

LICENSING SUB-COMMITTEE C

A meeting of the Licensing Sub-Committee C was held on 7 August 2013.

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

PRESENT AS OBSERVERS: L Henman, Political Assistant.

ALSO IN ATTENDANCE: G Singh – Applicant
C Singh – Applicant’s son.
Mr White – Applicant’s Legal Representative.
S Dee – Making Representations.
M Hayes – Making Representations.
A Farrow – Making Representations.

OFFICERS: J Dixon, T Hodgkinson and S Vickers.

DECLARATIONS OF INTERESTS

Councillor Hudson highlighted that he recognised the applicant by sight only and did not know him in a personal or professional capacity. All parties accepted that this did not constitute as a declaration of interest and that it would not affect Councillor Hudson’s consideration of the matter.

13/1 **APPLICATION FOR PREMISES LICENCE - 1 OTTERBURN GARDENS, BROOKFIELD, MIDDLESBROUGH, TS5 8DE : REF PRO/221**

A report of the Assistant Director - Community Protection had been circulated outlining an application for a Premises Licence in relation to 1 Otterburn Gardens, Brookfield, Middlesbrough, TS5 8DE, Ref No. PRO/221, as follows:-

Summary of Proposed Licensable Activities and Hours for Proposed Licensable Activities

Sale of Alcohol (off sales) - 8.00am to 11.00pm Monday to Saturday.
- 10.00am to 10.30pm Sundays.

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, confirmed that copies of the report and Regulation 6 Notice had been received.

Details of the Application

The Principal Licensing Officer presented the report in relation to an application, received on 5 June 2013, for a Premises Licence in relation to 1 Otterburn Gardens, Brookfield, Middlesbrough, as outlined above. The applicant had advertised the application, as required by the Licensing Act 2003, in the Evening Gazette on 14 June 2013, which was confirmed as being an accurate reflection of the facts by the applicant.

It was highlighted that the premises consisted of a ground floor convenience store located within a block of three retail units with residential accommodation above and in close proximity to the premises. (A location plan was attached at Appendix 2).

It was noted that on 11 January 2006, Members of the Licensing Sub Committee granted an application for a premises licence for 1 Otterburn Gardens – permitting the sale of alcohol (off sales) between 8.00am and 11.00pm Monday to Saturday and 10.00am to 10.30pm on Sundays and remained in force until it was surrendered by the previous licence holder on 14

February 2013 when the premises closed.

A representation was received from a local resident, A Farrow, on 1 July 2013 objecting to the application on the grounds of the prevention of crime and disorder, public safety, prevention of public nuisance and the protection of children from harm. A copy of the representation was attached at Appendix 3.

On 9 July 2013, a representation was received from Cleveland Police, objecting to the application on the grounds of the prevention of crime and disorder, prevention of public nuisance and the protection of children from harm. The representation was subsequently withdrawn on 16 July 2013 following the applicant's agreement to amend the operating schedule to include a number of conditions. A copy of the agreement was attached at Appendix 4.

On 18 July 2013, documentation in support of the application was received from the applicant, copies of which were attached at Appendix 5.

The Principal Licensing Officer advised that a further petition, containing 15 names, had been submitted by Mrs Farrow prior to the meeting. The petition objected to the application but provided no reasons. The applicant's legal representative had no objection to the petition being submitted.

Applicant in Attendance

The applicant was in attendance at the Hearing, accompanied by his son and legal representative.

The applicant's legal representative presented the case in support of the application. He stated that the applicant wished to re-open a pre-existing off-licence/convenience store. A premises licence had been granted in respect of the premises on 11 January 2006 and was subsequently surrendered voluntarily by the previous licence holder earlier in the year. The application submitted by the applicant requested the same hours previously granted in respect of the premises.

The applicant had agreed to a number of conditions suggested by Cleveland Police, thus allowing the Police to withdraw its representations.

The applicant's legal representative advised that the applicant had been a licence holder for 27 years and had an unblemished record. He was a responsible and experienced businessman who could be trusted to operate the premises properly.

The applicant's legal representative made reference to the four Licensing Objectives and confirmed that the applicant was committed to working closely with the Local Authority and Cleveland Police. Reference was made to the conditions agreed with Cleveland Police in respect of upholding the licensing objectives.

The applicant's legal representative referred to the representation submitted by Mrs Farrow (Appendix 3) and highlighted that the problems experienced were not as a result of the applicant's premises as it had been closed since February 2013. Mrs Farrow had expressed concerns in relation to an increase in problems in the area and an increase in litter, however, the legal representative stated that this was pure speculation and advised that the applicant would ensure that the area outside his premises was kept clean and tidy.

