

**LICENSING SUB-COMMITTEE B**

A meeting of the Licensing Sub-Committee B was held on 9 May 2016.

**PRESENT:** Councillors S Biswas (Chair), J Rathmell and J A Walker

**ALSO IN ATTENDANCE:** Mr L Grimes - Applicant  
Mr L Howard - Proposed Operator of Delivery Service

**OFFICERS:** B Carr, C Cunningham, M Vaines

**DECLARATIONS OF INTERESTS**

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

15/2      **APPLICATION FOR VARIATION OF PREMISES LICENCE - THE LORD BYRON, 20-22 BRIDGE STREET, MIDDLESBROUGH: REF NO: OL/16/08**

A report of the Assistant Director of Improving Public Health had been circulated which outlined an Application for a Variation to the Premises Licence in relation to The Lord Byron, 20 - 22 Bridge Street, Middlesbrough: Ref No. OL/16/08.

**Summary of Current Licensable Activities:**

Sale of Alcohol - 10am to 2am - Daily  
Late Night Refreshment - 11pm to 2am - Daily  
Live Music, Recorded Music and other licensable activities - 9am to 2am - Daily

Full details of the application for the Variation of the Premises Licence were attached at Appendix 1 and the current Premises Licence and accompanying operating schedule were attached at Appendix 2.

**Summary of Proposed Variation of Licensable Activities:**

To amend the current licence to offer an alcohol delivery service - 10pm to 8am - Daily

The Chair introduced those present and outlined the procedure to be followed at the meeting. The Applicant confirmed that he had received a copy of the report.

The Principal Licensing Officer presented the report in relation to an Application for a Variation to the Premises Licence in relation to The Lord Byron, 20 - 22 Bridge Street, Middlesbrough: Ref No. OL/16/08, as outlined above.

The Applicant had advertised the application in the Evening Gazette on 25 March 2016.

The premises, which were located on Bridge Street East, close to Middlesbrough College, consisted of a public house that had traded with the benefit of a premises licence since June 2009.

**Representations**

On 31 March 2016 a representation was received from Councillor Linda Lewis and Councillor Zafar Uddin - the Ward Councillors for Central Ward, objecting to the application on the grounds that granting the application would undermine the four licensing objectives. A copy of that representation was attached at Appendix 3 to the report.

On 30 March 2016, a Planning Officer with Middlesbrough Council contacted the Licensing Section and advised that there would be no representation submitted in relation to the application from the Planning Department, as the alcohol delivery service was secondary use only with the main use of the premises remaining as a public house. If however that changed in future, then a further planning application would be required.

On 8 April 2016, following consultation with a Trading Standards Officer the Applicant agreed a number of additional conditions to be placed on the operating schedule should the application be granted. Those conditions were attached at Appendix 4 to the report.

On 15 April 2016, following consultation with Cleveland Police the Applicant agreed a number of additional conditions to be placed on the operating schedule should the application be granted. Those additional conditions were as follows:

1. The sale by retail of alcohol will remain Monday to Sunday 10.00am to 2.00am for the licensed area of the venue. The alcohol delivery service will operate between the hours of 10.00pm and 8.00am Monday to Sunday
2. There will be CCTV coverage of the storage area and all ingress/egress from it. This will be maintained and stored in line with other CCTV conditions on the premises licence.

The Committee was advised that the premises were located just outside the Council's licensing cumulative impact area for consumption of alcohol on the premises. However for the purposes of off-sales, the premises did fall within the cumulative impact area. Reference was made to Page 43 - 48 of the Council's Licensing Act 2003 - Statement of Licensing Policy 2016- 2021 which related to Cumulative Impact Policies and Page 86 of the Revised Guidance issued under Section 182 of the Licensing Act 2003 which related to the cumulative impact of a concentration of licensed premises.

