

LICENSING SUB-COMMITTEE C

A meeting of the Licensing Sub-Committee C was held on 9 April 2013.

PRESENT: Councillors B E Taylor (Chair) and R Arundale and G Purvis.

ALSO IN ATTENDANCE: G Robinson, Area Manager, Martin McColl - Applicant.
D Cragg - Applicant's Legal Representative.
PC Fixter – Cleveland Police.
M Nevison – Police Legal Representative.
G Rogers – Making Representations.

OFFICERS: C Cunningham, J Dixon and T Hodgkinson.

DECLARATIONS OF INTERESTS

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

12/13 **LICENSING ACT 2003 - APPLICATION FOR PREMISES LICENCE - MCCOLLS, 120 TRIMDON AVENUE, ACKLAM, MIDDLESBROUGH, TS5 8SB, REF NO: PRO365**

A report of the Assistant Director Community Protection had been circulated outlining an application for a Premises Licence in relation to Martins, 120 Trimdon Avenue, Acklam, Middlesbrough, Ref No. PR0365, as follows:-

Summary of Proposed Licensable Activities and Proposed Hours for Licensable Activities

Sale of Alcohol (off sales)
6.00am to 11.00pm daily.

Full details of the application and accompanying Operating Schedule were attached at Appendix 1 to the submitted report.

Prior to the start of the meeting, the Principal Licensing Officer advised that the applicant's legal representative had confirmed, by email, to Cleveland Police and the Licensing department, that given the concerns expressed by residents, the applicant would be willing to reduce the terminal hour of the premises to 9.00pm. With the Chair's permission, all parties were afforded the opportunity to negotiate outside the meeting room.

At 10.35am, the meeting commenced. 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.

The Chair highlighted that Mr Rogers, who was present at the meeting in order to make representations, had previously been a Middlesbrough Councillor and was known to the Committee. All parties confirmed that they had no objection to this.

Details of the Application

The Principal Licensing Officer presented the report in relation to an application for a Premises Licence in respect of Martins, 120 Trimdon Avenue, Acklam, received on 8 February 2013, as outlined above. The applicant had advertised the application, as required by the Licensing Act 2003, in the Evening Gazette on 14 February 2013, which was confirmed as being an accurate reflection of the facts by the applicant.

It was highlighted that the premises consisted of a convenience store situated within a parade of shops at Trimdon Avenue, Acklam. There were residential properties in close proximity to the premises. A location plan was attached at Appendix 2.

Four representations were submitted in relation to the application between the dates of 13 February 2013 and 5 March 2013 inclusive. The representations were submitted by Mr G Rogers, a local resident, Mrs N White, local resident, a petition containing over 350 signatories and Cleveland Police on the grounds of the prevention of crime and disorder, prevention of public nuisance, public safety and the protection of children from harm. The representations were attached at Appendices 3 – 6 respectively.

Applicant in Attendance

The Area Manager for Martins (applicant), accompanied by their 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 presented the case in support of the application for a premises licence and confirmed that during discussion prior to the meeting, Cleveland Police and Mr Rogers had accepted the applicant's offer to amend the terminal hour to 9.00pm. The parties had also accepted a number of conditions to be added to the licence, including the installation of external CCTV cameras, Challenge 25 Policy to be in place as standard together with associated notices/ signage, notices/signage in relation to proxy sales and to request that customers respect residents when leaving the premises, notices in relation to the alcohol-free zone at the shopping parade. The legal representative stated that Police and residents had indicated that they would be content with these proposals and would withdraw their representations and he considered that this should conclude the matter without the necessity of a Hearing.

Relevant Representations

Cleveland Police

The Chair acknowledged the applicant's submission and asked Cleveland Police to provide their position in relation to the application.

The Police legal representative advised that, following discussion with the applicant outside the meeting room, Cleveland Police was satisfied that the conditions being offered by the applicant, together with the additional CCTV and beers and lagers being placed behind the counter (as covered in page 19 of the application) would assist in the licensing objectives not being undermined. Should the licensing objectives be undermined, Cleveland Police would seek to review the Premises Licence.

Mr G Rogers, resident making representations on behalf of himself, local residents and Mrs N White

Mr Rogers, a local resident, was in attendance to present representations on behalf of local residents, including Mrs White. He stated that residents had been opposed to the licence being granted and that a terminal hour of 11.00pm was unacceptable, however, as the applicant had now confirmed that the terminal hour would be reduced to 9.00pm, Mr Rogers considered that this would not create any additional noise nuisance in the area nor would it create anti-social behaviour linked to the premises after 9.00pm. Mr Rogers stated that the applicant had agreed to 'no loading' prior to 10.00am so as not to disturb residents living above the premises. Mr Rogers added that he was in agreement with the proposed additional conditions and reduced terminal hour.

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, the applicant's legal representative confirmed that the applicant wished to sell alcohol from 6.00am to 9.00pm daily.
- Clarification was sought from Mr Rogers who stated he had believed that the sale of

alcohol would be from 8.00am not 6.00am. The applicant advised that they would be happy to amend the hours to 8.00am to 9.00pm daily.