In relation to concerns regarding noise late at night, the applicant's legal representative advised that the terminal hour of the premises was 11.00pm and believed that this was a reasonable time and in line with the Council's own policy in relation to premises situated in residential areas.

Further concerns within the representation were in relation to children using the premises. The applicant's legal representative advised that children would not normally be prohibited from entering such premises, however, appropriate conditions would be imposed, designed to protect children from harm. This was fully addressed within the applicant's operating schedule.

The applicant's legal representative believed that good management was the key to the running of the premises and highlighted that there was only one objection to the application but four letters of support and a 464 signature petition in support of the application. In conclusion, the applicant's legal representative stated that there was no reason to refuse the application and believed the premises would be beneficial to the local community.

Questions to the Applicant from those making representations

Those making representations who were present at the meeting, were afforded the opportunity to ask questions of the applicant and the following issues were raised:-

- An objector referred to the premises when it had operated previously and stated that it had closed at 10.00pm each day due to lack of business and questioned whether the applicant would consider closing at 10.00pm rather than 11.00pm. The applicant's legal representative responded that the previous premises licence was granted until 11.00pm daily.
- In response to several queries, the applicant confirmed that all deliveries would be made to the rear of the premises between the hours of 9.00am and 5.00pm.
- The applicant was asked how he would ensure that groups of people did not congregate outside the premises. He responded that he had discussed the issue with the local PCSOs and would call on them for assistance if necessary.

Questions to the Applicant from Members

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

- A Member of the Committee highlighted that one of the conditions requested by the Police, and agreed to by the applicant, was that groups of people should not be allowed to congregate outside the premises. The applicant stated that, in his experience, most groups would move on when asked to do so but he would call on the local PCSOs for assistance if necessary.
- The applicant was asked what proportion of the stock being sold would be alcohol. The applicant advised that approximately 10 to 15% of the store would be alcohol sales. The premises was approximately 800 square feet and it was explained that there would be one rack displaying wines and beers, etc and that spirits would be stored behind the counter. A store plan was provided for Members' information.
- It was queried whether the applicant intended to sell certain low-priced products such as perry and high-volume ciders. The applicant responded that it would depend upon what customers asked for. The Principal Licensing Officer interjected that there were concerns with other premises selling high volume ciders, etc. The applicant stated he intended to stock standard products.
- Clarification was provided in relation to CCTV at the premises. The applicant confirmed that the premises was fitted with colour, digital CCTV (internally and externally) and that the rear exit and front entrance to the premises were covered.
- A point of clarification was sought in relation to the previous reference to the applicant having 27 years' experience in the licensed trade and it was queried what premises this was in relation to. The applicant advised that he was a premises licence holder at the Indian Cottage Restaurant in Guisborough.

Relevant Representations

Local Resident – Mrs Farrow

Mrs Farrow, local resident, was in attendance at the meeting and presented her representations in relation to the application.

Mrs Farrow advised that the store had previously operated as a convenience store and off-licence but had closed at 10.00pm due to lack of business. Mrs Farrow stated that the premise was situated in a quiet residential area and that anyone wanting to purchase alcohol

after 10.00pm could use other premises nearby.

Mrs Farrow referred to the 464 signature petition in support of the application and highlighted that approximately just 24 of the signatures were from residents living in the immediate vicinity of the premises and that none of the signatures were from residents living opposite the premises. She stated that the petition had been placed on the counter in the applicant's fish and chip shop which was also situated at the parade of shops.

Mrs Farrow stated that she had experienced anti-social behaviour when the store had been open previously selling alcohol and had made complaints. There had been subsequent involvement from the Police and local Councillors. It was highlighted that Brookfield had been declared an alcohol-free zone due to problems experienced in the area.

In conclusion, Mrs Farrow felt that a balanced approach would be to grant the application until 10.00pm as she considered this a reasonable terminal hour given the proximity to residential premises and also accepted that the convenience store element of the premises would be beneficial to the community.

Local Resident – Mr Dee

Mr Dee, local resident, was in attendance at the meeting and presented his representations in relation to the application.

Mr Dee informed the Committee that the front of his property was located approximately 25 metres from the premises and that he had lived there since 1998. He considered that the area had deteriorated over the last two years. Mr Dee advised that the premises had previously closed at 10.00pm to consider local residents. Mr Dee provided examples of anti-social behaviour that he had witnessed, including a 'smash and grab' at the premises and being verbally abused by delivery drivers when he had asked them to move in order to exit his property.

Mr Dee clarified that he was not objecting to the premises opening as a convenience store but strongly felt that the opening times should be restricted. He added that the premises might attract additional traffic and large delivery lorries in an area that already experienced high volumes of traffic and parking issues causing a danger to children and elderly people. Mr Dee asked that the Committee consider applying restrictions to the opening hours.

