

LICENSING SUB-COMMITTEE C

A meeting of the Licensing Sub-Committee C was held on 13 November 2013.

PRESENT: Councillors Taylor (Chair); Arundale and Williams

ALSO IN ATTENDANCE: Applicant : Mr S S Punjani
M Nevison : Legal Representative - Cleveland Police
PC J Arbuckle - Cleveland Police Licensing Unit
PC S Craig - Cleveland Police Licensing Unit

OFFICERS: B Carr, C Cunningham and T Hodgkinson

DECLARATIONS OF INTERESTS

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

13/4 **APPLICATION TO VARY PREMISES LICENCE - 293 LINTHORPE ROAD, MIDDLESBROUGH : REF NO: MBRO/PRO/243**

A report of the Assistant Director of Development and Planning Services had been circulated outlining an application for a Variation of the Premises Licence in respect of 293 Linthorpe Road, Middlesbrough, TS1 4AP - Ref No: MBRO/PRO/243.

Summary of Proposed Licensable Activities

Sale of Alcohol (off sales) 8.00am to 11.00pm daily

Summary of Proposed Hours for Licensable Activities

Sale of Alcohol (off sales) 8.00am to 12 midnight daily

A copy of the existing licence was attached at Appendix 1 to the report. Full details of the application and accompanying Operating Schedule were attached at Appendix 2 to the submitted report.

The Chair introduced those present and outlined the procedure to be followed.

Details of the Application

The Principal Licensing Officer presented the report in relation to an application for a variation of Premises Licence in respect of 293 Linthorpe Road, Middlesbrough, received on 25 September 2013, as outlined above.

The applicant had advertised the application, as required by the Licensing Act 2003, in the Evening Gazette on 30 September 2013. It was highlighted that the premises consisted of a General Dealers situated on a main road in close proximity to residential premises and other businesses.

An application to vary the licence to permit the sale of alcohol for 24 hours daily was refused by Licensing Sub Committee A on 20 August 2007 after consideration of representations from Cleveland Police,

On 29 April 2013, the Premises Licence was transferred to the applicant and on 29 July 2013 the applicant became the Designated Premises Supervisor.

A location plan was attached at Appendix 3 to the report.

On 15 October 2013, a representation was received from Cleveland Police objecting to the application on the grounds of the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm. A copy of the

representation was attached at Appendix 4 to the report.

Applicant in Attendance

The applicant, was in attendance at the meeting and confirmed that the report was a correct representation of the facts.

The applicant advised Members that he had previously worked in London before he purchased the shop in Middlesbrough. The applicant presented the Committee with a copy of an invoice from Render Alarms for the installation of a 4 camera 1TB Digital recorder dated 8 November 2013 together with an A4 refill pad which contained details of refusals for the sale of alcohol. The applicant advised that he had shown the list of refusals to PC Arbuckle when he carried out a Licensing Inspection of the premises. PC Arbuckle confirmed that he had not had sight of the list of refusals prior to the Committee. He stated that during the inspection of the premises, the applicant had produced a blank book which he purported to be the refusals book. In response to a query from the Legal Adviser for the Police the applicant stated that he had not worked in an off licence in London.

The applicant stated that he required the one hour extension to his licence as he was not making enough money to meet his financial commitments and his customers had requested that he remain open for the additional hour. He stated that he had originally wanted a licence to open until 2.00am however the Police Officer had advised that he would be able to open until 12 midnight. The applicant advised that there were a number of other larger retail outlets in the near vicinity to his premises selling alcohol.

The applicant stated that the Police had advised that the CCTV system should have the facility to record for ninety days. The applicant stated that the Police had found perry at his premises. He advised, however that he had bought the perry by mistake as one of his customers had requested it. He stated that the writing on the bottles stating that the contents were perry was very small.

A Member queried whether the applicant had read the conditions attached to his licence when he bought the premises. The applicant stated that he had not read the condition regarding the CCTV system properly. In response to a query from the Principal Licensing Officer regarding whether the applicant had read the conditions with regard to the sale of perry, the applicant stated that he had read the conditions. A Member asked the applicant if he had consciously purchased perry, even though the sale of perry was specifically prohibited as part of the licensing conditions on his licence. The applicant advised that it was a mistake and that he did not currently stock perry at his premises.

The applicant advised that he was aware of the condition with regard to the sale of perry, however he advised that the way in which a breach of licensing conditions was dealt with in Middlesbrough was different to how they were handled in London. He advised that he had previously worked in an off licence and ordered his stock on-line. The Chair pointed out to the applicant that he had earlier denied that he had worked in an off licence when questioned by the Police Legal Adviser. The Police Legal Adviser queried whether the applicant had held a Personal Licence in London. The applicant advised that he had obtained his Personal Licence three months previously from Bracknell and that he had become the DPS for the premises in Middlesbrough in July 2013. The applicant advised that he did not hold a personal licence whilst he was working at the off licence in London, he was authorised to sell alcohol by the DPS of the premises.

