

**LICENSING SUB-COMMITTEE B**

A meeting of the Licensing Sub-Committee B was held on 16 July 2012.

**PRESENT:** Councillors S Biswas (Chair), B A Hubbard and T Mawston.

**PRESENT AS  
OBSERVERS:** Councillors C Hobson and J Hobson.

**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.

12/1 **APPLICATION FOR PREMISES LICENCE - FINLAYS, 2 - 3 NORFOLK PLACE, BERWICK HILLS, MIDDLESBROUGH : MBRO/PRO241**

A report of the Assistant Director - Community Protection had been circulated outlining an application for a Premises Licence in relation to Finlays, 2-3 Norfolk Place, Berwick Hills, Middlesbrough, Ref No. MBRO/PRO241, as follows:-

Summary of Proposed Licensable Activities and Hours for Proposed Licensable Activities

Sale of Alcohol (off sales) - 6.00am to 10.00pm 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, accompanied by his representative, confirmed that copies of the report and Regulation 6 Notice had been received.

The Senior Licensing Officer advised that several documents had been circulated to all interested parties prior to the Hearing but following the issue of the agenda. It was confirmed that the following additional documents had been circulated to all:-

- Witness Statement from PC Arbuckle, including document from Alcohol Concern, circulated on 10 July 2012.

- Incident Logs from Cleveland Police relating to the application, circulated on 13 July 2012.

- Background information from the applicant, Mr Gandy, and supporting information in relation to the application compiled by Licensing Matters, including response to Police incident logs, circulated at the Hearing.

The Council's legal representative sought clarification in relation to the supporting documentation submitted by Licensing Matters as the front cover referred to another premise. The applicant's representative, Ms Sherratt, from Licensing Matters confirmed that this was an administrative error for which she apologised.

As Members had not had sight of the supporting information, the Chair determined that the Committee should retire for approximately 15 minutes in order to read the documents.

At this point, all interested parties, other than the Members of the Committee, the Council's legal representative and governance officer, withdrew from the meeting.

At 10.30am all interested parties returned to the meeting and the Hearing recommenced.

**Details of the Application**

The Senior Licensing Officer presented the report in relation to an application, received on 29 May 2012, for a Premises Licence in relation to Finlays, 2-3 Norfolk Place, Berwick Hills, Middlesbrough, as outlined above. The applicant had advertised the application, as required by the Licensing Act 2003, in the Evening Gazette on 6 June 2012, which was confirmed as being an accurate reflection of the facts by the applicant.

It was highlighted that the premises consisted of a newsagents located in a block of retail outlets at Norfolk Place, adjacent to Crossfell Road. There were residential properties in close proximity to the premises and a location plan was attached at Appendix 2.

A representation was received from Cleveland Police on 14 June 2012 objecting to the application on the grounds of the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection on children from harm. A copy of the representation was attached at Appendix 3.

### **Applicant in Attendance**

The applicant, Mr Gandy of Finlays, was represented at the Hearing by G Sherratt, Licensing Matters.

The applicant's representative presented the case in support of the application. She advised that Mr Gandy was the Managing Director of Finlays and had been in the business for 35 years. He operated 20 shops across the north east and six of those were currently licensed to sell alcohol. Those six premises had been developed into Bargain Booze Plus franchises and that was the intention for the premise at Norfolk Place. The applicant was responsible for approximately 120 staff across the Finlays stores which included 12 Personal Licence Holders. The manageress of the Norfolk Place store had worked there for around 20 years and knew the store and area well.

The applicant's representative advised that the applicant felt it necessary to become part of the Bargain Booze franchise in order to compete with neighbouring stores and for his business to continue to be viable. She considered Bargain Booze to be a very professional organisation with robust policies and procedures in relation to alcohol and tobacco sales. A copy of the Bargain Booze Licensing Training Manual was circulated for information. It was highlighted that the applicant attended a franchisee meeting every three months and that staff were provided with refresher training every three months. Till prompts were linked directed to Head Office so that any challenges for ID could be looked at immediately. Bargain Booze was experienced in fitting out stores correctly in terms of the location of alcohol, etc and installing CCTV to uphold the crime and disorder objective.

