

**LICENSING SUB-COMMITTEE C**

A meeting of the Licensing Sub-Committee C was held on 11 August 2014.

**PRESENT:** Councillors Taylor (Chair): R Arundale and M Hudson

**ALSO IN ATTENDANCE:** Representing the Applicant

Stewart Gibson  
Jeeva Subramaniam

Representing the Police

Sergeant Paul Higgins  
PC Jane Bryan

**OFFICERS:** B Carr, C Cunningham and T Hodgkinson

**DECLARATIONS OF INTERESTS**

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

14/2 **APPLICATION TO VARY A PREMISES LICENCE - TUDOR LODGE SERVICE STATION, MARTON ROAD, MIDDLESBROUGH, TS4 3SE - REF NO: PR0/143**

A report of the Assistant Director of Economic Development had been circulated outlining an application for a Variation of the Premises Licence in respect of Tudor Lodge Service Station, Marton Road, Middlesbrough, TS4 3SE - Ref No: MBRO/PR0/143.

Summary of Existing Licensable Activities

Sale of Alcohol (off sales): 6.00am to midnight Monday to Sunday  
Late Night Refreshment: 11.00pm - 5.00am Monday to Sunday (restricted to sale of hot drinks only)

Summary of Proposed Licensable Activities

Sale of Alcohol (Off Sales): 24 hours, daily

Full details of the application and accompanying operating schedule had been reproduced at Appendix 1 to the report. A copy of the existing Premises Licence was attached at Appendix 2 to the report.

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

The Principal Licensing Officer presented the report in relation to an application for a variation of Premises Licence in respect of Tudor Lodge Service Station, Marton Road, Middlesbrough, received on 4 June 2014, as outlined above.

The applicant had advertised the application, as required by the Licensing Act 2003, in the Evening Gazette on 6 June 2014. It was highlighted that the premises consisted of a convenience store which operated in association with a petrol filling station situated at the junction of Marton Road and Ladgate Lane in close proximity to residential premises. The premises had benefitted from a Premises Licence since November 2005 and the licence was transferred to the applicant on 9 July 2013.

On 28 November 2013, Members had considered an application to vary the Premises Licence to extend the hours for the sale of alcohol from 6.00am to 11.00pm each day, to 24 hours a day, to extend the provision of Late Night Refreshment from 11.00pm to 12 midnight to 11.00pm to 5.00am each day and to include a number of conditions. On this occasion, Members determined to grant the variation for the sale of alcohol until 12 midnight daily and to

grant the variation to provide Late Night Refreshment until 5.00am, subject to late night refreshment being restricted to the sale of hot drinks only. Members had also modified a number of the proposed conditions to ensure that the conditions were clear, enforceable and appropriate to promote the licensing objectives. The conditions had been included on the existing Premises Licence, attached at Appendix 2.

On 25 June 2014, a representation was received from Cleveland Police objecting to the application on the grounds of the prevention of crime and disorder and the protection of children from harm. A copy of the representation was attached at Appendix 4. Additional information submitted on behalf of the Police, had been circulated prior to the meeting and all parties confirmed that they had received this supplementary information.

The applicant's agent confirmed that the information contained in the report was correct.

A map showing the location of the incidents of anti-social behaviour was circulated to Members of the Committee and the applicant. The Police clarified that the incidents were colour coded according to the closure codes allocated by the Police and the different gradings/type of anti-social behaviour.

The Chair invited the applicant's agent to present the applicant's case to the Committee.

### **The Applicant**

The applicant's agent advised Members that Londis was a buying group that had 2000 fascias across the country. The individual businesses were all owned by different operators and the applicant owned the Tudor Lodge Service Station. Londis provided a strong network support team to assist the individual operators particularly with regard to guidance on the sale of tobacco and alcohol and alcohol proxy sales.

Members were advised that the application was to extend the sale of alcohol by an additional six hours. It was clarified that the Late Night Refreshment Licence was already in place. The Committee was advised that all the sales from 11.00pm - 6.00am, including any alcohol sales would be from a secure service hatch. There would be limits with regard to what could be sold such as no beers, lager, or Perry above 5.5% alcohol by volume could be sold and there would be no sales allowed of single cans of beer, lager, cider or Perry and single bottles of beer, lager or cider in vessels of less than 500ml.