In response to a query from the Council's Legal Representative, the applicant confirmed that his current licensing hours for the premises were 8.00am - 11.00pm. The applicant confirmed that he opened the premises at 3.30pm and closed at 5.00am.

Cleveland Police

The Legal Adviser for Cleveland Police advised the Committee that should the variation of the licence be granted it would undermine all four of the licensing objectives. PC Arbuckle was asked to confirm the details of his statement for the Committee.

PC Arbuckle advised that he had worked in the licensing unit for over three years and he knew the area where the premises were situated very well as he had worked in the neighbourhood team for that area prior to joining the licensing unit.

PC Arbuckle advised that prior to the applicant taking over the premises, an application had been submitted in 2007 to allow the premises to remain open 24 hours a day. The Police had objected to the application because of the alcohol related crime already prevalent in the area. Reference was made to Operation Anvil which was set up in 2007 by Cleveland Police to combat crime and anti social behaviour in the area. As a result of the crime and disorder in the area, the application was refused and a condition placed on the licence which stated that the sale of alcohol at the premises should be limited until 11.00pm as per the current Premises Licence.

Members were advised that prior to submitting the application, the applicant had attended Middlesbrough Police Station to outline his plans for extending the licensable hours and he was asked to evidence his claim that customers were requesting an extension of hours. The applicant had subsequently submitted a petition signed by a number of his customers to the Police in September 2013 and was advised by Sergeant Higgins that if everything was in order at the premises, the Police would offer no objections to the application.

On 26 September 2013, PC Arbuckle received information with regard to the premises which stated that perry products were being sold at the premises. PC Arbuckle and his colleague attended the premises in plain clothes and asked if there was any perry for sale. The applicant showed PC Arbuckle a bottle of "Bellabrusco" which he produced from a crate of other bottles of the perry which he was placing on the shelves to sell.

PC Arbuckle informed the applicant that he was a Police Officer and the applicant confirmed that he was the DPS for the premises. When challenged with regard to the sale of perry, the applicant had stated that the "Bellabrusco" was not a perry product. PC Arbuckle had shown the applicant the writing on the bottle which stated it was perry product. PC Arbuckle seized 2 bottles of the perry from the two crates stored at the premises and took a selection of photographs of the remaining bottles on sale at the premises. Copies of photographs of the crates and bottles of Bellabrusvco were appended to the statement of PC Arbuckle.

During the inspection, PC Arbuckle had asked the applicant if he could produce Part A and B of his Premises Licence and the applicant was unable to produce the documentation. The applicant was also asked to produce a copy of his incident book and refusals book and the applicant produced from behind the till a black book and informed PC Arbuckle that it was his refusals book. PC Arbuckle examined the "refusals" book, however there was no information contained within the book.

PC Arbuckle asked the applicant if he could demonstrate how the premises CCTV system operated however the system was not operating correctly. The applicant advised that he had five days recording footage retained on the system but was unable to produce the footage. PC Arbuckle also examined the petition submitted by the applicant and discovered that the petition contained signatures from at least three people who did not reside in Middlesbrough; three people who had signed the petition had been previously arrested for alcohol related crime and five of the people who had signed the petition were known to the police for various reasons.

When interviewed by the Police with regard to the licensing conditions that had been breached, the applicant stated that the Police were being unfair as when he was found to be breaching licensing conditions in Brackley, that authority had given him a few days to rectify the issues and subsequently granted his application for an additional three hours for the sale of alcohol.

On 2 October 2013, the applicant attended Middlesbrough Police Station to advise that he was now complying with all of the conditions contained on his licence. The Police however still held concerns with regard to the applicant given his history of breaching licensing conditions in Middlesbrough and Brackley. The Police were not confident that the applicant would

promote the licensing objectives and they were concerned that the premises were based in an area with known anti social behaviour problems and crime and disorder.

In the view of the Police the applicant was an experienced operator in the length of time that he had been involved in licensing only. The Police did not think that the applicant had demonstrated that he would comply with the four licensing objectives.

The applicant advised that the refusals book he had shown PC Arbuckle contained details of refusals of the sale of alcohol. The applicant advised that the Police Constable that had advised that he could have the hour extension to his licence was not present at the meeting. The Principal Licensing Officer advised that the books produced by the applicant which represented the refusals and incident books for the premises were the same as those that the Licensing Authority issued to premises.

A Member queried whether the handwritten list of all refusals would have been acceptable to the Police had the applicant produced it at the licensing inspection. PC Arbuckle confirmed that the list would have been acceptable however the applicant had produced a blank book. It was highlighted that the list of refusals commenced in August 2013 and PC Arbuckle had conducted his licensing inspection in September 2013.

A Member queried where the nearest residential properties were located in relation to the premises. PC Arbuckle advised that there were houses at the back of the premises and residential properties on Granville Road and Albert Terrace.

A Member queried if there were any premises nearby that sold alcohol and PC Arbuckle advised that Zaks and Tesco were located nearby. A Member queried whether the area still suffered from alcohol related crime and whether the crime was worse between 11.00pm and 12 midnight. Members were advised that antisocial behaviour was usually worse on an evening and a weekend and if the additional hour was granted problems would be exacerbated because of the longer period that alcohol would be available.