#### **Applicants in Attendance**

Mr Howard, the person responsible for operating the proposed alcohol delivery service advised that he and the DPS had approached the Police and Trading Standards to enquire about the possibility of setting up an alcohol delivery service in order to improve the viability of the Lord Byron. The alcohol delivery facility would employ 2 Full Time staff which would consist of a driver and a telephone operator.

Mr Grimes, the Applicant advised that he had been running the Lord Byron for the past 8 years and he had always adhered to the licensing objectives and the conditions on his licence. Reference was made to a business that was already operating in the area from 8pm - 8am and they only delivered to specified post codes.

The Applicant had agreed to all of the proposed conditions suggested by the Trading Standards department and the Police and he advised that the service would be select about which areas they would operate the delivery service.

The Chair queried whether the Applicant wanted to revise the application in any way and the Applicant advised that he was satisfied with the submitted application.

In response to a query with regard to who would be in charge of the storage area, Mr Howard advised that he would be responsible for the area. The area would be separate from the public house and would have the benefit of CCTV.

A Member queried whether the public house remained open until 2am. The Applicant advised that it only opened when functions were booked. The alcohol area had a separate entrance to the public house however the telephone for taking orders would be based within the Lord Byron. Mr Howard advised that once the business was established, it could be possible to consider having a separate headquarters in the future.

Mr Grimes advised that he would be in overall control of the alcohol delivery service and would ensure that all the conditions placed on his licence would be adhered to. Only orders that had been placed would be present on the van, there would be no additional stock carried on the van. He advised that Mr Howard would undergo all the necessary licensing training and refresher training would be provided on a monthly basis.

Mr Howard advised that should the application be approved, no trading would take place until

he had undertaken all the necessary licensing training. Mr Grimes advised that he would ensure that Mr Howard completed any training required to operate the business.

The Chair referred to Page 27 of the application form and queried whether the application should state supply of alcohol off the premises rather than off and on the premises. The applicant confirmed that the application was for supply of alcohol off the premises.

In response to a query whether a camera would cover the storage area and the van, Mr Howard confirmed that both areas would be covered by cameras. The Chair queried about the sale of perry and Mr Howard confirmed that there was a condition which would be in place on the licence, if approved, to specify that "no perry to be stocked or sold at any time" and the Police had already suggested conditions which the Applicant had accepted to specify no super-strength alcohol to be sold (cans with 6.5% alcohol etc).

The Committee was advised that whoever telephoned the order into the service, the delivery would only be made to that person's address. It was confirmed that all staff would receive Challenge 21 training and be trained with regard to the sale of alcohol in general.

The Chair advised that the Applicant's needed to be proactive e.g. if youths were congregating around an address that had ordered a delivery, then the order could be cancelled so the refusals book would need to be present on the van at all times.

The Chair queried whether Councillor Lewis had any questions at this time and Councillor Lewis confirmed that she did not have any questions at this point of the meeting.

The Council's legal representative queried why the Applicants had chosen to operate Challenge 21 rather than Challenge 25. The Applicants confirmed that Challenge 21 was included in the conditions suggested by the Police but they did not have any issues if this needed to be changed to Challenge 25. The Chair advised that if they did choose to operate Challenge 25, this did not mean that they could not sell to people aged 21.

The Applicant's advised that if Members thought that Challenge 25 would be more appropriate then they would be willing to include it within the conditions.

The Council's legal representative queried whether the van drivers would be required to have Personal Licences.

Mr Howard confirmed that he would be the person who would have a Personal Licence. It would not be cost effective for the business to require van drivers to have Personal Licences as there could be a big turnaround of staff. Mr Howard advised the Committee that he had prepared a pack of training which would be delivered to each of the drivers and the driver would have to sign and date to say they had received the training. The training would be at the same level of the training that Mr Howard would receive and it would be refreshed regularly.

In response to a query with regard to how many vans would be operating, Mr Howard confirmed that it would be one van initially and he would drive the van but would have a relief driver to allow Mr Howard to have time off.