In consulting with the Responsible Authorities on the application, the applicant's representative advised that Cleveland Police had objected, however, the applicant had outlined several conditions that he would be happy to place on the licence but had not had the opportunity until today's hearing to offer those to the Police.

The applicant's representative advised that Cleveland Police had objected to the application based on the existing anti-social behaviour problems in the area. The applicant accepted this but did not consider it a sufficient reason to prevent a new licence being granted. She stated that the applicant was a responsible, experienced employer who managed his business well. The applicant's representative stated that the Police had not discussed the application with the applicant but had objected and sought refusal based on their submitted representation and the statement provided by PC Arbuckle. She advised that she had requested further information/incident logs from the Police in relation to incidents occurring in the vicinity of the premises to support their representation. Reference was made to 9.12 of the Government Guidance stating that it was incumbent on Police that their representation could withstand scrutiny at a Hearing and the applicant's representative believed that the Police representation was too general. Examples of case law were provided by the applicant's representative in support of her views.

The applicant's representative stated that she had examined the incident logs provided by the Police and found that of 154 logged incidents, 22 involved alcohol. She believed the remaining 132 incidents to be irrelevant to the Hearing. She acknowledged that general anti-social

behaviour was a problem but did not consider it relevant to the Hearing as it was not specifically linked to alcohol. Some of the incidents had occurred further away from the shopping parade and some incidents had taken place during the night, after the shops had closed. She believed there to be no evidence to restrict the application.

### **Questions to the Applicant**

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

- In response to a query regarding how the business would be branded, should the application be granted, the applicant stated that there would be a dual fascia of Bargain Booze Plus and Finlays.
- The applicant advised that the core newsagent business would be retained and that he wished to add the sale of alcohol to the existing business as he considered that he needed to diversify and that Bargain Booze had presented the opportunity to do so.
- In response to a question, the applicant circulated a copy of the proposed floor layout of the premises and explained that the intention was to keep the alcohol behind a screen. The only access to the aisle containing the alcohol would be via an isolated entrance in front of the till area. This would ensure that children were not exposed to alcohol products and that staff could monitor customers entering the area designated for alcohol.
- A Member of the Committee queried why the applicant wished to sell alcohol from 6.00am. The applicant responded that the premises opened at 6.00am and that whilst he would not actively encourage the sale of alcohol at 6.00am, it could cause more problems by not being permitted to sell alcohol at the times the shop was open. The applicant's representative advised that 'Exposing alcohol by retail' was a serious offence and that any alcohol would need to be completely covered when the hours for retail of alcohol were not the same as the premises opening hours. This would be an added complication for the applicant. The applicant's representative added that there was no Police evidence to suggest that there were alcohol-related problems in that area at 6.00am.
- Concern was expressed by a Committee Member in relation to sales being made early in the morning to people who had been drinking all night, for example, having a party and seeking a place to purchase more alcohol. The applicant assured Members that the any alcohol sales would be conducted in the same manner whether it was 6.00am or 6.00pm, in accordance with Bargain Booze's policies and procedures. Any customers under the influence of alcohol would be refused and this would be recorded in the refusals book.
- In response to a query as to how the applicant intended to prevent crime and disorder and public nuisance in the area by selling alcohol at 6.00am, the applicant's representative responded that there would be a CCTV system, till prompts for staff and a robust training programme in place in relation to the sale of alcohol. All of those preventative measures would be in place the whole time the premises was open, therefore, the same measures would be in place at 6.00am that were in place at 10.00pm. The focus would be on running the premises well and responsibly.
- Reference was made to the applicant's report that stated "... there has already been a Bargain Booze next-door to our shop, that closed for personal reasons... and a licence granted to a national company on the other side of our shop which also closed." It was queried when those premises had closed. The applicant responded that Bargain Booze had closed in approximately 2008 for personal reasons and that the other premises was part of a national company that had gone into administration and closed down.
- Clarification was sought in relation to the ownership and running of the premises should the licence be granted. The applicant advised that the premises would continue to trade under his ownership and that Bargain Booze would be paid by him to provide goods and support.
- The Council's legal representative sought clarification in relation to the DPS of the premises

