

**LICENSING SUB-COMMITTEE C**

A meeting of the Licensing Sub-Committee C was held on 29 August 2014.

**PRESENT:** Councillors B E Taylor (Chair) and R Arundale and M B Williams.

**ALSO IN ATTENDANCE:** Councillor J Walker, Councillor N Walker - Ward Councillors for Hemlington. W Myrddian, local resident.

**OFFICERS:** C Cunningham, J Dixon and T Hodgkinson.

**DECLARATIONS OF INTERESTS**

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

14/3 **APPLICATION TO VARY A PREMISES LICENCE: ONE STOP, 43 VIEWLEY CENTRE, HEMLINGTON, MIDDLESBROUGH: REF. NO: PRO123**

A report of the Assistant Director of Improving Public Health had been circulated outlining an application to vary the Premises Licence in relation to One Stop Stores Ltd, 43 The Viewley Centre, Hemlington, Middlesbrough, Ref No. PRO/0123, as follows:-

Summary of Existing Licensable Activities and Hours

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

Summary of Proposed Licensable Activities and Hours

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 and a copy of the existing Premises Licence was attached at Appendix 2.

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

The applicant, One Stop Stores Ltd, was represented by a legal representative, Area Manager and Trading Law Manager. It was 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 to vary the premises licence in respect of One Stop Stores, 43 The Viewley Centre, Hemlington, received on 9 July 2014, as outlined above. The applicant had advertised the application, as required by the Licensing Act 2003, in the Evening Gazette on 15 July 2014, which was confirmed as being an accurate reflection of the facts by the applicant.

The Principal Licensing Officer highlighted that the license appended to the report circulated to all parties was incorrect in that the named DPS for the premises had now changed. This was the only difference.

It was noted that the premises operated as a convenience store, with off-licence, located in a shopping precinct in a residential area. The premises had operated with the benefit of a Premises Licence since 11 December 2012.

On 30 December 2013, correspondence was received from the applicant agreeing to amend the operating schedule to include a number of conditions following concerns raised by the Area Child Protection Officer. A copy of the correspondence was attached at Appendix 3.

Between 22 July and 5 August 2014, three representations were received - one from a local

resident and one from each of the two Hemlington Ward Councillors. The objections were based on the grounds of the prevention of crime and disorder, prevention of public nuisance, public safety and the protection of children from harm. Copies of the representations were attached at Appendices 3 to 5 inclusive.

#### Applicant in Attendance

The applicant, One Stop Stores Ltd, was represented at the Hearing by their Area Manager, Trading Law Manager and legal representative.

The applicant's legal representative presented the case in support of the application to vary the hours to 6.00am to 11.00pm daily. The Committee was advised that One Stop had been trading from the premises since January 2013 and that there were no concerns in relation to the running of the store and no enforcement action had been taken in relation to the store. None of the responsible authorities had made representations.

It was highlighted that the premises were currently licensed for the sale of alcohol from 8.00am, however, the store opened at 6.00am. Reference was made to 10.13 of the Government Guidance which stated that shops, stores and supermarkets should be free to provide alcohol sales whenever the outlet was open for business unless there were good reasons for restrictions being placed on the licence. No positive test purchases had been made and no alcohol-related crime had been reported in that area. The applicant's legal representative felt it was relevant to point out that the store was already permitted to sell alcohol from 8.00am.

The applicant's legal representative stated that the store opened at 6.00am and by being able to sell alcohol from that time would benefit shift workers and people who used the shop early on a morning as it would enable them to make all of their purchases in one go. For example, customers calling in for a morning paper and pint of milk would be able to purchase a bottle of wine for their evening meal. Being able to sell alcohol from the time that the store was open would avoid confusion and embarrassment for customers being informed that they were unable to purchase alcohol prior to 8.00am.

The applicant's legal representative believed that the concerns expressed in the objections to the application to vary were based on hearsay as there was no actual evidence to suggest that there would be an increase in crime and disorder and public nuisance if the store was permitted to sell alcohol between the hours of 6.00am and 8.00am.

