

LICENSING SUB COMMITTEE C

A meeting of Licensing Sub Committee C was held on 11 January 2012.

PRESENT: Councillor Taylor (Chair); Councillors Arundale and P Sharrocks.

OFFICERS: B Carr, A Gray and J Hodgson.

ALSO IN ATTENDANCE: T Nazir – Applicant
 C Harvard – Applicant's Legal Representative
 Ms S Stobbs – Designated Premises Supervisor
 J Marwick – Cleveland Police Legal Representative
 Sgt P Higgins – Police Licensing Unit
 PC J Ward – Cleveland Police
 PC J Bryan – Cleveland Police

**** DECLARATIONS OF MEMBERS' INTERESTS**

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

LICENSING ACT 2003: APPLICATION FOR PREMISES LICENCE – ELITE FUELS LTD, FLEET POINT SERVICES, CAMBRIDGE ROAD, MIDDLESBROUGH - REF. NO. MBRO/PRO351

A report of the Assistant Director Community Protection had been circulated outlining an application for a Premises Licence in relation to Elite Fuels Ltd, Fleet Point Services, Cambridge Road, Middlesbrough, Ref No. MBRO/PRO351.

The Senior Licensing Officer advised that the applicant had informed the Licensing Section that the financial information submitted in support of the application was very detailed and as a consequence a financial adviser had been invited to the meeting by the applicant to explain the relevance of the financial information in relation to the application. The applicant had subsequently contacted the Licensing Section to request that the application be deferred to a future meeting as the financial adviser was unable to attend the meeting.

The Chair suggested that a Site Visit be arranged to view the premises prior to determining the application.

ORDERED as follows:-

1. That the application for a Premises Licence in relation to Elite Fuels Ltd, Fleet Point Services, Cambridge Road, Middlesbrough, Ref No. MBRO/PRO351 be deferred to the Licensing Sub Committee meeting scheduled for 20 January 2012.
2. That the Licensing Section liaise with the Members of the Licensing Sub Committee appointed to sit on the Committee scheduled for 20 January 2012 with regards to a suitable date for a Site Visit in relation to the application for Elite Fuels Ltd, Ref No. MBRO/PRO351.

LICENSING ACT 2003: APPLICATION TO VARY PREMISES LICENCE – ZAK'S OFF LICENCE, 287 LINTHORPE ROAD, MIDDLESBROUGH - REF. NO. MBRO/PRO258

A report of the Assistant Director Community Protection had been circulated outlining an application to vary the Premises Licence in relation to Zak's Off Licence, 287 Linthorpe Road, Middlesbrough, Ref No. MBRO/PRO258, as follows:-

Summary of current Licensable Activities and Licensing Hours

Sale of alcohol	Monday – Saturday	8.00am – 11.00pm
	Sunday	10.00am – 10.30pm
	Good Friday	8.00am – 10.30pm
	Christmas Day	12noon – 3.00pm & 7.00pm – 10.30pm

A copy of the current premises licence was attached at Appendix 2 to the report.

Summary of Proposed variation

To extend the licensing hours as follows:-

Sale of alcohol	Sunday – Thursday	6.00am – 12 midnight
	Friday – Saturday	6.00am – 2.00am

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 and his legal representative were present at the meeting and confirmed that copies of the report and Regulation 6 Notice had been received. The applicant's legal representative advised that the premises licence attached at Appendix 2 related to the applicants other premises at 345 Linthorpe Road. The Senior Licensing Officer confirmed that the Members of the Committee and the Police had since received a copy of the correct premises licence in relation to 287 Linthorpe Road.

The applicant's legal representative also clarified that the variation of the licence was for revised opening hours of Sunday – Thursday – 6.00am – 12 midnight and Friday – Saturday 6.00am – 2.00am

Details of the Application

The Senior Licensing Officer presented the report in relation to an application, received on 11 November 2011, for a variation of the Premises Licence in relation to Zak's Off Licence, 287 Linthorpe Road, Middlesbrough, Ref No. MBRO/PRO258 as outlined above. The application had originally been submitted by Darren Francis Cook however the Senior Licensing Officer confirmed that Mr Nazir was now the applicant. Copies of additional witness statements from the applicant and Cleveland Police had been circulated to Members of the Committee.

The report provided background information in relation to the premises which, operated as an off licence and convenience store situated in close proximity to residential properties. The premises had the benefit of a Premises Licence and operated under the provisions of a Justices Licence.

Details of representations, received from Cleveland Police on 5 December 2011 (attached at Appendix 3), Mr A Said, a local business owner received on 9 December 2011 (attached at Appendix 4) and Mr E Amani, another local business owner also received on 9 December 2011 (attached at Appendix 5) were circulated with the submitted report. Copies of additional witness statements from the applicant and Cleveland Police had also been circulated to Members of the Committee.

Applicant in Attendance

The applicant's legal representative presented the case in support of the application.

A copy of a map provided to the applicant's legal representative by Sergeant Higgins showing the Ward Boundaries and the Alcohol Free Zones was circulated to Members of the Committee. Members were advised that the premises which were the subject of the application were situated outside the boundary of the saturation zone.