The applicant's agent advised Members that the issue they needed to consider was if the sale of alcohol for an additional six hours at the premises would be a cause for concern. The applicant's agent advised Members that he had been involved in a number of licensing applications involving 24 hour petrol stations, and most applicants did not apply for them because of the number of people queuing round the block because of demand for alcohol. He advised that the night-time economy was vibrant and people called at the premises at all times of the day. He stated that if every one in ten customers purchased a bottle of wine, it would increase the revenue of the premises.

Members were advised that only one objection to the application had been received from Cleveland Police. The applicant's agent stated that it was unusual that although the premises were located on the edge of a residential area, no representations had been received from residents. He stated that he noted that Cleveland Police had made reference to the Council's Licensing Policy within their representations, however he clarified that this application was not a regular application as it did not fall within the Policy as it had already received an extension beyond 11.00pm.

Members were advised that the Police had referred to numerous incidents of anti-social behaviour of which a large proportion were alcohol related. The applicant's agent stated that of the 45 incidents, only 10 were alcohol related; he referred to a number of the individual cases and advised that the common theme was that none of the incidents could be related to the applicant's premises.

The Committee was advised that two of the incidents that related to children trying to turn off

the emergency pumps would have still occurred even if no alcohol was on sale. The applicant's agent stated that there was no link that the sale of alcohol would have had any effect on these incidents.

The Committee was advised that there had not been any increase or evidence in relation to anti-social behaviour incidents leading up to 12 midnight. The applicant's agent stated that he could go through the 35 incidents one by one but none of the incidents were related to the applicant's premises and 16 of the incidents were caused by youths on bikes.

The Committee was advised that premises located in Ormesby (the BP site), just three miles away had been selling alcohol 24 hours a day and there did not appear to be any incidents linked to those premises. The applicant's agent stated that in his view this demonstrated that premises could operate successfully for 24 hours, without issues.

The applicant's agent advised Members that there was nothing that Members had before them that could give reason for the application to be refused. He advised that there was no semblance of fact and no evidence of any incidents up to midnight that related to the applicant's premises and no evidence to suggest any concern.

Sgt Higgins queried how long the Manager had been in charge of the premises. The Manager advised that he had been in charge of the premises for a period of six months. Sgt Higgins queried whether the Manager had any control over the alcohol once it had been sold from the premises and what he would do if a 20 year old came to the store to buy alcohol.

The Manager advised that he would ask for the necessary documentation such as a passport, driving licence etc. if an individual who appeared to be 20 years old requested to buy alcohol. He accepted that it was impossible to control what would happen to any alcohol purchased from the premises as he was not authorised to do so.

A Member queried whether all alcohol would be served from the shop if the licence were to be granted. The applicant's agent advised that all alcohol sold after 11.00pm would be sold from the secure serving hatch.

The Chair stated that the applicant's agent had stated that there had been no complaints received from residents. He pointed out that the Guidelines outline the role of the Police and in his view they acted on behalf of residents. The applicant's agent pointed out that in his experience, the average resident would not be aware if the Police had submitted an objection to a particular application and residents usually objected to an application on their own behalf.

The Chair pointed out that after reading the Police evidence, it was obvious that a problem existed in relation to anti-social behaviour in the area and he asked if the applicant's agent recognised this fact. The applicant's agent advised that he recognised that 45 incidents of anti-social behaviour had occurred, however 16 of the incidents related to youths on bikes. He stated that if there was any indication that the applicant's premises were causing a problem with anti-social behaviour then there would have been evidence to support this.

The Chair pointed out that the Tesco garage which was situated two miles from the premises was only permitted to sell alcohol up to 12 midnight.

The Council's Legal Officer asked the applicant's agent to clarify the operating hours for the Tudor Garage Service Station. It was confirmed that the operating hours for the garage were 24 hours.

The Chair invited the Police to present their objections to the application.

