

LICENSING SUB COMMITTEE C

A meeting of Licensing Sub Committee C was held on 12 February 2007.

PRESENT: Councillor J Jones (In the Chair); Councillors Heath and Mawston.

OFFICIALS: J Dixon, A Gray and T Hodgkinson.

APOLOGIES FOR ABSENSE were submitted on behalf of Councillors B Taylor and Lancaster.

ALSO IN ATTENDANCE: M Illingworth – Applicant.
C Underwood. – Legal Representative for the Applicant.
R Baker – Applicant’s Agent.
Mr Sandhu – Objector.
S Catterall – Objector’s Legal Representative.
J Fernie – Local resident (objecting)

**** DECLARATIONS OF MEMBERS’ INTERESTS**

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

LICENSING ACT 2003: APPLICATION FOR PREMISES LICENCE – CROSSROADS NEWS AND CONVENIENCE STORE, 228 CARGO FLEET LANE, MIDDLESBROUGH - REF. NO. MBRO/PR046

A report of the Head of Community Protection had been circulated outlining an application for a Premises Licence for Crossroads News and Convenience Store, 228 Cargo Fleet Lane, Middlesbrough, Ref No. MBRO/PR046, as follows:-

Summary of Proposed Licensable Activities:-

Sale by retail of alcohol for consumption off the premises.

Summary of Proposed Hours of Licensable Activities:-

5.00am to 11.00pm 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 Legal Representative and Agent, was present at the meeting and confirmed that copies of the report and Regulation 6 Notice had been received.

Details of the Application

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

The report outlined that, on 22 December 2006, an application was made for a Premises Licence, as stated above, and the applicant had advertised the application, as required by the Licensing Act 2003, in the Evening Gazette on 29 December 2006.

A number of representations had been received in relation to the application and were fully detailed in the report.

An initial representation was made by Cleveland Police upon receipt of the application and the applicant had been asked to consider a number of conditions to promote the licensing objectives. The applicant subsequently agreed to the six proposed conditions, allowing the Police to withdraw their representations.

On 4 January 2007 a representation was received from Mr Catterall of Jacksons Solicitors acting on behalf of Mr P Sandhu, the owner of an off licence premises at 230 Cargo Fleet Lane. Mr Sandu's objection was based on the grounds of sufficiency of licensed premises in the area and he submitted a petition signed by local residents objecting to the application on the grounds of sufficiency, prevention of public nuisance and the prevention of crime and disorder. This was attached at Appendix 2 to the submitted report.

Between the period 8 January to 18 January 2007, seven separate representations were received from local residents, each objecting to the application on the grounds of sufficiency and public nuisance. These representations were attached to the submitted report at Appendices 3 – 9.

The Principal Licensing Officer drew Members' attention to the fact that all of the representations made reference to the sufficiency of licensed premises in the area. Members were reminded that under the Licensing Act 2003, grounds for objection must fall under one of the four licensing objectives and whether there was a 'need' for additional licensed premises in the area was not a matter for the Licensing Committee to consider. The Committee should base any decision on the impact the premises would have on any of the licensing objectives.

Members were advised that on 19 January 2007, a petition signed by local residents in support of the application, was received. This was attached at Appendix 10.

In addition, on 19 January 2007, six separate letters were received from local residents (including the Neighbourhood Watch Co-ordinator for Boyds Estate), each supporting the application, stating that they did not suffer from anti-social behaviour caused by underage drinking in the area and that Mr Illingworth (the applicant) was a responsible shop-keeper. The letters of support were attached to the submitted report at Appendices 11 – 16.

Applicant in Attendance

The applicant, Mr Illingworth, was in attendance at the meeting accompanied by his legal representative, Mr Underwood and his Agent, Mr Baker. The legal representative presented the case in support of the application.

The Committee was informed that Crossroads News and Convenience Store was operated by the applicant and his wife, who also lived on the premises and reported no problems with disturbance/anti social behaviour at the present time. The couple employed two other staff who lived locally. It was stated that the applicant had carried out considerable refurbishment to the premises resulting in a high quality convenience store.