The legal representative advised that the application for the variation of hours had been made on the basis that his client believed from speaking to his customers that there was a demand for the additional hours. The applicant had traded at the premises for over 20 years and because he had obtained the licence (which was previously held by his father) under "Grandfather Rights" his licence operated under the provisions of a Justices Licence and as a consequence only mandatory conditions were attached to his current licence.

Members were advised that for the past six months the premises had operated as part of a franchise operation in connection with Bargain Booze. As part of the franchise, the applicant maintained a computerised refusals and incidents book. A print out of statistical information in relation to checks carried out under the Challenge 25 Policy was circulated to Members of the Committee.

The applicant circulated copies of notices that were exhibited at the premises in relation to the Challenge 25 Policy and the Committee was also advised that the premises offered a £200 reward for information in relation to customers breaking the law in relation to underage sales and the purchase of alcohol for under 18 year olds. The till used in the premises also operated an automatic prompt to check I.D. in respect of age restricted products.

In terms of training at the premises, Members were advised that all staff received monthly training sessions. A DVD which included all aspects of the Challenge 25 Policy formed part of the training process and all staff received a written test on the contents of the DVD. Staff at the premises also had access to a manual detailing the law in respect of alcohol and other age restricted sales. Computerised records were maintained in respect of staff training attendance and the DPS who had worked at the premises for over 4 years and the applicant attended franchise meetings on a two monthly basis to discuss all aspects of the business including training.

The legal representative also pointed out that the applicant had produced a letter from Trading Standards dated 15 November 2011 advising that as part of Middlesbrough Trading Standards procedures an exercise had been carried out in relation to test purchasing. As part of the exercise, five test purchases had been carried out at the premises on 15th April 2011, 5th June 2011, 29th July 2011 and 19th August 2011 and on each occasion the sale was refused. The premises had not encountered any problems with youths congregating outside the premises or with anti social behaviour. There had also not been any instances of proxy purchases and the premises benefitted from a CCTV system.

The legal representative advised that the applicant had spoken to the two business owners that had objected to his application. Mr Said had advised that he had objected to the application purely on commercial grounds because of concerns regarding the potential loss of business. Mr Amani had advised that the signature on the representation purporting to be from him was not his signature. Mr Amani had advised the applicant that he would be pleased if the application was granted as it could mean that his pizza shop would obtain further business as a result of the extended hours. The legal representative also pointed out that there had not been any representations from the Ward Councillors or the Residents Associations

The legal representative advised that the applicant accepted that the Police had concerns regarding the anti social behaviour associated with the use of alcohol in the Gresham and Park Wards and he acknowledged that the Police had reduced resources. The applicant had however demonstrated that he was actively promoting the licensing objectives.

The legal representative also referred to a number of other licences that had been granted in the past two years in the vicinity of the premises.

Questions to the Applicant

The Members of the Committee and the Police asked questions of the applicant and the following issues were raised:

- In response to a query by the Police legal representative regarding the cheapest bottle of white cider, the applicant confirmed that the cost was £1.49 per litre which was ten pence dearer than the cost for two litres of the same item at Sainsbury's;
- With regard to a query from the Police legal representative regarding the list of statistical information in relation to checks carried out under the Challenge 25 Policy the applicant advised that the list only related to people who appeared to be under the age of 25;

- The applicant was asked by the Police legal representative if many of his customers were young people. The applicant advised that his customers did include a number of young people but the automatic till prompts ensured the Challenge 25 Policy was operated;
- In response to a query from a Member the applicant advised that he did not have any actual figures for the number of customers requesting that the premises extend the opening hours;
- In response to a query from a Member the applicant advised that the reasons that he wanted to apply for the extension was as a result of demand from customers and for financial reasons. The applicant also advised that in the last year he had been required to terminate the employment of 2 staff and it was possible that he would have to finish another Member of staff in the next 2 months.

The applicant's legal representative asked the DPS to confirm the details contained in the applicant's statement. The DPS also confirmed that she had received requests from customers for an extension of the premises opening hours on a regular basis although it was usually the applicant who received such requests as he usually worked the evening shifts. The DPS also confirmed that the premises had not been visited by any of the responsible authorities and that she had not experienced any instances of anti social behaviour or alcohol fuelled crime in the vicinity of the premises.

Reference was made to the conditions that had been suggested by the applicant which were appended to the applicant's statement. The applicant's legal representative asked Sergeant Higgins if these conditions would be acceptable to the police if the Committee were minded to approve the application. Sergeant Higgins advised that the conditions were broadly similar to the types of conditions that the police would like to have on the licence however the conditions suggested would need amending to ensure they were enforceable.

Relevant Representations

Cleveland Police

The legal representative from Cleveland Police stated that the area surrounding 287 Linthorpe Road was blighted by anti social behaviour and alcohol problems.

He acknowledged that the franchise appeared to be working well, however the problem in granting the licence would be that the premises would be the only off licence open in the locality beyond 11.00pm and the availability of alcohol could contribute to the problems with anti social behaviour and alcohol fuelled behaviour already prevalent in the area.