and it was confirmed that the applicant was the DPS for the purpose of the application. The applicant intended to be present at the premises on a regular basis and then transfer the DPS to the person currently running the premises, within the first few weeks of operation.

- The Council's legal representative queried how staff would deal with proxy sales. The applicant acknowledged that this was a contentious issue but advised that this was something Bargain Booze made staff very aware of and covered in staff training. The premises employed local people who tended to get to know regular customers and look out for signs of groups/youths gathering outside the premises.

- In response to a query, the applicant confirmed that any conditions placed on the licence would be his sole responsibility.

- A Member referred to the applicant's report which mentioned Finlay's 'most recent conversion' and queried whether this had been successful. The applicant replied that the most recent conversion undertaken with Bargain Booze had been at its Eston premises and that it had been a success so far.

Cleveland Police 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 only Finlays store in Middlesbrough that sold alcohol was in Eston.

- The applicant was asked if the Berwick Hills store had experienced any problems with youths and anti-social behaviour. The applicant acknowledged that the store was located in a deprived area but that they had not really experienced any major problems. He added that he had spent a considerable amount of time working at the premises and considered that he and the staff had built up a good relationship with regular customers. He stated that they had recently experienced a couple of break-ins at the premises but had experienced very little trouble otherwise.

- Sergeant Higgins queried whether the applicant had witnessed youths congregating outside his shop. The applicant advised that he had not but acknowledged that they sometimes congregated outside the One Stop shop.

- It was queried how the alcohol would be displayed. The applicant advised that the alcohol would be screened off by a Perspex constructed screen. This layout had been suggested by Bargain Booze shop fitters. In response to a query as to whether this was the usual layout employed by Bargain Booze, the applicant stated that the layout depended on the location of the shop, however, he felt the proposed layout would provide staff with control at these particular premises.

### **Relevant Representations**

#### **Cleveland Police**

Sergeant Higgins presented the representations on behalf of Cleveland Police.

Sergeant Higgins stated that the application was in relation to an existing newsagents and that it was difficult to make representations as it did not currently sell alcohol, however, the location of the premises was an area seriously affected by high levels of alcohol-related anti-social behaviour. Cleveland Police strongly believed that existing problems in the area would be exacerbated by granting a premises licence.

PC Arbuckle, who was also in attendance at the meeting, confirmed the contents of his submitted statement and responded to questions from Sergeant Higgins. PC Arbuckle confirmed that Pallister Ward was ranked seventh most deprived ward in the Tees Valley and 56th out of 7,932 wards across the whole country.

PC Arbuckle advised that there was a problem with anti-social behaviour at Norfolk Place

shops and that when he received a copy of the application he had spoken to the local Ward Officers and discovered that the problems there had been so great that a dispersal order had been in place between 17 February and 16 March 2012, affording officers greater powers.

PC Arbuckle clarified that in relation to the incident reports, there had been 154 incidents of anti-social behaviour reported to the Police by local residents/business owners. He added that just because the incident reports did not mention alcohol, it did not mean that alcohol was not a factor in the incidents.

Sergeant Robson, Area Sergeant for Berwick Hills, was also in attendance at the meeting and confirmed the contents of his submitted statement and responded to questions from Sergeant Higgins.