The Principal Licensing Officer referred to Page 33 of the report where it stated that no sales to be made at the storage area. The Applicant confirmed that every order would have to be made by telephone because there were a number of checks that would need to be made prior to accepting the order. Customers would not be able to pick up orders from the storage area and there would be no proxy sales.

The Council's legal representative queried whether customers would pay for the order on delivery. The Applicant advised that customers could pay for orders by credit card or cash but they would be required to produce suitable identification upon delivery of the order.

The Chair advised that the customer placing the order would have to be the person taking delivery of the order and providing evidence of their identification.

The Council's legal representative queried whether the Applicant had a copy of the script that

would be used when taking orders for alcohol. The Applicant advised that he had a hard copy of the script which he would provide for the Committee.

Councillor Lewis queried whether the Applicants were aware of the Council's Cumulative Impact Policy. The Councillor advised that approximately a third of the area of Middlesbrough was designated as being in a Cumulative Impact Zone because of problems associated with the consumption of alcohol. The Committee was advised by Councillor Lewis that Middlesbrough needed less off-licences because the area was over-saturated with off-licences. Councillor Lewis also queried how the home delivery service would be monitored.

The Chair advised that each sale would be monitored by the CCTV system.

The Council's legal representative advised that the premises were in the Cumulative Impact area for off-licences and she queried how the delivery service would not undermine the licensing objectives.

Mr Howard advised that the drivers would receive the appropriate training in relation to upholding the licensing objectives and they would also receive training in relation to Challenge 25. They would be trained not to make a delivery if they had any doubts about a sale. Mr Howard suggested that he could pass out alcohol awareness literature.

The Council's legal representative queried about who would be able to refuse a sale. Mr Howard advised that the driver could refuse the sale and would make a record of the refusal and the reason for the refusal in the refusals book. A record would be made of the address and the person would have their payment reimbursed. Mr Howard advised that he would always be contactable if the driver had any doubt about making a sale.

The Chair queried whether it would be possible for the storage area to be completely separate from the public house. The Applicant advised that there was a separate gated entrance with four locks. There was a door leading into the public house but this could be kept locked and the whole area would be covered by the CCTV system.

The Chair queried whether Mr Howard could provide members with an overview of the script that would be used when making sales. Mr Howard advised that he would be able to provide a copy of the training pack if the Committee would agree to adjourn for ten minutes.

The Committee adjourned at this point of the meeting and all interested parties other than the officers of Legal Services and Members Office, withdrew from the meeting.

All interested parties returned to the room and Mr Howard produced a training pack and script for members information.

The Council's legal representative advised that the Council's licensing policy stated that the premises were located in a cumulative impact area for off-licences. The policy stated that no off sales can be made in a cumulative impact area. The legal representative also referred to 7.4 of the Council's policy which stated that licensable activities should cease at 11pm and she queried how the sale of alcohol would not impact on residents after 11pm.

Mr Howard referred to the conditions suggested by Trading Standards and the Police and advised that he would adhere to the conditions but if it could be proved that the business was causing a rise in anti-social behaviour in an area, they would consider ceasing sales in that area.

A member stated that there was nothing in the information submitted by the Applicant's which stated how they would be able to prevent a negative impact. he stated that the Cumulative Impact was a concern as the aim was to prevent anti-social behaviour.

The Applicant's advised that they would follow all of the guidance available and would refuse sales that could have a detrimental effect on their business.

A member queried how the Applicants would protect the drivers in terms of the collection of

money. The Applicants advised that they were thinking of installing a safe within the van and the presence of CCTV would act as a deterrent .

A member queried whether the Applicants would consider not selling in the areas of Middlesbrough designated as Cumulative Impact areas. The Applicants advised that it would make trading difficult as over a third of the Middlesbrough area was affected and it could make the business unviable.

The Council's legal representative queried whether conditions on the licence would alleviate any issues such as not selling to customers who were already highly intoxicated. The Applicants advised that it would be down to common sense, combined with implementing alcohol training. The Chair advised that in any case it was illegal to sell alcohol to a person who was already highly intoxicated.

