confirmed that there were no further questions and all interested parties other than the Officers of Legal and Democratic Services, withdrew whilst the Committee determined the application. The Council's legal representative stated that as it was likely for the debate and decision-making process to take some time, in accordance with the Regulations, the full decision and reasons would be issued to the parties within five working days.

The Chair advised all parties of the Right of Appeal to the Magistrates Court within 21 days of the decision.

DECISION

ORDERED that the application for a Premises Licence in respect of the European Deli, 242-244 Linthorpe Road, Middlesbrough, TS1 4AP, Ref No. OL/18/10, be refused.

Considerations

1. 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 242-244 Linthorpe Road Middlesbrough ("the Premises") between the hours of 9.00am until 10.00pm daily. The Applicant was European Deli Ltd and the Designated Premises Supervisor was Mr Karim Aidross, the sole Director of the Company.
2. Relevant representations had been received against the grant of the application by Responsible Authorities, namely, the Police, the Licensing Authority, Public Health, and Environmental Health. The Ward Councillors for the area also submitted an objection to the application as interested parties.
3. The Committee noted under Section 18 of the Act that it must hold a hearing and, having regard to the representations, take such steps as it considered appropriate for the promotion of the licensing objectives. The steps were either to grant the application, grant the application subject to conditions and/or modify conditions in the operating schedule, exclude a licensable activity, remove the Designated Premises Supervisor or reject the application.
4. The licensing objectives under Section 4 of the Act were the promotion of the prevention of crime and disorder, prevention of public nuisance, protection of children from harm and public safety.
5. The Committee considered: the application on its own merits; the report, appendices and additional documentation exchanged prior to the hearing; the relevant

representations made at the hearing by the applicant, the Responsible Authorities and the Ward Councillor; the Act, the Council's Statement of Licensing Policy ("the Policy") and Guidance under Section 182 of the Act ("the Guidance").

Decision

1. The Committee decided it was appropriate to reject the application in the public interest in order to uphold the promotion of the prevention of crime and disorder, prevention of public nuisance, protection of children from harm and public safety.

Reasons

1. The Premises was proposed to be operated as a medium - large convenience/supermarket store, selling a wide range of convenience goods, including alcohol, aimed at the Eastern European market.
2. The Premises was situated on the main road into the town centre, Linthorpe Road, near to other licensed premises including other medium to large size convenience/supermarket stores such as Iceland, Sainsbury's and Tesco Express, together with other small convenience/off-licence premises and on licensed premises (pubs/restaurants). The Premises was located very near to the University, Albert Park and Ayresome Gardens where youths and children congregated.
3. The Premises was situated in an area subject to a Cumulative Impact Policy. This meant that the area was saturated with off licensed premises and the cumulative impact of the saturation of such premises was having a detrimental effect on the promotion of crime and disorder, public nuisance, protecting children from harm and public safety. The effect of this Policy meant applications for the sale of alcohol in the area would normally be refused unless an applicant could satisfy the Committee the Premises would not add to the current problems in the area.
4. The applicant failed to satisfy the Committee that the Premises would not add to the problems in the area and, therefore, it had no good reason to depart from the Policy.
5. The Policy stated that there was a relationship between the density of off licensed premises, crime and disorder, anti-social behaviour and alcohol attributable hospital admissions. The Policy confirmed the Council was satisfied there was good evidence that crime and disorder or nuisance occurring in the area was being caused by customers of off-licensed premises, and the detrimental cumulative impact in the area was evident. The five areas, otherwise known as wards, which were subject to the special cumulative impact policy out of 20 wards in Middlesbrough accounted for 61% of all crime and disorder and 61% of all the off licences in Middlesbrough.
6. The Premises was situated in Central Ward and bordered Newport Ward. Public Health confirmed that Central Ward had the highest number of alcohol related incidents of crime and anti-social behaviour and the highest number of hospital admissions for alcohol related harm in Middlesbrough. The boarder Ward, Newport, had the second highest number of alcohol related incidents of crime and anti-social behaviour and was the fourth highest for hospital admissions for alcohol related harm. Out of 7,522 national ward areas Central ward was ranked as the 30th most deprived ward. Deprivation factors included, income, health, education, housing and crime. Middlesbrough itself was ranked 2nd out of 326 local authority areas for alcohol related mortality and was within the top 12 areas for hospital admissions for alcohol related harm.
7. The Committee considered it essential that a grant of a licence in this area did not add to these current very serious issues.
8. The information showed that the length of road or area where the Premises was situated, in particular, was subject to many problems of alcohol related crime and disorder, nuisance and harms to children. It suffered from street drinkers, rough sleeping, drug taking, prostitution, indecency, thefts, assaults, underage drinking, under age sales, youths and children congregating and committing anti-social behaviour directly behind and around the particular area including the nearby green space.
9. The Police confirmed the availability of alcohol in the already saturated area was having a detrimental effect on local residents, businesses and the licensing objectives. A survey of a relatively short distance of 300 metres surrounding the Premises over a