### **The Police**

Sgt Higgins advised that the premises were situated in an area that already experienced high levels of crime and disorder. He made reference to the statement submitted by PC Bryan which contained details of 45 incidents of anti-social behaviour over a six month period.

PC Bryan advised that the area defined on the map had been chosen because it showed the main roads that surrounded the licensed premises. The main crossroads between The Derby and The Grove was where the residents closest to the premises were situated. PC Bryan explained that the incidents identified as JKB2 related to the non-alcohol related incidents and the incidents identified as JKB3 on the map related to the alcohol related incidents.

Sgt Higgins referred to a number of the individual cases and he advised Members that the problem with the recording of incidents was that the person reporting the incident may not be aware if it was alcohol related and as a consequence, some of the incidents recorded as non-alcohol related, may have involved the use of alcohol. PC Bryan referred to the incident involving youths misusing drugs and advised that there was a close link between the misuse of drugs and the misuse of alcohol and generally the two issues tended to go hand in hand.

Reference was made to the incident that occurred on 25 April 2014 at 20.07 listed on page 62 of the report and the incident that occurred on 12 June 2014 at 14:00:29 listed on page 85 of the report. It was confirmed that these two incidents should have been included as part of the alcohol related incidents,

Sgt Higgins advised Members that when the Ward Councillor for the area and individual residents telephoned to report anti-social behaviour they were reporting that the incidents were happening on a nightly basis. He advised that the granting of the licence would impact on the number of domestic issues as often alcohol was a factor as the people involved in the incidents were usually intoxicated. He advised that if alcohol was accessible 24 hours a day, it could exacerbate the problem.

Sgt Higgins advised that currently, if a resident wanted to obtain alcohol after 12am, they would have to walk to the store in Ormesby which was three miles away. He expressed concern regarding the fact that shops did not have any control over what happened to the alcohol once it left the premises. Sgt Higgins emphasised that the area suffered from alcohol related anti-social behaviour and domestic incidents and in his view, the granting of the licence would exacerbate the problems.

The applicant's agent queried whether Sgt Higgins or the Police had any suspicions that the applicant's premises were carrying out underage sales or whether the premises were not complying with the licensing conditions. Sgt Higgins confirmed that the Police did not have any concerns with regard to either of the above issues.

The applicant's agent queried whether Sgt Higgins was implying that there was a link to the premises in respect of any of the alcohol related incidents. Sgt Higgins advised that it was not possible for the Police to say which store the alcohol was obtained from, but he emphasised that whichever store sold the alcohol, they did not have any control over what happened to the alcohol, once it had left the store.

The applicant's agent pointed out that the premises were not allowed to control what happened to any alcohol sold from the store. Sgt Higgins advised that when the Police were called to domestic issues involving the use of alcohol, it was a relevant factor that alcohol would be freely available on a 24 hour basis.

The applicant's agent stated that the Police had earlier confirmed that they did not have any concerns with regard to how the premises currently operated. He stated that in his view, the Police were suggesting that if the licence was to be granted the additional hours, they would not continue to operate the premises in a responsible manner. The applicant's agent stated that if the application was to be granted, the alcohol would be sold through the secure service hatch and the premises would not be allowed to serve any individual who appeared to be intoxicated.

Sgt Higgins advised that as far as the Police were concerned, there were already issues with anti-social behaviour and they were unaware if youths were getting the alcohol from somebody who purchased the alcohol legitimately.

The applicant's agent advised that none of the incidents included within the Police evidence

could be attributed to the applicant's premises. Sgt Higgins concurred with the above.

The applicant's agent referred to the one incident which occurred after midnight which involved females attacking a male. Sgt Higgins advised that the reason that there was only one incident could be attributed to the fact that currently, alcohol was not available for sale after midnight.

A Member queried whether there were any other retail outlets that sold alcohol in the area. Sgt Higgins advised that there was a Sainsburys store which closed at 11pm and another petrol station that had a 3pm licence which was licensed in another local authority area.

A Member queried what impact the granting of the licence would have on Police resources. Sgt Higgins advised that in his view further anti-social behaviour would occur after midnight. He stated that the Ward Councillors and residents had been reporting that anti-social behaviour was occurring every night and after midnight there would be less Police officers on duty and Police Community Support Officers did not work beyond midnight.