### **Summing Up**

#### **The Applicant**

The Applicant urged members to consider his previous history as a responsible licensee and requested that he and Mr Howard be given the prove themselves. he stated that there was a demand for the service and people would benefit from the service.

#### **Councillor Lewis**

Councillor Lewis requested that the Committee refuse the application to vary the licence because the Cumulative Impact areas were designated because of the impact of alcohol on health and anti-social behaviour.

Councillor Lewis stated that five of the Middlesbrough Wards were in the Cumulative Impact areas which constituted one third of the Middlesbrough area. There was also concern with regard to how the business would be monitored.

It was confirmed that there were no further questions and all interested parties other than the officers of Legal Services and Members Office, withdrew whilst the Committee determined the application.

Subsequently all the parties returned and the Chair announced the Committee's decision.

### **DECISION**

The Committee considered the report, appendices, representations made the applicant, the additional information provided at the Committee and the representations of the objector. The Committee took into consideration the Licensing Act, Government Guidance issued under Section 182 of the Licensing Act 2003 and Middlesbrough Council's Statement of Licensing Policy.

The Committee noted that the application form for variation was for the supply of alcohol for consumption on and off the Premises from 10.00pm until 8.00am. The Applicants confirmed that this should read "off the Premises" only.

The Committee decided to grant the application to vary the Licence by permitting off sales of alcohol from 22.00 hours to 08.00 hours daily subject to all off sales being made by way of remote orders and alcohol delivery service. The Committee therefore decided to vary the Premises Licence as follows:

- Sale of Alcohol on the premises permitted from 10.00am until 2.00am daily
- Sale of Alcohol off the premises permitted from 10.00am until 10.00pm, daily
- Sale of Alcohol off the Premises by way of remote order and delivery service only from 10.00pm until 8.00am daily.

The Variation for the sale of alcohol off the Premises from 10.00pm until 8.00am will be

subject to the following conditions, (the draft conditions on the operating schedule will be replaced with the following) :-

1. That the sale of alcohol from 10.00am until 8.00am off the premises must be made by way of a remote order and deliver service only.
2. No off sale of alcohol shall be made to a customer in person at the Premises between the hours of 10.00pm and 8.00am.
3. The storage of alcohol for off sales between the hours of 10.00pm and 8.00am must be kept and maintained in its own room / area separated by walls from the area where on sales take place at the Premises.
4. The storage area for alcohol for off sales between the hours of 10.00pm and 8.00am must have its own entrance and exit independent to the entrance and exit to the area where on sales take place at the Premises.
5. Digital colour CCTV cameras must be installed in the storage area of alcohol for off sales between the hours of 10.00pm and 8.00am and maintained in good working order at all times, covering the storage area and entrances and exits to that area. CCTV recordings must be retained for a minimum period of 31 days. CCTV footage must be capable of being produced on media which can be viewed by police equipment. CCTV footage must be made available to the police and other responsible authorities on request or during an inspection of the Premises.
6. Every customer making a remote order must be asked the following:
  - Full name
  - Date of Birth
  - Delivery Address
  - Telephone number
  - The type of ID that will be produced on delivery which must be either a current ten year passport, photo card driving licence or PASS logo identity card.
7. Every customer making a remote order must be informed of the following:
  - That if the delivery driver considers the customer appears to be under the age of 25 or the date of birth provided when the order was made shows the customer to be under the age of 25, the customer will be required to produce ID in the form of a current ten year passport, photo card driving licence or PASS logo identity card.
  - That if the customer fails to produce that ID confirming the customer is over 18 years of age, the sale will be refused and the alcohol will not be delivered.
  - That the purchase of alcohol for or on behalf of persons under the age of 18 is a criminal offence.
8. All orders and information provided by the customer must be recorded on a computerised recording system. Those records must be maintained up to date, kept on the Premises and be made available to the Police, trading standards or the Licensing Authority during an inspection or on request.
9. No sale of alcohol will be made or delivery attempted to a customer who fails to provide the information set out in condition 6.
10. The Premises Licence Holders must ensure any person managing or operating off sales by way of remote order and delivery service between the hours of 10.00pm and 8.00am must be a Personal Licence Holder.
11. All persons delivering the alcohol must be over the age of 18.