Sergeant Robson was asked to provide his views in relation to the incidents that had occurred in the area in the last six months and whether they were alcohol-related. Sergeant Robson stated that he could not say for certain whether alcohol was a factor in all of the incidents but considered that it was a factor in some of the incidents. He advised that his office was located opposite the Norfolk Place shops and that there was a problem in trying to stop youths gathering in that area. The Police were asked on behalf of the community to disperse the youths. They particularly gathered outside the One Stop shop as it opened late.

Sergeant Robson advised that the list of incidents provided was not representative of jobs carried out by his officers and the 14 PCSOs. He stated that they dealt with unreported incidents and incidents in passing on a daily basis and that the problems in the area took up a great deal of officer time. The Committee was informed that of the crimes committed at the shopping area, the majority occurred at the One Stop shop and that of 28 reported crimes over the last few months, 20 had involved the theft of alcohol. Sergeant Robson was concerned that should the applicant be granted a premises licence, the levels of crime would increase. He also had concerns that there was a potential for rival groups to gather outside Finlays and One Stop and that there would be a rise in anti-social behaviour in general.

Sergeant Higgins summarised that he believed there was a problem with alcohol-related anti-social behaviour in the area. He accepted that not all of the incidents that occurred mentioned alcohol in the incident logs, therefore, it was difficult to present definite statistics in relation to alcohol-related crimes. Sergeant Higgins was concerned that, should the application be granted, the existing problems would worsen. He acknowledged that it was the Committee's decision as to whether the application should be granted and advised that he had prepared a list of conditions to be attached to the licence that he believed would be more appropriate than those that had been proposed by the applicant. It was confirmed that the applicant had been provided with a copy of the conditions proposed by the Police.

#### **Questions to those making Representations – Cleveland Police**

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

- It was queried how many of the problems in the area were related to alcohol. Sergeant Robson advised that some of the problems included domestic violence (where alcohol was involved), drunken youths and alcohol being confiscated but it was difficult to link the alcohol to specific premises.
- It was queried whether alcohol had been a factor considered when making the dispersal order. Sergeant Robson advised that alcohol linked to anti-social behaviour had been mentioned and covered the area from Norfolk Place shops to Morrisons and the corridor from the Neptune Centre. Evidence of empty alcohol containers was found and groups of youths congregating around off-licence premises.
- In response to a question, Sergeant Higgins stated that it was difficult to ascertain where the alcohol was purchased and that it was possible that it was sometimes purchased outside of the locality. He added that the majority of youths purchasing alcohol were over 18 and that they shared it with younger members of the group. This in itself was a problem as the alcohol

was shared out of view.

- Sergeant Robson advised that the anti-social behaviour did reduce whilst the dispersal order was in place, however, the youths moved from Norfolk Place shops to the Pallister Park area.

- A Member of the Committee referred to the incident logs that were circulated to Members on 19 July 2012 and highlighted that some of the reports were nowhere near Norfolk Place shops, for example Kings Road, North Ormesby and Grove Hill. It was also highlighted that the Police objection was made on 14 June 2012 and it was queried why the incident logs had not been circulated until 19 July. Sergeant Higgins responded that the incident logs were submitted upon the request of the applicant's representative and that Cleveland Police were present at the Hearing to make verbal representations.

- In response to a query, Sergeant Higgins reiterated that it was difficult to link alcohol to the point of purchase and that the Police had an issue with one of the stores in the area regarding thefts of alcohol. For those reasons the Police were making representations in relation to the application as it believed that another licensed premise would exacerbate existing problems.

- The Council's legal representative sought clarification on several points and it was confirmed that One Stop was currently the only licensed premises on the parade of shops and that the youths tended to gather outside of that premises. Since January there had been 28 reported thefts from the store, 20 being thefts of alcohol, despite CCTV being operational inside the store and at the entrance/exit door.

- The Council's legal representative referred to the incident logs and highlighted that very few of the reports mentioned alcohol and asked whether the problems of youths being drunk was from personal experience. Sergeant Robson advised that it was easy to spot those that had been drinking by their attitude and demeanour. He accepted that not every instance of anti-social behaviour involved alcohol but considered that there were problems with youths congregating outside One Stop intimidating customers and staff.

