

LICENSING SUB COMMITTEE B

A meeting of the Licensing Sub Committee B was held on 4 March 2008.

****PRESENT:** Councillor Biswas (in the Chair): Councillors G Rogers and J Walker.

****OFFICIALS:** C Breheny, A Gray and J Hodgson.

****ALSO IN ATTENDANCE:** M Hindmarsh – Applicant
Councillor K Walker – Gresham Ward Representative
L Mole – Chair Gresham Community Council

****DECLARATIONS OF MEMBERS' INTERESTS**

No Declarations of Interest were made at this point of the meeting.

LICENSING ACT 2003 – APPLICATION FOR PREMISES LICENCE – UNIT 13, VICTORIA STREET, MIDDLESBROUGH – REF: MBRO/PRO469

A report of the Head of Community Protection had been circulated outlining an application for a Premises Licence for Unit 13, Victoria Street, Middlesbrough, Ref No. MBRO/PRO469, as follows:

Summary of proposed Licensable Activities

Sale by Alcohol (Off Sales)

Summary of proposed hours of Licensable Activities

10pm to 5am Monday to Sunday

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, Mr Hindmarsh, was present at the meeting and confirmed that copies of the report and Regulation 6 Notice had been received.

Details of the Application

The Senior Licensing Officer presented the report, which was confirmed as being an accurate reflection of the facts by the applicant.

The report outlined that, on 17 January 2008, an application was received for a Premises Licence, as stated above, and that the applicant had advertised the application, as required by the Licensing Act 2003, in the Evening Gazette on 23 January 2008.

On 7 February 2008 a representation was received from Sinead Upton, Senior Trading Standards Officer, objecting to the application on the grounds of the prevention of crime and disorder and the protection of children from harm.

The Committee was advised that Trading Standards had subsequently advised that if the following conditions were added to the licence then they would not object to the granting of the licence:

1. Delivery vehicles to be maintained in a safe condition at all times and all must display company livery.
2. No sales to be made at the warehouse premises at any time.
3. Sales will be made by delivery to customers from the van outside the customer's premises. Sales to take place at the van itself.

4. No sales will be made to customers attempting to "flag down" a delivery van.
5. Deliveries will only be made to residential or commercial premises and not to e.g. customers in public places or in areas where open air consumption of alcohol is restricted by local bylaws.
6. No horn will be sounded by the delivery driver on arrival at the premises and deliveries at anti social hours must be effected with the minimum of noise.
7. Engines will be switched off and customer telephoned when order arrives.
8. Vans must only carry the stock required for each delivery, no excess stock to be carried in the van.
9. Sales to be completed only by drivers aged over 18 years.
10. Staff must not be employed on a commission basis.
11. No sales must be made to person(s) under the age of 18 years or to person(s) apparently seeking to purchase alcohol on behalf of under 18's.
12. All staff are to be fully trained and retrained on a regular basis in relation to the laws relating to the sale of alcohol to underage persons, persons buying on behalf of under 18s (proxy sales), and persons appearing to be under the influence of alcohol.
13. Staff are trained and instructed to use a challenge 21 type system, requiring ID from anyone under 21 years old and to operate a No ID – No Sale policy.
14. Staff are trained on and instructed to accept only photographic ID bearing a date of birth, that is either a passport, driving licence or recognised proof of age card accredited under the proof of age standards scheme (PASS)
15. There will be a set script to follow when taking orders over the phone. This shall require that the name, address, and age of the person placing the order be obtained, in addition to details of the order, as well as the type of ID that the customer intends to produce.
16. All of these details to be entered on a sales form on the computer. Records to be kept available for inspection on request by member of the police or local authority.
17. The script will require staff to inform customers that photographic ID such as passport, driving licence or PASS code accredited proof of age card, will be required from anyone appearing to be under 21 years old and that if no ID is produced then the sale will be refused.
18. The customer will then be required to give the number of the passport/driving licence over the phone. If this information cannot be produced at the time of order then the sale shall be immediately refused and no delivery even attempted.
19. The delivery driver will carry with them at all times details of the sales order which will include name, address, telephone number and details of the order. These records are produced upon request to any police officer or other authorised officer checking.
20. Signs to be displayed on dashboards of vehicles used for deliveries to remind staff to check proof of age for anyone under 21 by requesting ID.
21. Whenever proof of age is requested details will be taken and recorded from the identification produced. These details to be kept on set forms given to delivery staff, copies of which to be kept on site for inspection and to be regularly checked by owner.
22. A refusals book to be kept in each vehicle and maintained to record all refused sales. Details will be taken of person(s) being refused and reasons for sales being refused will be recorded in addition to the date, time and signature of the driver.
23. Vehicles to be fitted with cameras which will monitor deliveries. All footage to be maintained for a minimum of 31 days for inspection by the police or local authority. The owner to regularly review the footage to check that procedures to prevent underage sales are being followed and that sales of alcohol are being made by his staff to underage persons.
24. No perry to be stocked or sold at any time.
25. Cider to be only stocked in cans and orders to be restricted to a minimum of 12 cans.