The legal representative referred to the list of offences produced by PC Bryan which had occurred within the vicinity of 287 Linthorpe Road in relation to alcohol. He confirmed that the list contained details of a number of youths under the age of 18 but also a large number of young people over the age of 18. Reference was also made to the statement of PC Harrison regarding the empty bottles being buried in the children's play area in Albert Park. PC Harrison's statement also contained indirect evidence of residents complaining about anti social behaviour.

The statement from PC Chalmers made reference to the fact that the premises were located within a Ward subject to a Dispersal Order under section 30(3) to (6) of the Anti Social Behaviour Act 2003 which was granted in November 2011.

Sergeant Higgins outlined to Members of the Committee the boundaries of the saturation zone and the Dispersal Order. Members were advised that none of the off licences in the vicinity of 287 Linthorpe Road were open beyond 11.00pm. He highlighted that previously two 24 hour licences had been granted, however both licences had since been reviewed and one of the premises had surrendered their licence and the other had reverted back to their original permitted hours.

Questions to Cleveland Police

- Sergeant Higgins provided a response to a query from the applicant's legal representative regarding representations made by the Police to various other licensed premises in the vicinity of 287 Linthorpe Road

It was highlighted that people in public houses were confined within the premises, however if people purchased alcohol from an off licence there was no control over what they did with the alcohol once they left the premises. Sergeant Higgins also clarified that the Police had visited 287 Linthorpe Road on 9 May 2011 to view CCTV footage in response to a theft at the shop.

PC Bryan confirmed that the content of her statement was correct. In response to a query from the applicant's legal representative PC Bryan confirmed that she did not carry out neighbourhood policing, she had simply compiled the statistical information. PC Ward advised that the neighbourhood police held regular meetings with residents in the Gresham Ward and that a number of concerns regarding anti social behaviour in the Ward had been raised. PC Ward confirmed that Gresham was a hotspot for crime and that additional resources to deal with the issue had been directed to that Ward.

The applicant's legal representative asked if the Police liaised with premises that held licences regarding any problems with anti social behaviour. PC Ward confirmed that the Police did speak to licensees and shop keepers on a regular basis. The applicant advised that he had never received any contact from the Police or Street Wardens regarding anti social behaviour in the Ward.

Representations from Mr Said and Mr Amani

Neither Mr Said nor Mr Amani were present at the meeting however their letters of objection had been circulated to Members prior to the meeting.

Summing UpCleveland Police

The Police legal representative stated that the area where the premises were located was blighted by alcohol fuelled anti social behaviour. It was also located very near to a saturation zone and in a Ward subject to a Dispersal Order. None of the other off licences in the locality had a licence to sell alcohol beyond 11.00pm.

The Police legal representative stated that to grant the extension of hours to the licence would undermine the licensing objectives and would attract more anti social behaviour to the area.

The Premises Licence Holder

The applicant's legal representative summed up by stating that the premises had been operating for over 20 years and the applicant had not experienced any problems with anti social behaviour in the vicinity of the premises throughout this time.

No objections to the proposed variation of the licensing hours had been received from Ward Councillors or Resident's Associations despite the fact that the premises were situated on the edge of one of the most densely housed areas of the town centre.

Numerous requests for an extension to the opening hours of the premises had been made by students, residents and shift workers. There was no evidence of proxy sales or people congregating outside the shop and there was evidence to prove that the premises had passed all the test purchases carried out by the Council's Trading Standards Department.

The applicant's legal representative requested Members to put little weight on the two objections received, given that one objection was submitted on the grounds of commercial reasons and there was doubt about the authenticity of the second objection. The legal representative stated

that given the applicant's past record of operating the premises in a responsible manner that Members grant the proposed extension of hours either in full or in part.

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

That the Application to Vary the Premises Licence in respect of Zak's Off Licence, 287 Linthorpe Road, Middlesbrough, Ref No. MBRO/PRO258 be refused.

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

1. The Committee noted that one of the reasons for applying for extended hours was for commercial purposes and felt that such a reason would not promote the licensing objectives.
2. There is currently a Dispersal Order in place in the area due to the high level of alcohol related anti-social behaviour and the Committee believed that granting the extended hours would only add to this problem.

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

1. The application was considered on its own merits, taking into account the three licensing objectives of the prevention of crime & disorder, prevention of public nuisance and protection of children from harm.
2. Consideration was given to the Government Guidance, in particular paragraph 2.32 onwards relating to the prevention of public nuisance and paragraph 8.68 in relation to variation of licensing hours.
3. Consideration was also given to Middlesbrough Council's Licensing Policy, in particular paragraph 2.21 to 2.29 in relation to Alcohol Related Health and Crime concerns in Middlesbrough and paragraph 7.5 in relation to the prevention of public nuisance. The Committee noted that the premises were on the edge of one of the most densely housed areas of the town centre.
4. Consideration was given to the case made by the Applicant and the Police. The Committee accepted that the premises were well run.

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