- A Member of the Committee acknowledged that in terms of the convenience store proposals, this would be helpful to the local community, but expressed concern that the applicant may decide to have a large proportion of the premises selling alcohol. The applicant's legal representative accepted the Committee's concerns and stated it was not the applicant's intention to predominantly sell alcohol. The Martin's group had found that the news-agency related trade had significantly reduced and therefore, wished to offer a convenience type store to customers, selling milk, chilled foods, news goods, confectionary, etc and part of that proposal was the sale of alcohol.
- The applicant's legal representative advised that an example of a similar premises was the applicant's store at the Viewley Centre, Hemlington, which sold a wide range of products, including alcohol, and that this was the model the applicant wished to adopt for all stores.

It was queried whether it would be possible to place a condition on the licence requiring the licence holder to stock a proportion of the store with convenience goods at all times, to ensure that the premises did not become solely an off-licence. The Council's legal representative sought the views of Mr Roger and Cleveland Police in relation to this.

Mr Rogers stated that it would be wholly unacceptable for the premises to become purely an off-licence and that it should retain a discernable convenience element.

The Police legal representative responded that the applicant was a responsible, national operator and there was nothing to suggest that they would be irresponsible by filling the store with alcohol, however, if that were to happen the Police would apply to review the licence.

The Principal Licensing Officer highlighted that if the Police and Mr Rogers withdrew their representations, the only valid remaining objection was that of Mrs White, who was not in attendance at the meeting. Mr Rogers confirmed that he was in possession of a letter from Mrs White giving him the authority to speak on her behalf.

Mr Rogers explained that Mrs White lived above the premises and had been concerned in relation to disturbance from deliveries being made to the premises but had been assured that there would be no deliveries prior to 10.00am. Mr Rogers confirmed that he was not formally withdrawing Mrs White's objection and the Council's legal representative advised that the Hearing needed to proceed as there was still an objection to be considered and that the Committee would take into account the views expressed by Cleveland Police and Mr Rogers.

Further Information from the Applicant

The applicant's legal representative wished to provide further information in relation to the application, it having been confirmed that the Hearing should proceed.

The Committee was advised that the applicant intended to refurbish the premises at an approximate cost of £30,000 and to employ two additional members of staff. This was in line with the applicant's intention to provide around 200 – 250 conversions of its stores offering a range of products allowing the Company to continue trading as the impact on the newsagency business in recent times might affect the applicant's ability to continue trading solely as a newsagents in the long term.

It was the applicant's intention that the store should be of benefit to the community and the sale of alcohol would supplement the other goods sold from the store and not result in the store becoming an off-licence. The applicant's legal representative highlighted that the applicant had successfully transformed its store at the Viewley Centre, Hemlington, over two years ago. There had been objections at the time, however, the store had operated without incident and had passed all test purchases since the licence was granted.

Mrs Robinson, Area Manager, provided details in relation to the applicant's staff training policy and procedures in relation to sales of age restricted products, challenge 25, recording of refusals and challenges made, test purchasing, operation and inspection of the CCTV system

at the premises.

Questions to the Applicant

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

- A Panel Member expressed concern in relation to the proposed layout of the premises, given the history of anti-social behaviour in the area. It was queried how the applicant would prevent people coming into the store and taking alcohol if it was situated next to the entrance. The applicant's legal representative circulated a plan showing the proposed layout of the premises and stated that he considered it would be helpful to put in 'block stacks' and added that the alcohol would be under the view of the CCTV which would deter shop-lifting. The applicant would be responsible for risk assessing the situation and should there be any regular incidents of theft, the layout would be reviewed and appropriate action would be taken.
- A Member of the Committee expressed approval at the operation of CCTV within the store, however, he stated that he would be more satisfied if alcohol was not displayed in the area immediately next to the door.
- The applicant's legal representative advised that operationally the first element of compromise would be to remove the block stacks. He advised that there was a large ATM machine that obscured the view of alcohol from outside the store.
- Mr Rogers, objector, provided information in relation to a number of incidents of alcohol thefts from another store operating at the same parade of shops and advised that the problem had been prevented by positioning the alcohol further away from the entrance.

The Police legal representative stated that the Police had a number of conditions that they would wish to impose on the licence should it be granted, and sought permission for the applicant and objectors to be afforded the opportunity to have sight of the proposed conditions and to discuss them.

The Chair agreed that the meeting should be adjourned for approximately 15 minutes in order for the Police, applicant and objectors to discuss the proposed licence conditions. Subsequently, all interested parties other than the Officers of Legal Services and the Members Office, withdrew to consider the information.

At 11.40am all interested parties returned to the meeting and confirmed that all parties were agreeable to the conditions proposed by Cleveland Police. The Council's legal representative suggested that Members be permitted to retire in order to consider the proposed conditions and to determine 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 Members determined the application.