### **Summing Up**

#### **The Police**

In summing up, Sgt Higgins advised that the area suffered from youth related anti-social behaviour and callers reporting incidents to the Police had stated that the incidents were occurring on a regular basis. Sgt Higgins referred Members to Paragraph 7.5 of the Council's Licensing Policy which stated that "in predominantly residential areas, the Licensing Authority will normally expect all licensable activities to cease at 11pm with the premises closing no later than 11.30pm".

The Policy also stated that later closing times i.e. beyond 2am would be considered where it could be demonstrated that the licensed activities would not be likely to cause adverse impact especially on local occupiers, and that, if there was a potential to cause adverse impact, appropriate measures would be put in place to prevent it.

The Police were concerned regarding the fact that the area was predominantly residential and suffered from anti-social behaviour and if Members chose to grant the variation to the licence, the existing anti-social behaviour would be extended throughout the night and the licensing objectives would be undermined.

#### **The Applicant**

The applicant's agent stated that the Committee had heard from the Police that if Members chose to grant the variation to the licence, there would be a likelihood of increased anti-social behaviour. He advised that the applicant was requesting an additional six hours. The existing incidents of anti-social behaviour were occurring throughout the day. There had only been one incident that had occurred after 12.00am which showed that there was no evidence of a build-up of incidents leading up to midnight.

The applicant's agent advised that the Police had stated that they had no concerns in relation to how the premises were run and the premises currently operated successfully for 18 hours a day. Any alcohol sold after 11.00pm would be served from the secure service hatch which offered protection for the staff of the premises should they feel that there was a requirement to refuse a sale to an individual who was or appeared to be intoxicated.

The Committee was advised that none of the incidents of anti-social behaviour were linked to the premises and there was no suggestion that alcohol had been sold inappropriately, by the store to children or that any proxy sales had taken place. The applicant's agent advised that in his view there was no reason for the Committee to refuse the application.

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.

In reaching the decision Members 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.

### **DECISION**

The Committee did not consider it appropriate to grant the variation of a Premises Licence in respect of the Tudor Lodge Service Station, Marton Road, Middlesbrough, Ref No: PRO/143 for the following reasons:

1. The Committee noted that there were currently problems with anti-social behaviour in the area surrounding the Tudor Lodge Service Station. There had been numerous incidents of anti-social behaviour in the area.
2. Some of the anti-social behaviour had been identified as alcohol related incidents.
3. The incidents were wide ranging, involving gangs of youths and domestic incidents.
4. These incidents had occurred over a short period of time.
5. Although not all of the incident reports had specifically referred to alcohol, the Police had informed the Committee that from their knowledge, generally, anti-social behaviour was closely linked to alcohol and drugs.
6. The incidents had occurred during the day and into the night.
7. It was noted that the Police had no issues with the premises as they currently operated, however they were concerned that the availability of alcohol from midnight onwards from these premises, was likely to extend the anti-social behaviour in the area.
8. The Committee had been advised that Police resources were depleted from midnight onwards and were concerned that the risk of unattended anti-social behaviour could increase.
9. The Council's Licensing Policy detailed at 7.5 onwards, states that Licensing activities after 12 midnight and beyond 2.00am should be in predominantly commercial areas and not be likely to cause an adverse impact on the area.
10. The Committee could not find any good reason to depart from the above Policy as the premises were situated in a residential area which currently experienced high levels of anti-social behaviour.
11. The Committee noted that the Licensing Guidance and Policy stated generally that shops should be allowed to sell alcohol for the times that they were open unless there were good reasons to restrict it. The Committee considered that the sale of alcohol from the premises in that location, from midnight to 6.00am was not appropriate. The Committee considered that the sale of alcohol over this period was likely to extend the anti-social behaviour problems in the area and there would be less police resources to deal with such problems during this period.
12. The Committee considered that no conditions were likely to prevent such problems and the premises would be the only outlet, selling alcohol in that residential area after midnight.

The Committee determined to **refuse** the application in order to promote the prevention of crime and disorder for the reasons given above.

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