The Committee was advised that Mr Sandhu operated the off-licence store situated next-door to the applicant's premises and that, despite initial concerns expressed by the Police, the applicant had agreed to conditions proposed by the Police allowing their representations to be withdrawn.

In response to those conditions agreed with the Police, it was stated that the applicant already kept a refusals book and incident book and was prepared to display notices regarding the 'Challenge 21' proof of age scheme. With regard to staff training, the legal representative provided Members with the opportunity to peruse the training manual which the applicant intended to use and it was confirmed that the applicant was a Personal Licence Holder. Additionally, the applicant was in the process of upgrading the CCTV system at his store.

With regard to the submitted written objections from local residents, the applicant's legal representative considered that there was no evidence of nuisance being caused by patrons of the store at the present time and that objections appeared to be based on expectations of problems should the licence be granted. It was highlighted that if problems did exist, they were not caused by the applicant's store as he currently did not sell alcohol.

It was highlighted that a number of residents living in close proximity to the store had submitted letters of support for the application and had stated that the applicant was a responsible shop-keeper.

With regard to the two petitions submitted, the legal representative pointed out that the petition in opposition of the application was not headed at the top of each page and that there was no opportunity to indicate support for the application, whereas the applicant's petition provided the opportunity to support or object to the application. In fact, one signatory had signed both petitions – one in opposition and one in support.

It was confirmed that there were no questions for the applicant or his legal representative.

Relevant Representations

Mr Sandhu - Representations

Mr Sandhu, proprietor of 230 Cargo Fleet Lane, accompanied by his legal representative, Mr Catterall, was in attendance at the meeting and was invited to present the representations against the application.

The legal representative presented the case for the representation and highlighted that Mr Sandhu had no personal issue with the applicant but considered that, should the application be granted, a 'price war' would be created as a result of two competing off licences located next-door to each other. Mr Sandhu considered this would attract people from other areas and give rise to nuisance. The legal representative commented that the submitted petition of over 400 signatories indicated the level of opposition to the application from local residents. He added that if the application was granted, this would create a fifth venue for the sale of alcohol within a small geographical area, resulting in increased crime and disorder and public nuisance.

Questions to the Objector's Legal Representative

Members of the Committee were given the opportunity to ask questions of the objector/his legal representative and the following issues were raised:-

- A Committee Member noted that the objections to the application were based upon making an existing problem worse and queried whether there had been any previous complaints made about the premises. The Principal Licensing Officer confirmed that no previous complaints had been received by the Licensing Department. It was noted that the Principal Licensing Officer had discussed the application with the local Ward Councillor who had no objections to the application.
- A Member of the Committee considered the objections to be vague and that there was no evidence of current anti social behaviour despite the existence of an off licence, public house and supermarket selling alcohol, all in close proximity to each other and all likely to be serving residents beyond Boyd's Estate.

Mr Fernie, Local Resident - Representations

Mr Fernie, local resident, was in attendance at the meeting and was invited to present his representations against the application.

Mr Fernie stated that Boyd's estate consisted of 169 houses and already had an existing off licence in addition to the nearby public house and supermarket.

He explained that local residents had encountered problems, approximately one year ago, with anti social behaviour from underage youths drinking and obtaining alcohol via persons over the age of 18 who had purchased it for them. He stated that the problems had eventually been resolved by local residents themselves in conjunction with Mr Sandhu who had refused to sell alcohol to those over the age of 18 whom he knew to be purchasing alcohol for consumption by those underage. Mr Fernie stated he could not understand why the applicant wished to sell alcohol when Mr Sandhu already sold alcohol. He believed it would increase anti social behaviour and cause problems for local residents and was bound to cause fierce competition and attract youths.

Questions to the Objectors

The applicant and his legal representative were afforded the opportunity to ask questions of the objectors and the following issues were raised:-

- In response to a query, it was confirmed that both stores already sold items of a similar nature (ie groceries, newspapers).
- Mr Sandhu elaborated that he considered the existing items sold caused price competition as they also had to compete with the large Lidl supermarket opposite the stores.