12. All persons delivering the alcohol must not be paid on a commission basis.
13. All persons delivering alcohol must require ID in the form of a current ten year passport, photo card driving licence or PASS logo identity card from all customers who appear to be under the age of 25 or who are under 25 in accordance with the details provided when the order was made. The person delivering the alcohol must verify the customer is over the age of 18 before the alcohol is transferred to the customer.
14. All persons delivering alcohol must have in the delivery vehicle details of the sales order record for the alcohol, including the name, address, telephone number, date of birth given, type of ID to be produced and alcohol order details.
15. All persons delivering alcohol must state on the sales order record each time ID was required and include details of that ID on the sales order for that customer.
16. Copies of the sales order records must be made available to the Police or the Licensing Authority on request.
17. Only specific alcohol allocated to each order can be stored on delivery vehicles.
18. Alcohol must only be delivered to the person who made the order.
19. Alcohol must only be delivered to the residential / commercial premises address given when the order was made.
20. The delivery of alcohol must take place at the delivery vehicle outside of the address given when the order was made.
21. Any delivery vehicle must have its engine switched off on arrival at the delivery address. The customer must be contacted by telephone and advised the order has arrived. No horn must be sounded or radio or other media devices played once the delivery vehicle has arrived at the delivery address.
22. No deliveries of alcohol must be made to customers in public places.
23. No deliveries of alcohol must be made to customers who attempt to or flag down a delivery vehicle.
24. There shall be a maximum of one sale per property per night.
25. The business name of the off sales delivery service from the Premises and contact number must be displayed in a prominent position on the outside of all delivery vehicles.
26. All delivery vehicles must be maintained in a safe condition at all times.
27. All delivery vehicles must be fitted with digital colour CCTV capable of monitoring the delivery of alcohol. CCTV recordings must be retained for a minimum period of 31 days. CCTV footage must be capable of being produced on media which can be viewed by police equipment. CCTV footage must be made available to the police and other responsible authorities on request or during an inspection.
28. Signs must be displayed in all delivery vehicles advising customers, drivers and staff that a challenge 25 policy is in place and all customers who appear to be under the age of 25 will be required to provide ID proving they are over the age of 18 in the form of a current ten year passport, photo card driving licence or PASS logo identity card.
29. A refusals registers must be kept at the Premises and in each delivery vehicle and maintained up to date at all times recording the date, time and reasons for every refusal to sell alcohol to a customer. Each refusal entered on a register at the point of delivery must be signed by the person refusing the delivery. The Refusals registers must be made available to the police, trading standards and the Licensing Authority upon request or during an inspection.

30. An incident book must be kept in each delivery vehicle maintained up to date at all times recording details of any incidents of anti-social behaviour at the point of delivery, details must include the time, date of the incidents. The incident book must be made available to the police and the Licensing Authority upon request or during an inspection.

31. All staff including all persons making deliveries of alcohol must be trained prior to making a sale of alcohol or delivery of alcohol and every three months thereafter in relation to the following:-

- Delivery procedures and conditions on the Premises Licence.
- Challenge 25 policy.
- Underage sales.
- Sales to adults on behalf of Children - Proxy Sales.
- Sales to intoxicated persons.
- Refusals, procedures and completion of Refusals Register and Incident Books.

32. Documented training records must be completed in respect of every member of staff and all persons making deliveries. The record must include the name of the person trained, date, time and content of the training and must be signed by the person receiving the training, the person providing the training and the Premises Licence Holder. The records must be kept at the Premises and made available to the Police, Trading Standards or the Licensing Authority on request or during an inspection.

