

LICENSING SUB-COMMITTEE C

A meeting of the Licensing Sub-Committee C was held on 11 September 2012.

PRESENT: Councillors B E Taylor (Chair) B A Hubbard and M Hudson.

ALSO IN ATTENDANCE: Mr Durrani – Applicant.
N Wood – Applicant's employee.
C Harvard – Applicant's Legal Representative.

OFFICERS: C Cunningham, J Dixon, J Hodgson and S Morris.

DECLARATIONS OF INTERESTS

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

12/5 **APPLICATION FOR PREMISES LICENCE - NORTH ORMESBY PARMESAN HOUSE, 18 BEAUMONT ROAD, NORTH ORMESBY, MIDDLESBROUGH - MBRO/PRO330**

A report of the Assistant Director Community Protection had been circulated outlining an application for a Premises Licence in relation to North Ormesby Parmesan House, 18 Beaumont Road, North Ormesby, Middlesbrough, Ref No. PR0330, as follows:-

Summary of Proposed Licensable Activities and Hours for Proposed Licensable Activities

Provision of Late Night Refreshment - 11.00pm to 12.00 midnight Sunday to Thursday.
- 11.00pm to 1.00am Friday and Saturday.

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's legal representative confirmed that copies of the report and Regulation 6 Notice had been received.

Details of the Application

The Senior Licensing Officer presented the report in relation to an application, received on 19 July 2012, for a Premises Licence in relation to North Ormesby Parmesan House, 18 Beaumont Road, Middlesbrough, as outlined above. The applicant had advertised the application, as required by the Licensing Act 2003, in the Evening Gazette on 19 July 2012, which was confirmed as being an accurate reflection of the facts by the applicant.

It was highlighted that the premises consisted of a hot food takeaway at the junction of Beaumont Road and Coltman Street, North Ormesby. The premise was in close proximity to residential properties and a location plan was attached at Appendix 3.

On 2 August 2012, correspondence was received from Cleveland Police, signed by the applicant, stating that the applicant had agreed to a number of conditions being attached to the operating schedule, resulting in the Police not submitting a representation. A copy was attached at Appendix 2.

A representation was received on 15 August 2012 from Councillor Junier on behalf of the residents of North Ormesby and North Ormesby Community Council. The objection was based on the grounds of prevention of crime and disorder and the prevention of public nuisance (copy attached at Appendix 4).

On 16 August 2012, correspondence was received from the applicant. This included a petition containing approximately 160 signatures in support of his application. A copy of the

correspondence and petition was attached at Appendix 5.

The Senior Licensing Officer updated that on 6 September 2012, a further statement was received from the applicant. As a result of that statement, the Senior Licensing Officer circulated an area map with details of premises in the vicinity that were licensed for late night refreshment.

On 11 September 2012, Councillor Junier responded to the correspondence circulated by the Senior Licensing Officer stating that he did not intend to attend the Hearing and that the original objection still stood.

Applicant in Attendance

The applicant, accompanied by his legal representative, was in attendance at the meeting and confirmed the report as being a correct representation of the facts.

The applicant's legal representative referred to the area map and wished to highlight that immediately behind the premises at 60-64 Kings Road was North Ormesby Working Men's Club (as this had not been marked on the map). It was also highlighted that the premises marked at 7 Beaumont Road had now closed down and relocated to the premises next-door to the Conservative Club. The Senior Licensing Officer advised that she had checked that morning as to whether there were any further licensed premises on Beaumont Road and there were not. It was pointed out, however, that a licence for late night refreshment was only required if the operating hours were beyond 11.00pm.

The applicant's legal representative stated that he was unsure of the operating hours of North Ormesby Working Men's Club and the Chair requested that the licensing officer obtain this information at some point during the Hearing.

The applicant's legal representative firstly wished to comment in relation to Councillor Junier's email. He stated that he had been involved in licensing in the area for many years and regularly approached objectors in an attempt to ascertain whether accommodations could be made in relation to applications. He advised that he had telephoned Councillor Junier to ask two questions – whether councillor Junier was aware of the conditions agreed between the applicant and Cleveland Police and whether he would be attending today's Hearing. The legal representative stated that he had not attempted to persuade Councillor Junier to remove his representation and strongly objected to being accused of doing so.