- period of eight months showed a sample of 61 alcohol related incidents of crime and disorder. The Police confirmed this was a snapshot of the incidents and many more incidents of crime and disorder had occurred. The incidents happened at all times of day and night, all included a person who was drunk or under the influence or stealing alcohol. The Committee considered all of the samples to be very serious and that it demonstrated the scale of the problems in the area.
10. Shops in the immediate locality of the Premises had reported to the Police, that almost on a daily basis, they were faced with alcohol related crime and disorder and anti-social behaviour including thefts of alcohol, begging, drug taking, prostitution, indecency, arson and vehicle crime. Staff were threatened, intimidated and even assaulted when challenging such people. The Committee heard that problems continued to occur at and around premises in the area even with the financial resources and experience of major operators who complied with a raft of conditions, including training and employment of experienced staff and in some situations the engagement of security staff.
 11. The Premises was previously operated as a convenience/supermarket store including alcohol sales called "Multi Culti". Previously the operation of the premises itself added to the crime and disorder and problems in the area by selling illicit tobacco and being irresponsibly managed which resulted in the Licence being revoked. Previously, the Police had serious concerns as to who actually had control of the Premises. Even after the Premises Licence was revoked the Premises still displayed alcohol for sale unlawfully.
 12. The Committee noted that the applicant stated he had no connection with the previous owners of the business. However, after further enquiries, it was not clear whether the applicant had completed a lease with the Landlord for the Premises as the deposit had yet to be paid. In view of the history and the problems in the area, the Committee was concerned that the applicant did not think it was necessary to bring such documentation or even a documented business plan, proposed conditions or details of staff or training to the Committee. The Responsible Authorities and Ward Councillors were all seriously concerned at the lack of experience and responsibility of the applicant to run such a high risk Premises in the area.
 13. The Committee noted that the applicant stated he intended to provide a family service mainly to the Eastern European Community. However, the Committee considered that the premises would still be a convenience store/supermarket selling alcohol in an area saturated with similar stores and saturated with alcohol fuelled harms. In addition to this, the premises had a reputation of operating unlawfully and in all likelihood would attract street drinkers, problem drinkers and those who went on to cause harm and who were already prevalent in the area.
 14. The Committee was seriously concerned that the applicant did not address how the premises would deal with or prevent adding to the issues in the area in the operating schedule. The applicant stated he had paid for licensing agents to assist in the completion of his application form. He was not aware of the Policy or Guidance, but expected to get guidance on such matters from the Responsible Authorities. The applicant stated that he met the Responsible Authorities and advised the Committee he would abide by any conditions and requirements the Committee and the Responsible Authorities require. However, it was at the request of the Responsible Authorities, not the applicant, following the application being made, that a meeting be held to discuss the application. The applicant was not aware at the point of making his application that the premises was in an area subject to a cumulative impact policy or the problems in the area. Even after meeting with the Responsible Authorities and at the hearing, the applicant failed to address the issues, produce any clear operational structure, business plan or conditions and plans to comply with such conditions in order to explain how the premises would not add to the alcohol harms in the area.
 15. The Policy and Guidance were clear and widely available to view before an application was made. Even where no special cumulative impact policy applied, an applicant was expected to identify the problems in the area and address how such problems would be dealt with by conditions in the operating schedule. The applicant failed to do this, the only matters stated in the operating schedule and to the Committee were vague and wholly inadequate.
 16. The applicant stated that by opening the premises the problems of people congregating, taking drugs, drinking alcohol and rough sleeping that occurred to the

- rear of the premises would be removed by the presence of CCTV and a sensor light. However, after hearing evidence from Public Health and the Police, the Committee was not satisfied that such measures would alter the situation. Similar premises with the resources and experience to deal with such matters had not been able to resolve the issue. The addition of another premises selling alcohol in the immediate vicinity would only add to the problems.
17. The Responsible Authorities confirmed that no conditions on the licence would prevent further detriment to the licensing objectives. The offer was no different to that which added to the problems in the area previously. The Committee could not be satisfied that even if it imposed a raft of conditions including, for example, prohibiting the sale of single cans, strong beers or ciders, the objectives would be upheld.
 18. After hearing all of the information, including the problems in the area, the operation proposed by the applicant, the applicant's lack of experience and knowledge to operate such a risky premises, the Committee decided if it granted the application, even with conditions, the objectives would be undermined. The Committee considered if the Licence was granted it would only add to the alcohol harms already prevalent in the area.
 19. The Committee therefore decided to refuse to grant the application for a premises licence and considered its decision was in accordance with the Act, Guidance and Policy.

All parties were reminded of the Right of Appeal to the Magistrates Court within 21 days of the date of the decision being conveyed to the parties.