Questions to those making Representations – from the Applicant

The applicant's legal representative was afforded the opportunity to ask questions of those making representations and the following issues were raised:-

- In response to a query regarding the ownership of the chip shop, Mrs Farrow responded that she was led to believe that the applicant owned it. The applicant's legal representative stated that he did not.
- The legal representative acknowledged that the objectors had requested that the terminal hour for the licence be reduced to 10.00pm but pointed out that the previous licence had a terminal hour of 11.00pm which was the terminal hour being requested by the applicant.

Questions to those making Representations – from Members

Members were afforded the opportunity to ask questions of those making representations and the following issues were raised:-

- Members referred to anti-social behaviour and queried over what period of time it had occurred and the number of incidents. Mrs Farrow responded that it had occurred on a regular basis and that she had to involve her local councillor and Police. A camera was set up outside of her property and eventually the perpetrators were identified. The anti-social behaviour was linked to an off-licence located at the parade of shops. The incidents had occurred mainly on Friday, Saturday and Sunday evenings after 8.00pm

- until the store closed.
- A Member queried whether the shops were already there when the residents had moved into their homes. They confirmed that they were but added that the shop used to close earlier.

Summing Up

Those Making Representations

Mrs Farrow

Mrs Farrow summed up by stating that the premises had previously closed at 10.00pm each night and considered this to be an acceptable closing time in a residential area.

Applicant

The applicant's legal representative summed up by stating that the reprehensible behaviour referred to by the objectors had nothing to do with the applicant. He was a responsible licence holder who abided by the law. The applicant's legal representative believed that the objections were not well-founded and that the premises had previously held a Premises Licence until 11.00pm until it was surrendered in February 2013.

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 that the application for a Premises License in respect of 1 Otterburn Gardens, Brookfield, Middlesbrough, Ref No: MBRO/PR0221, be granted to permit the sale of alcohol (off sales) from 8.00am to 11.00pm Monday to Saturday and 10.00am to 10.30pm on Sundays, subject to the following conditions, as agreed with Cleveland Police:-

1. A Challenge 21 Policy to be implemented with all staff insisting on evidence of age from any person appearing to be under the age of 21 years who is attempting to purchase alcohol. There shall be notices at all points of sale and at all entrances and exits informing customers and reminding staff that the premises was operating a 'Challenge 21' Policy.
2. Staff to be fully trained and re-trained on a six-monthly basis and the training must include the laws relating to the sale of alcohol to underage persons, persons buying on behalf of under 18s (proxy sales), persons appearing to be under the influence of alcohol and also the operation of the associated 'Challenge 21' Policy.
3. Training records must be signed by both the members of staff and the DPS/Store Manager/Business Owner and will be retained for future reference and must be updated at least every six months. All training records must be made available to Police and/or a Responsible Authority upon request.
4. Only UK photo card style driving licence, valid non-expired passport and PASS approved proof of age ID must be accepted as a form of identification at the premises.
5. A refusals book to be maintained and kept on the premises at all times and be made available to Police and other responsible authorities upon request.
6. There must be a minimum of three signs on the premises stating that it is an offence to sell alcohol to persons under 18 years of age. The signs must be visible in the public areas of the store.
7. Digital colour CCTV must cover both internal and external areas of the premises. It must be recording at all times with footage being retained for a period of 31 days. There must be a

member of staff on duty who is trained in the use of CCTV and who is able to produce copied footage onto a disc which must be made available to reasonable requests by Police and/or any other responsible authority.

8. An incident book must be maintained and kept on the premises at all times. It must be made available to Police and any other responsible authority upon request.

9. No alcohol must be stocked within two metres of the entrance/exit door.

10. No alcohol shall be consumed on the premises.

11. Groups of people will not be allowed to congregate outside the premises.

The Committee also wished to add the following conditions:-

12. That CCTV should include external coverage of the rear fire exit of the premises leading to the car park.

13. That alcohol sales should not exceed 15% of the retail shop floor space.

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

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 representations made by local residents, both in writing and verbally at the meeting.

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

The Committee recommended that the applicant should liaise regularly with Brookfield Community Council.

The Chair highlighted that the Committee had taken into account the concerns expressed by residents, however, the previous licence at the premises had been surrendered voluntarily and was not revoked due to crime and disorder issues. The conditions agreed between the Police and applicant had satisfied the Police, and the Committee, that the four Licensing Objectives would be met.

The Chair advised all parties of the Right to Appeal to the Magistrates Court within 21 days of the decision.