The applicant's legal representative presented the case in support of the application and circulated some additional pages containing 35 signatures from customers in support of the application to add to the petition previously circulated.

The applicant's legal representative stated that it was a modest application submitted by a businessman who had operated in the area for 15 years and had lived in the area for 15 years. The applicant had previously operated his business for the hours he now requested. He had operated his business from 3 Beaumont Road for five years. The applicant had then operated his business from 60-64 Kings Road for a number of years, with the benefit of licence for Late Night Refreshment with no representations made at that time. In July 2012, the applicant moved to 18 Beaumont Road and now made his application to replicate the trading hours at his two previous premises. The applicant was an experienced businessman in the area and had not encountered any problems as referred to in the representation.

Reference was made to the representation submitted by Councillor Junier on behalf of North Ormesby residents and North Ormesby Community Council. The representation stated "... residents (as well as Neighbourhood Police) believe that if allowed to stay open until 1.00am that it could become a further causal issue and a place to congregate for those responsible for the anti-social behaviour in the area." In this regard, the applicant's legal representative advised that he had contacted PC Bryan of Cleveland Police (who had agreed conditions with the applicant) and she had confirmed that she had notified North Ormesby Neighbourhood Police of the application, as a matter of course, and had received no feedback. Cleveland Police Licensing Unit considered that the conditions proposed, and agreed by the applicant,

satisfied the licensing objectives. The legal representative provided Members of the Committee with a copy of the correspondence between himself and PC Bryan for information.

The applicant's legal representative referred to the conditions agreed with Cleveland Police (included within the submitted documentation) and advised that, in relation to CCTV, the applicant had installed eight cameras – three external and five internal. Two of the external cameras covered Beaumont Road and the other covered Coltman Street. The applicant also had notices displayed on the premises notifying patrons of the CCTV in operation. In relation to condition 3) regarding food waste/containers, the Committee was advised that the applicant had a large bin inside the premises for any waste and a large external trade waste receptacle that was emptied on a regular basis by a contractor. With regard to condition 4), the applicant did not intend to sell alcohol. Condition 5) stated that groups of people should not be allowed to congregate outside the premises.

The applicant's legal representative considered this to directly address the concerns raised in Councillor Junier's representation. The Police were satisfied that the condition would address any concerns and there was no evidence to the contrary.

It was highlighted that there were other premises in the vicinity, as marked on the location plan, that traded at the hours being sought by the applicant. There was no evidence of complaints in relation to any of the premises nor had there been any applications to review the licences.

The applicant's legal representative stated that he would have liked to ask Councillor Junier, had he attended the Hearing, how long anti-social behaviour, linked to the premises in the area, had been a problem and also whether there had been any study of street based CCTV in the area.

North Ormesby Neighbourhood Police had not made a separate representation and the Cleveland Police Licensing Unit would have made a representation, however, were satisfied that it was not necessary given the agreement by the applicant to the proposed conditions.

The applicant's legal representative highlighted that the petition submitted by the applicant showed a lot of support from local people and that of the 215 signatures, approximately 28% of signatories lived in the streets immediately surrounding the premises, therefore, his application was supported by local people. In addition the applicant had operated three separate premises in the same area.

The applicant confirmed the content of his submitted statement and confirmed that he had nothing further to add to it.

Questions to the Applicant

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

- A Panel Member firstly thanked the applicant for his co-operation with Cleveland Police in relation to the conditions. The applicant was asked how many delivery vehicles he currently operated and replied that he operated one vehicle but may operate two vehicles at weekends if his application was successful. In response to a further query, the applicant stated that in all the years he had been in business he had never operated more than two delivery vehicles and did not intend to operate more than two.
- Reference was made to condition 5) agreed with the Police that stated 'groups of people would not be allowed to congregate outside of the premises' and the applicant was asked how he intended to enforce that condition. The applicant stated that when groups came into his premises he would serve them as quickly as possible. A Member stated that from a Police perspective the condition referred to groups congregating outside the premises, perhaps to eat the food they had purchased or waiting for other members of the group to be served. The applicant stated that he had never experienced any problems with groups hanging around.