33. There shall be no sale of single bottles or single cans of beer, lager, cider, or alcopops.

34. No Perry alcohol products will be sold at any time.

35. No beer, larger or cider of 6.5% abv (alcohol by volume) or above shall be sold at any time.

36. Cider must only be stocked in cans or bottles of 500ml or less and orders must be a minimum of six cans or bottles unless ordered with other alcoholic products.

### **Reasons**

The Committee noted that the Premises is situated just outside of the original cumulative impact area of the town centre for on licensed premises but is within the cumulative impact area of Central Ward in relation of off sales of alcohol. The Committee also noted that because the offer was that of a delivery service that the Premises Licence Holder could deliver alcohol into the other cumulative impact areas identified in the policy.

As a result, the Committee noted the policy states that applications which are likely to add to the existing cumulative impact will normally be refused or subject to limitations, following receipt of relevant representations, unless the applicant can demonstrate that there will be no negative cumulative impact on one or more of the licensing objectives.

The Committee noted that the Applicant had consulted with the Police and Trading Standards who agreed to the imposition of conditions on the licence and did not object to the application.

The Committee did note however that objections were received from Ward Councillors for Central Ward specifically about the effect on the cumulative impact areas and the lack of ability to monitor the impact of a delivery service in these areas and noted the concerns expressed at Committee regarding this.

The Committee considered the responses given by the Applicant and Mr Howard who proposes to run the delivery service about how they would comply with the objectives.

Although the Premises themselves are situated in a cumulative impact area, the Committee considered it is unlikely to add to the problems of saturation of licensed premises in that area particularly because direct off sales to customers from 10.00pm until 8.00am will be prevented



and the storage of alcohol for the delivery service is to be entirely separate from the on Licence area. To support this and to further ensure that the operation is ran without undermining the objectives the Committee considered that it was appropriate that the person running the operation must have a Personal Licence whereupon he or she would have the knowledge of the licensing rules, laws and requirement to pass on to other staff involved in the operation.

Although the operation of delivery of alcohol may result in alcohol being delivery to addresses within the cumulative impact area, The Committee considered that imposition strict controls and limitations by way of the conditions are likely to result in the operation not having a negative effect on the objectives. In reaching this decision the Committee did take into consideration that the police who are the authority on crime and disorder and environmental health / trading standards agreed conditions but did not object to the application.

The Committee considered it was appropriate to amend, reword and expand the proposed conditions put forward by the applicant. Some of the proposals were unenforceable and specific conditions regarding the control of the ordering and delivery processes, limitations to sales and storage, conditions on vehicles and staff operations, CCTV deterrent and rigorous staff training are required to further ensure the objectives would be upheld in view that the Premises are situated in and deliveries will be made to cumulative impact areas.

The Committee also considered it was appropriate to add conditions to protect the public by requiring an incident record to be completed to ensure should problems occur at or around the delivery address those are recorded and dealt with. To prevent continued drinking which could result in rowdy behaviour or disturbance by vehicles by requiring only one delivery to one property per night and to ensure a challenge 25 as opposed to a challenge 21 policy is rigorously imposed.

The Committee also noted that the Council's policy states that in residential areas it is expected that licensing activities should cease at 11.00pm with premises to close no later than 11.30pm. This is to prevent noise and nuisance to residents from such premises late into the night. The Committee considered that deliveries could take place late in the night right through to the next morning. However, it considered that the conditions in relation to the delivery process should minimise any disturbance as a result of a vehicle attending an address for delivery during those hours and therefore departed from this part of the policy.

Objectors were concerned that the impact of a delivery service could not be monitored, however the Committee considered that the vehicles are required to have the livery and contact details on the outside of the vehicles and should deliveries result in a disturbance this could be reported to the police or licensing authority. Also through the conditions the police, trading standards officers and the licensing authority have the authority to inspect records and to ensure conditions are being complied with.

The Committee considered that the grant of the variation in the terms above with the amendment of conditions and addition of further conditions would be appropriate to uphold the licensing objectives.