A second member of the public was in attendance at the meeting and wished to speak in opposition to the application, however, it was discovered that he was a family friend of Mr Sandhu and did not live in the vicinity of the store. Reference was made to Part 3, Section 13(4) of the Licensing Act 2003 (Authorised Persons, Interested Parties and Responsible Authorities) which stated that interested parties wishing to make representations should either:-

- a) be a person living in the vicinity of the premises.
- b) be a body representing persons living in that vicinity.
- c) be a person involved in a business in that vicinity.
- d) be a body representing persons involved in such businesses.

Subsequently, the Chair advised the gentleman that he was not permitted to speak and he left the meeting.

Members of the Committee were afforded the opportunity to ask questions of the objectors and the following points were noted:-

- In response to a query, Members were advised that the problems with anti social behaviour from youths had ceased approximately 12 – 14 months ago.
- A Member of the Committee referred to the Licensing Regulations and queried whether the new Regulations had helped to ease the problems of anti social behaviour. Mr Fernie considered that the new Regulations had no effect and that Mr Sandhu and local residents had eventually put a stop to the behaviour.

Summing Up

The Chair invited all parties to sum up.

Applicant's Legal Representative

The applicant's Legal Representative summed up by stating that the talk of a 'price war' had not come from the applicant and that Mr Sandhu was, understandably, attempting to protect his own trade. He considered that any problems caused through healthy competition could be reviewed by the Licensing Committee under its powers of review and it would be for Members to decide whether one or both stores should have its licence reviewed. The legal representative felt that problems of anti social behaviour being caused as a result of the licence being granted were pure speculation and that there were no problems at the current time.

Mr Sandhu's Legal Representative

The objector's legal representative summed up by stating that Mr Sandhu did want to protect his trade and that the basic rules of commerce indicated that when two off-licences were located next-door to each other it was likely that this would result in fierce competition for business. The consequences of such competition would possibly be the sale of cheap alcohol to people travelling from miles around and that was the reason why so many local people had signed the petition in opposition to the application being granted.

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 AS FOLLOWS:-

1. That the application for a Premises Licence, at 228 Cargo Fleet Lane, for the retail sale of alcohol for consumption off the premises between the hours of 5.00am and 11.00pm daily be granted, subject to the following conditions as agreed with the Police and the applicant, with an amendment to condition 5) to include the non-sale of alcohol to persons over 18 years attempting to purchase alcohol for those aged under 18:-
 - i) The premises must be fitted with colour digital CCTV both internally and externally and footage must be kept for a minimum of 31 days.
 - ii) An incident book must be kept to record any incidents of crime and disorder relating to the premises.
 - iii) All staff must be trained with regards to identifying and selling alcohol to underage persons and a record of the training must be kept.
 - iv) Notices must be displayed around the store regarding the sale of alcohol to underage persons and anyone attempting to purchase alcohol for persons underage.
 - v) A refusals book must be kept and maintained.

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 7.20, Annex D.
 - Prevention of Public Nuisance, starting at paragraph 7.38, Annex G.
 - The need for licensed premises, starting at paragraph 3.12.
 - Hours of trading for shops, stores and supermarkets; starting at paragraph 6.20.
3. Middlesbrough Council's Licensing Policy particularly in relation to:-
 - Prevention of Crime and Disorder (pages 17 and 18).
 - Prevention of Public Nuisance, (pages 10 to 15, particularly paragraph 38).
 - Off licences (page 27).
4. The case presented by the applicant and his legal representative.
5. The representations made by Mr Sandhu and his legal representative.
6. The representations made by Mr Fernie (local resident).
7. The submitted written representations.

Members had made their decision based on the following reasons:-

1. That it was acknowledged by local residents that there was no evidence of anti social behaviour at the present moment.
2. The Committee had the powers of review to review the Premises Licences of either store should problems arise.