- A Member of the Committee referred to the other takeaway premises in the area and the applicant's legal representative's mention of no objections being made in relation to those premises and queried whether the applicant considered that local people were concerned in relation to the amount of takeaways in the area, hence the reason they were now objecting. The applicant responded that he had not received any comments from local businesses and was not aware of any problems.
- Reference was made to the Council's Licensing Policy in relation to Late Night Refreshment, 7.5 stated that premises in residential areas would usually close at 11.00pm and asked the applicant to comment. The applicant's legal representative responded that there were two other premises, in close proximity to the applicant's premises, operating until midnight during the week and until 1.00am at weekends and highlighted that the applicant had also previously operated those hours without any problems. He pointed out that the premises were situated in a densely populated area and the takeaway establishments traded as there was a demand for them. He considered the Council to have departed from its own Policy on at least two occasions due to the other premises operating at the later hours which the applicant wished to replicate.
- In response to the comments, the Committee Member stated that when the other premises referred to had applied for later hours, there had been no objections and, therefore, no Committee Hearing was required. However, an objection had now been received in relation to the applicant's application which may suggest that the local community felt that there were sufficient takeaways operating beyond 11.00pm in a residential area. The applicant's legal representative accepted the point being made but highlighted that the objection received in relation to the application made no mention of residents considering there to be enough takeaways in the area, but had stated that it could be further cause for issue with people congregating. The applicant had confirmed that he had not experienced any problems with groups congregating outside of any of the premises he had operated over the last 15 years. He added that there was no evidence of problems with the operation of the other late night refreshment houses in the area, nor that by granting the applicant's request for longer hours there would be an increase in groups congregating.
- The Council's legal representative accepted the point made in relation to the representation but highlighted that the final paragraph of the submitted representation stated "... 18 Beaumont Road is directly amongst terraced housing and residents are convinced that should this late licence be granted, at least two of the licensing objectives could be adversely affected." This and the fact that the representation was made on behalf of North Ormesby residents and the Community Council was the only information that had been provided to the Committee and the Committee's discretion was engaged.
- Reference was made to paragraphs 6.0 and 7.0 of the Council's Licensing Policy, namely the impact of licensable activities and prevention of public nuisance. The impact of trading after 11.00pm may cause disturbance to residents through noise from customers and delivery vehicles and the Council's legal representative queried how the applicant would resolve those issues. The applicant's legal representative referred to the applicant's Operating Schedule and highlighted that he would ensure windows and doors were kept closed at night, to ask customers to leave the premises quietly and display a large, prominent notice to this effect. The applicant would not play music at the premises and delivery drivers would ensure that they did not leave vehicle engines running and would come and go from the premises as quietly as possible.
- The Council's legal representative sought clarification from the Licensing Officer whether the two other late night refreshment premises previously referred to by the applicant's legal representative had been granted without any objections or whether a Committee Hearing had been held. The Senior Licensing Officer confirmed that the premises at 60 Kings Road had recently been granted a new licence without coming

to Committee as there had been no objections. The default position for applications was to grant unless objections were received in which case the application would be determined by a Sub Committee. 2 Henry Street had been considered by a Sub Committee, however, this premises was not in the immediate vicinity of the subject premises.

- Further information and clarification was provided in relation to various streets/premises surrounding the premises and it was acknowledged that Kings Road was a mix of business and residential accommodation.
- The Council's legal representative referred to condition 5) agreed with the Police in relation to not allowing groups to congregate outside the premises. She considered this condition not to be enforceable and that further clarification was required in relation to the definition of a 'group'. The applicant's legal representative considered that it was not his position to define a 'group' and that his advice to the applicant in terms of enforcing the condition would be to telephone the Police for assistance should a group congregate outside his premises.
- A Member of the Committee queried whether there had been any incidents in or around the applicant's premises and whether he had the facility to record incidents, for example making a record when asking a customer to leave the premises if causing a nuisance or being loud. The applicant stated that he had never experienced any problems. His legal representative stated that it was possible for the Committee to consider adding a condition in relation to retaining an incident book at the premises, although this was a tool usually associated with alcohol licenses.
- In response to a query, the Senior Licensing officer confirmed that the hours for the North Ormesby Working Men's Club was 11.00am to 12.00 midnight daily and the terminal hour for the club located on Beaumont Road, North Ormesby Conservative Club, was 11.30pm.
- In response to a query from the Council's legal representative, the applicant's legal representative provided details of the properties within immediate proximity to the premises that had signed the petition in support of the application.
- A Member of the Committee pointed out that some of the signatories on the petition had signed twice and others did not live in the area. The applicant advised that he had placed the petition on the counter at his premises and that customers had signed it without being asked.