Subsequently, all interested parties returned to the meeting. Prior to the Chair announcing the Committee's decision, several points were raised which required clarity:-

- It was noted that delivery times at the premises had been mentioned and that those making representations had requested that no deliveries be made prior to 10.00am. It was queried what the current delivery times were. The Area Manager confirmed that there was one delivery per week to the premises to deliver all stock. This took place between 8.00am – 10.00am on a Tuesday, however, it was highlighted that the delivery usually took place nearer to 10.00am. The delivery would continue in the same way and include alcohol.
- The Area Manager stated that she felt it reasonable for deliveries to be made after 9.00am and this was accepted by the objector, Mr Rogers. The Area Manager advised that the premises received only one delivery per week and that this would not change. It was highlighted that if Mrs White had any issues/concerns she should discuss them with the store manager who would be happy to assist.

It was confirmed that there were no further questions and that all parties had agreed the conditions proposed by Cleveland Police. The Chair announced the decision as follows:-

DECISION

ORDERED that the application for a Premises License in respect of Martins, 120 Trimdon Avenue, Middlesbrough, Ref No: PR0365, be granted to permit the sale of alcohol (off sales) from 8.00am to 9.00pm daily, subject to the following conditions:-

1. Internal digital colour CCTV cameras must be installed inside the premises and maintained in good working order at all times covering the shop floor, including the entrance/exit, till area and areas displaying alcohol for sale.
2. An external digital colour CCTV camera must be installed at the premises and maintained in good working order at all times covering the area directly outside the premises.
3. All CCTV recordings must be retained for a minimum period of 31 days.
4. CCTV footage must be capable of being produced on media that can be viewed on Police and Licensing Authority computer systems.
5. A member of staff who is capable of producing CCTV footage must be on the premises at all times when it is open.
6. CCTV footage must be made available for viewing by the Police, Trading Standards and Licensing Officers on request and copies of footage must be produced within 72 hours or immediately in case of a critical incident.
7. An incident book must be kept at the premises and maintained up to date at all times, recording the time, date and details of all incidents of crime and disorder at the premises or directly outside of the premises.
8. The incident book must be made available to the Police, Trading Standards and Licensing Officers on request and/or during an inspection.
9. The incident book must be checked by the Designated Premises Supervisor to ensure it complies with Condition 7) above, on a monthly basis and the Designated Premises Supervisor must sign and date the incident book after it is checked.
10. All refusals and challenges must be recorded electronically and made available to Police, Trading Standards and Licensing Officers on request.
11. Staff must require proof of age in the form of a current ten-year passport, photo-card driving licence or PASS logo identity card from any customer attempting to purchase alcohol who appears to be under the age of 25 and verify the customer is 18 or over 18 before any sale of alcohol is made.
12. At least two notices must be placed in the premises, one at the point of sale and one at the entrance/exit, advising customers that the premises operate a challenge 25 policy and all customers who appear to be under 25 will be challenged for id proving they are over 18 in the form of a current ten-year passport, photo-card driving licence or PASS logo identity card.
13. Training in relation to the Challenge 25 Policy, underage sales, sales to adults purchasing alcohol on behalf of a minor (proxy sales), sales to intoxicated persons, incident book records and all other conditions on the Premises Licence must be provided and undertaken by all members of staff (whether paid or unpaid) before he/she makes a sale or supply of alcohol and at least every six months thereafter.
14. Documented training records must be completed in respect of every member of staff (whether paid or unpaid) and must include the name of the member of staff trained, date and

time and content of the training and must be signed by the member of staff who has received the training and a Personal Licence Holder employed by the Premises Licence Holder.

15. Documented training records must be kept at the premises and made available to the Police, Trading Standards or Licensing Officers on request and/or during an inspection.

16. That one notice be prominently displayed at the point of sale area and the area where alcohol is displayed for sale informing customers that it is illegal to buy alcohol on behalf of a person under 18 years of age which can lead to prosecution and a fine.

17. That no perry based alcohol products or ciders exceeding 6% ABV alcohol content be sold from the premises at any time.

18. That spirits and alcoholic drinks exceeding 30% ABV alcohol content must be displayed behind the point of sale area only.

19. That the display of alcohol for sale below 30% ABV alcohol content must be located at least 3 metres from the entrance/exit door of the premises.

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 written representation made by a local resident and the petition submitted by local residents.

6. The conditions proposed by Cleveland Police and agreed between all parties.

Whilst no condition was placed on the licence in respect of delivery times to the premises, the applicant provided assurances that there would be no deliveries made to the premises prior to 9.00am and confirmed that the current frequency of deliveries in respect of all goods, other than milk and newspapers, was once per week.

The Chair highlighted that the Committee accepted the applicant's assurances in relation to the concerns expressed by Members regarding the ratio of alcohol to other goods to be sold from the premises, in that the applicant was a responsible national retailer and intended to operate as a convenience store, with alcohol sales not being the predominant factor.