It was confirmed that the applicant had agreed to these conditions being added to any licence granted and as a result Trading Standards had withdrawn their objection.

On 14 February 2008 a representation was received from Gresham Community Council objecting to the application on the grounds of the prevention of crime and disorder and the prevention of public nuisance.

Applicant in Attendance

The applicant was invited to present the case in support of the application. The applicant advised the Committee that the business would operate between the hours of 10pm and 5am, when the office would be open to accept orders. The orders would be taken via telephone and then a text message would be sent to the driver, who would collect and deliver the order. When accepting orders customers would be asked to provide their driver licence number or passport number and upon delivery this information would be verified. The applicant confirmed that the delivery vehicle would be fitted with CCTV and that the conditions imposed by Trading Standards and the Police would be obeyed.

The applicant confirmed that he would abide by all the licensing laws and was aware of the need to record incidences where proof of age were requested and sales were refused.

Questions from Members

Members of the Committee were afforded the opportunity to ask questions of the applicant and the following issues were raised: -

- In response to a query regarding the time at which the last order could be made the applicant advised that all activity would cease at 5am. The last order would be accepted at 4.30am to ensure that everyone was back at the office for 5am.
- A Member queried how many vehicles the applicant intended to use to operate the delivery service. The applicant confirmed that initially only one vehicle would be used and that he would be the driver. Only one order would be stocked on the van at any one time and the driver would have to return to the unit to collect the next order.
- In terms of advertising the applicant stated that he intended to advertise the business with business cards, radio announcements, leaflet drops and vehicle livery. The applicant explained that he had worked for Moonshine for a period of 18 months and intended to operate his business in a similar fashion.
- Clarification was sought on where the applicant intended to source his stock and whether reputable brands would be sold. The applicant stated that he intended to use local wholesale suppliers and confirmed that no bootleg alcohol would be sold.
- In response to a query regarding the information to be recorded at the point of order the applicant advised that a script had been designed to capture the necessary information. The script as well as ID sheets were distributed for Members information.
- A Member queried whether all transactions would be in cash. The applicant stated that he intended to have facilities fitted to enable the business to accept credit and debit cards. A mobile unit would be used and the customer would enter their pin number at the point of delivery.
- A Member queried how close the unit was to the nearest residential house. The applicant stated that the unit was approximately ½ mile from the nearest property.
- In terms of the specification of the delivery vehicle the applicant advised that the van was a 1.7dti Astra. The applicant acknowledged that it was impossible to eliminate all of the noise associated with the vehicle but confirmed that the engine would not be left running whilst deliveries were made. In terms of the route taken to deliver an order the applicant advised that where possible routes away from residential properties would be taken.
- In response to a query the applicant advised that the minimum order for delivery would be £25.
- Clarification was sought on whether customers would be able to purchase and collect alcohol from the unit. The applicant advised that the unit was located in a gated commercial

area and that the gates were locked at all times. The applicant confirmed that if customers approached the unit and attempted to purchase alcohol they would not be served. Orders would only be accepted via the telephone ordering system and were for delivery only.

- In terms of placing orders the applicant advised that the telephone would be manned from 10pm to 5am and that an answer phone service would be available outside of these hours. Customers would be able to leave a message when the office was closed with details of any order they wished to place.

Relevant Representations

Councillor K Walker

Councillor Ken Walker, Gresham Ward Representative, was present at the meeting to present a representation against the application on behalf of Gresham residents.