- When asked what he considered would be the impact of Finlay's selling alcohol until 10.00pm, Sergeant Robson stated that it was difficult to say but it may encourage youths to congregate outside of the premises.

- In relation to the proposed floor layout of the premises, it was highlighted that the alcohol would be screened off in a separate area and it was queried whether One Stop had a similar layout. Sergeant Robson advised that the store kept some items behind the counter but had items on display at the front on the store.

#### **Questions from the Applicant**

The applicant was afforded the opportunity to ask questions of Cleveland Police and the following issues were raised:-

- The applicant's representative highlighted that the applicant had stated he did not have a problem with youths gathering outside his shop and queried whether the Police had any evidence to suggest that the premises had issues with anti-social behaviour. The Police confirmed they did not.

- It was queried whether the Police had contacted and/or met with the applicant as part of the application assessment process. Sergeant Higgins confirmed that he had not contacted the applicant and had met him for the first time at today's meeting. He added that the applicant had not approached the Police for a meeting.

- Reference was made to the incident logs and it was confirmed that the applicant's representative had requested them from the Police. It was queried whether the communications operator would usually make a note (within the incident log) as to whether alcohol was involved. Sergeant Higgins explained that the communications operator received the calls from members of the public and would note down what they were being told. If alcohol was mentioned by the complainant, then this would be recorded.

- The applicant's representative stated that communications operators were trained to ask the caller whether alcohol was involved in the incident. She added that of the 154 incidents, 132 of those incidents made no reference to alcohol. Sergeant Higgins responded that the Police had attended the Hearing to advise of the issues in the area of Norfolk Place and that they were only able to present the evidence that they had available. If alcohol was not mentioned by the caller when reporting an incident it did not necessarily mean that it was not a factor.
- The applicant's representative queried why the incidents of theft from One Stop did not appear on the incident log. Sergeant Higgins responded that the Police had been asked to provide incidents of anti-social behaviour.
- The applicant's representative referred to the Policing priorities for the area and commented that there was no mention of alcohol within the priorities. Sergeant Higgins explained that the policing priorities were set by the Community Councils and that alcohol was not mentioned as a priority for the current period.
- Reference was made to the report from Alcohol Concern, appended to PC Arbuckle's statement. The applicant's representative considered it to be a very general document and queried whether there was any reference to Middlesbrough. PC Arbuckle advised that whilst there was no specific reference to Middlesbrough within the document, he was making the point that areas with a high density of off-licences had high hospital admission rates of young people related to alcohol.
- It was queried why local residents had not objected to the application. Sergeant Higgins replied that this could be due to a number of reasons but the fact residents had not objected in their own right did not stop them making complaints to the Police about problems in the area.

### **Summing Up**

#### **Applicant**

The applicant's representative summed up by stating that the applicant was a responsible and very experienced operator having spent many years in the trade.

The applicant's representative referred to the concerns expressed regarding the sale of alcohol from 6.00am and assured Members that it was common-place for a premises to be licensed to sell alcohol for the amount of hours that it was open for trading and that this was reflected in the Government Guidance and the Council's Licensing Policy. The applicant's premises would be operated at the same standard at every hour of the day.

The applicant's representative stated that Police evidence and statistics should be open to scrutiny and not just be verbal evidence at a Hearing. The applicant's representative stated that she had requested additional facts and figures from the Police and could have looked into the locations of incidents in more depth had she been provided with the information sooner. She highlighted that of the 154 incidents on the log sheets, she considered only three to be directly relevant to the application.

Reference was made to the list of conditions suggested by the Police to be added to the licence should it be granted. The applicant's representative advised that she would object to conditions 5 and 11 as it was restricting products that the applicant wished to sell and those products would be sold appropriately and within the law and she saw no basis for such restrictions to be applied.