Summing Up

Applicant

The applicant's legal representative summed up by stating that it was a modest application for a small premises. The applicant had operated from two other premises, within 300 yards of the subject premises, at the hours requested. He stated that the premises were situated in a densely populated, predominantly residential area but considered that premises such as this were usually situated where there was a demand and it was convenient for residents.

Reference was made to 7.1 of the Council's Licensing Policy. The applicant had addressed the potential risks within his Operating Schedule in the section on Prevention of Public Nuisance and the applicant's legal representative provided a type copy to the Committee.

The applicant had been willing to comply with the Police and had agreed to the proposed conditions, including a condition not to allow groups to congregate outside his premises. The applicant's legal representative stated that he had not been involved in the negotiations with the Police but was happy to discuss the definition of 'a group' in more detail.

The applicant was an experienced businessman and knew many of his customers. He had a good track-record and there was no history of complaints in relation to any of the premises he

had operated.

The applicant's legal representative highlighted that there were other premises in the immediate vicinity operating at the hours requested by the applicant. The only objection received was from Councillor Junier on behalf of North Ormesby Community Council and residents on the basis that they were concerned that two of the Licensing Objectives would be breached should the application be granted. The applicant's legal representative added that there had been no objection submitted by North Ormesby Neighbourhood Police and he had a copy of an email from PC Bryan confirming that she had not received any feedback in relation to the application from the Neighbourhood Police.

In conclusion, the applicant's legal representative stated that this was the applicant's livelihood and he gave a strong guarantee that he would operate his business sensibly and uphold the licensing objectives.

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 North Ormesby Parmesan House, 18 Beaumont Road, North Ormesby, Middlesbrough, Ref No: PR0330, be refused for the following reasons:-

1. The Committee acknowledged that the premise was situated in a predominantly residential area. The Council's Licensing Policy stated that licensable activities should normally cease at 11.00pm in such areas and the Committee considered that it should not depart from the Council's Policy.
2. The objection was based on crime and disorder and the prevention of public nuisance and the Council's Policy was in place to protect residents from unacceptable disturbances as a result of activities occurring after 11.00pm, caused by, for example, customers entering and exiting the premises together with delivery of services and other activities associated with the premises. The Committee did not consider that the conditions proposed would prevent this.
3. The other premises in Beaumont Road with licences after 11.00pm, referred to by the applicant, were granted by default as no objections had been received in relation to those applications and the Licensing Committee, therefore, had no discretion to apply the Policy.
4. The objection stated that the area was a Community Council Police Priority area, linked to anti-social behaviour. To resolve the problem, the Police had requested a condition from the Premises Licence Holder that he would not allow groups of people to congregate outside his premises. The Committee considered this condition to be unenforceable as the Premises Licence Holder had no authority to prevent groups congregating on a public footpath or to physically move them on. Therefore, this condition did not address the problems in the area.
5. The Committee concluded that it was not appropriate for the premises to open after 11.00pm in order to uphold the Licensing Objectives.

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. The Licensing Act 2003 and Amended Government Guidance issued under Section 182 of the Act.
3. Middlesbrough Council's Licensing Policy.
4. The case presented by the Applicant.

5. The representation made by Councillor Junier, North Ormesby and Brambles Farm Ward Councillor, on behalf of North Ormesby Community Council, including an email dated 11 September 2012 and the applicant's responses to it.

All parties were reminded of the right to appeal to the Magistrates Court within 21 days of the date of the decision.