Councillor Ken Walker sought clarification on the proposed operating hours of the business and questioned whether the applicant was proposing to offer a 24-hour ordering system for alcohol. The applicant confirmed that an answering service would be in operation during the hours of 5am and 10pm when customers could leave their name, address and telephone number and request an order for delivery during opening hours.

Councillor Ken Walker stated that although he was not suggesting that the applicant was anything other than a decent and proper person, who wished to operate a successful business under the regulations, the 24-hour licensing laws had proved a miserable failure. Councillor Ken Walker made reference to the recent cross party report by the Local Government Association (LGA), which had reached this conclusion.

Councillor Ken Walker advised the Committee that the area from which the premises intended to operate was heavily built up and that residents were living in very close proximity from where the alcohol would be distributed. It was advised that Parliament Road was situated closer than ½ a mile from the unit and that if the business was successful more than one delivery vehicle could be needed.

In terms of current problems within the Gresham area Councillor Ken Walker advised that there were already a number of irresponsible residents, over the age of eighteen, who engaged in nightly drinking dens. It was advised that these drinking dens caused permanent misery for residents living in nearby streets and that on average one new complaint a week was received from people unable to sleep due to the irresponsible behaviour of others.

Councillor Ken Walker stated that this application would not only impact on the residents within his ward but would also impact on residents across the town.

Councillor Ken Walker confirmed that his objections were in line with the four statutory licensing objectives and advised that having conducted a random survey in Gresham not one person had been in support of the application. Councillor Ken Walker expressed the view that there were already too many licensed premises in the area and that the provision of alcohol during the hours proposed was not in any way compatible with what Councillors wished to see for the area. The Committee was advised that Councillor Ismail was also opposed to this licensing proposal.

In conclusion Councillor Ken Walker stated that there was sufficient evidence for the Licensing Committee to reject the application and asserted that if the application were approved local residents would be seriously affected.

Chair of Gresham Community Council

The Chair of Gresham Community Council, Ms L Mole, was in attendance at the meeting to present a representation against the application on behalf of Gresham Community Council.

Ms L Mole advised the Committee that the Gresham area already suffered seriously from the effects of alcohol related problems and that the provision of a alcohol delivery service between the hours of 10pm and 5am would only create even more problems.

Ms L Mole expressed further concern that the purchase of alcohol would effectively take place in the street at 4am in the morning when people had already had a drink.

Summing Up

The Chair invited all parties to sum up.

The Applicant

In response to a query the applicant advised that one of the conditions imposed by the Police and Trading Standards was that all business had to be conducted at the van. The driver was not allowed to leave the vehicle and no one other than the driver was allowed to enter the vehicle.

In response to a further query the applicant stated that the reason he was applying for a licence from 10pm to 5am was to capture the clientele who wished to purchase alcohol between those hours.

Councillor Ken Walker

Councillor Ken Walker stated that there was sufficient time during the day for people to purchase alcohol and that there was no need for alcohol to be sold during the night, when most people wanted peace and quiet.

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 for Unit 13, Victoria Street, Middlesbrough - Ref No. MBRO/PRO469 be granted for a limited period of six months.

The reason for this decision was that the Committee wanted to ensure maximum protection to residents in accordance with the four licensing objectives. The applicant was to return to the Licensing Committee prior to the end of the six months period.

The licence was granted subject to those conditions agreed between the Police and the Trading Standards Department.

The licence was granted subject to the following additional conditions: -

- i) No recording facilities to be available between 5.00am and 10.00pm.
- ii) No call diversion facilities to be available at all.
- iii) Last orders to be taken no later than 4.00am, with all licensable activities ceasing by 5.00am.

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

1. The four Licensing Objectives of the Licensing Act 2003.
2. Relevant Government Guidance, particularly in relation to:-
 - Prevention of Crime and Disorder, starting at paragraph 2.1
 - Prevention of Public Nuisance, starting at paragraph 2.32
 - Protection of Children from Harm, starting at paragraph 2.41,

- The Pool of Conditions at Annex D
3. Middlesbrough Council's Licensing Policy particularly in relation to:-
 - Prevention of Public Nuisance (pages 10 to 15 in particular para 38)
 - Prevention of Crime and Disorder (pages 17 and 18)
 - Protection of Children (pages 19 to 21)
 4. The case presented by the applicant.
 5. The representations made by the parties present at the hearing and the written representations received.