#### **Those Making Representations – Cleveland Police**

Sergeant Higgins, on behalf of Cleveland Police, summed up by stating that the Committee had heard what the Police had to say in relation to anti-social behaviour in the area.

In relation to the screening off and covering of alcohol in premises where the licensing hours differed from the opening hours of the premises, Sergeant Higgins considered that this could be easily overcome by use of barriers or screening curtains.

With reference to the proposed conditions at 5 and 11 that the applicant objected to, Sergeant Higgins advised that the Police were not in favour of Perry products and cider above 5% abv. Whilst the applicant had stated he was a responsible trader, the Police would question how responsible it was to sell alcohol of 8% abv in two or three litre bottles and Sergeant Higgins asked the Committee to take this into consideration should it be minded to grant the application.

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.

**ORDERED** that the application for a Premises License in respect of Finlays, 2-3 Norfolk Place, Berwick Hills, Middlesbrough, Ref No: MBRO/PR0241, be granted but that the sale of alcohol be restricted to the hours of 9.00am to 6.00pm daily, and subject to the following conditions:-

1. The conditions proposed by Cleveland Police including conditions 5 and 11 which were rejected by the applicant.

1) The premise must be fitted with a colour digital CCTV system, both internally and externally. The footage must be retained for a minimum of 31 days and must be able to be transferred onto a medium that can be viewed on Police computer systems.

2) When the store is open, there must always be a member of staff on duty who is fully trained and can operate the CCTV system and who can provide a copy of the footage from the CCTV system to the Police or other responsible authority after being given a reasonable request.

3) An incident book must be kept and maintained at the premises to record all incidents of crime and disorder.

4) A refusals book must be kept and maintained at the premises, to log incidents of all refusals to sell alcohol.

The DPS must check the refusals book periodically to ensure compliance.

5) No Perry products to be stocked and sold from the premises at any time.

6) No alcohol to be displayed within five metres of the entry/exit door.

7) 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).

8) Training on 'Think 25' legislation surrounding selling alcohol to persons underage be provided to all staff members, every six months, and written records to be kept at the premises.

9) 'Think 25' signage to be displayed in and around the store.

10) Signs must be displayed at the checkouts reminding staff to check proof of age.

11) No cider to be sold from the store with an alcohol content of above 5%.

Members considered it appropriate to include conditions 5) and 11) relating to the non-sale of Perry and cider over 5% as they considered such products to be attractive to young people and a cause for concern in incidents of drunkenness involving young people in the area.

2. The following additional condition was imposed by the Licensing Sub Committee:-



- 1) That the location of the alcohol and security screening of it be in accordance with the plan submitted at the Hearing in order to prevent thefts of alcohol which the Police confirmed was a problem at other premises nearby that sold alcohol.

The decision was made for the following reasons:-

1. The Committee considered that the location of the premise was in a deprived area suffering high levels of disorder and anti-social behaviour which the Police advised was usually alcohol related.
2. The Committee considered it appropriate to restrict the sale of alcohol until after 9.00am in order to protect any children accessing the premises before this time from harm. Members considered this appropriate as it was likely that there would be an influx of school children given the nature of the business.
3. The Committee decided to limit the sale of alcohol to 6.00pm to prevent crime and disorder and anti-social behaviour as Police evidence showed more incidents of disorder and anti-social behaviour occurred at the location after 6.00pm.
4. The Police confirmed that incidents of disorder caused by youths congregating took place outside premises selling alcohol and incidents were generally fuelled by alcohol.

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. Government Guidance issued under Section 182 of the Licensing Act 2003, and Middlesbrough Council's Licensing Policy,
3. Consideration was given to the case made by the Applicant.
4. Consideration was given to representations made by Cleveland Police, both written and verbally at the meeting.

The applicant was reminded of the right to appeal to the Magistrates Court within 21 days of the date of the decision.