A Member commented that he was surprised that no action had been taken in respect of the breach of conditions. PC Arbuckle advised that he had discussed the situation with his superior and a decision was taken to give the applicant the opportunity to rectify his mistakes and comply with the conditions on his licence as it was his first offence.

The Principal Licensing Officer advised that for a first time offence, a warning was usually issued and subsequent offences resulted in a caution or enforcement. It was accepted that the applicant had rectified the issues with regard to the breach of licensing conditions.

Summing Up

Cleveland Police

The Legal Adviser for the Police advised that the problems with anti social behaviour in the area prevalent in 2007 when a condition was placed on the licence that the sale of alcohol should only be permitted until 11.00pm still existed.

The applicant had breached five out of the seven conditions placed on his Premises Licence in relation to the sale of perry; the operation of a CCTV system and retention of footage; the maintenance of a refusals and incident book and the display of the Premises Licence.

The Legal Adviser stated that the petition submitted by the applicant should be given little credibility because it did not contain any information with regard to what the petition related to and the signatories to the petition may not have been aware of what they were supporting by signing the petition. It was also of concern to the Police that some of the people who had signed the petition were known to the Police in relation to alcohol related offences.

The Police considered that the applicant had displayed a cavalier attitude in relation to the breaches of the licensing conditions and the Police maintained that the area in which the premises were situated continued to suffer from antisocial behaviour problems.

The Legal Adviser to the Police drew Members attention to Page 23, Paragraph 7.5 of the Council's Licensing Policy Statement of Principles which stated that in predominantly residential areas the Licensing Authority will normally expect all licensable activities to cease at 11.00pm, with the premises to close no later than 11.30pm.

The applicant had advised that as well as breaching the conditions on his current Premises Licence he had breached the licensing conditions at another premises in Brackley.

The Legal Adviser advised that the Police needed to be confident that they could work with the Premises Licence Holder and as a consequence they requested that the application be refused until such a time as the applicant could demonstrate that he could comply with the licensing objectives.

Applicant

The applicant stated that he had been advised by a Police Constable that he would be able to have the hour extension to his licence. He advised that another off licence which had more residential properties close to them had been granted an additional two hours and were open until 2.00am. and they had experienced antisocial behaviour.

The applicant advised that he had a refusals book and a CCTV system which retained ninety five hours footage. He advised that if the licence was granted he would move all alcohol out the way after 12 midnight and he stated that if the Police found alcohol on the premises after 12 midnight on the premises they could cancel his licence.

The applicant advised that he would operate a Challenge 25 policy in respect of the premises and he advised that if the police required any CCTV footage he would hand it over. He advised that many of his customers were visiting other licensed premises that operated longer hours. He stated that he needed the extra hour to meet his financial commitments and he did not want to apply for benefits.

It was confirmed that there were no further questions and all interested parties other than the officers of Legal Services and 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 Variation of Premises License in respect of 293 Linthorpe Road, Middlesbrough, Ref No: PR0/052, be **refused** for the following reasons:-

1. Members had heard that the Applicant had obtained the Premises Licence in April 2013 and in July 2013 he became the Designated Premises Supervisor (DPS). During that period, the Applicant had failed to comply with the conditions of his licence as follows :-

- The premises CCTV was not working as required;
- The Applicant had stocked and sold perry;
- The Applicant had failed to maintain a Refusals Book;
- The Applicant had failed to maintain an Incidents Book to record all incidents of crime and disorder;
- The Applicant had failed to display Part B of his Premises Licence as required by condition on his licence

Members considered that the breach of the above licensing conditions was a criminal matter.

2. The Committee did not place any weight on the petition submitted by the Applicant in support of his application. The petition did not contain any information with regard to what the petition related to and Members were concerned that the signatories to the petition may not have been aware of what they were supporting by signing the petition. It was also of concern to Members that some of the people who had signed the petition were known to the Police in

relation to alcohol related offences.

3. The Committee did not believe that the Applicant had shown to the Police during their Licensing Inspection of the premises, the hand-written note pad detailing refusals of sale at the premises produced by the Applicant at Committee and consequently, members considered that the Applicant had deliberately mislead the Committee.

4. The Council Licensing Policy states generally that in predominantly residential areas the Licensing Authority will normally expect all licensable activities to cease at 11pm. Although Members recognised that the premises were situated on a main road, residential premises were close by and the Police had informed the Committee that there were still problems of crime and disorder in the area.

5. The Committee considered that allowing the premises to remain open for an additional hour would be detrimental to the licensing objectives and they did not have any confidence that the Applicant would comply with the conditions of his licence.

In reaching the decision Members had considered the following:-

1. The Licensing Act 2003 and amended Government Guidance issued under Section 182 of the Act.
2. Middlesbrough Council's Licensing Policy.
3. The case presented by the Applicant.
4. The representations received from the Police

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