It was highlighted that the applicant, One Stop Stores Ltd, provided robust training for staff, particularly in relation to underage sales, and operated the Challenge 25 scheme. The store was well equipped with CCTV and maintained refusals and incident logs. Staff at the store already carried out litter picks outside of the premises and supported the local farmers' market and community events.

The applicant's legal representative stated that the Licensing Act 2003 was intended to be permissive legislation with the ability to review based on real evidence in the future, if necessary, however, it was considered that this would be most unlikely due to the way in which the store was operated. The applicant's legal representative recommended that the application should be granted as there was no good reason as to why restrictions should be placed on the application or as to why it should not be granted.

#### Questions to the Applicant from those making representations

Councillors J Walker and N Walker, Ward Councillors for Hemlington, were present at the meeting to make representations and were afforded the opportunity to ask questions of the applicant, as follows:-

- Reference had been made to customers being confused or embarrassed when refused a sale of alcohol prior to 8.00am and it was queried who this referred to. The Area Manager responded that customers came into the store before 8.00am and were sometimes frustrated when the store was open but they were unable to purchase

alcohol. This could sometimes lead to conflict as some customers could become aggressive when they were told that they could not purchase alcohol and this was not good for staff.

- It was queried whether there was written evidence to support this, ie a refusals book, and what had been done to address the issue. The Area Manager stated that any refusal made was logged and that all refusals/incidents could be viewed electronically, showing the date, time and nature of the incident. The store worked closely with the local PCSOs and whilst the incidents were minimal, they did occur.
- The applicant was asked whether they were aware of alcohol-related crime and anti-social behaviour in the area. The applicant's legal representative stated that when submitting such applications, Police and Licensing Officers would usually provide evidence where significant issues existed, however, upon speaking to the local Police Officer, he had indicated that there were no issues and anticipated that evidence would have been provided should he have had concerns.
- The applicant was asked what had changed since the initial licence was granted when it was agreed that there would be no sales of alcohol until 8.00am. The Trading Law Manager responded that the store had been open and trading for a period of time and had demonstrated that the applicant was dedicated to the community and that no issues had been raised in relation to the operation of the store. The Area Manager added that many people did not work 9.00am to 5.00pm and often, for example, taxi drivers finishing a night shift would use the store before 8.00am and the applicant wanted to be able to make a sale of any product at the time the store was open.
- The Ward Councillor made reference to litter picking and queried whether the applicant had noted any evidence of drinking in the centre, ie empty drinks cans and bottles. The Area Manager advised that regular litter picks and sweeping outside the store was undertaken and that sometimes the litter included empty drinks cans and bottles.

#### Questions to the Applicant from Members

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

- A Member of the Committee asked whether the applicant was aware of the reasons that restrictions had been placed on the licence in relation to the sale of alcohol from 8.00am when the licence was granted in December 2012. The applicant's legal representative stated that the store had opened in a previously empty retail unit, therefore, it was a brand new store and was it difficult to provide evidence in relation to a previously empty store. The Police had been consulted in relation to the application to vary and had not raised any issues. Members were reassured that One Stop provided extensive training to staff. There had been no positive test purchases made at the store. It was stated that, logistically, it was very difficult for the store to be open from 6.00am and not be able to sell alcohol until 8.00am as it caused confusion and could become a problem.
- It was queried what proportion of customers using the store between 6.00am and 8.00am might require the purchase of alcohol. The Area Manager responded that, realistically, there would be significantly fewer customers wishing to purchase alcohol than at peak trading times.
- A Member of the Committee reiterated that when the premises licence was granted, agreement was reached that there would be no sales of alcohol prior to 8.00am. It was queried whether the application to vary to extend the hours for the sale of alcohol was for the convenience of customers or for the operation of the store with logistical differences. The Area Manager responded that it was purely for the convenience of customers.
- It was queried what proportion of the store was dedicated to the display of alcohol. The Area Manager stated that approximately 10% of the store displayed alcohol.
- The Council's legal representative sought clarification in relation as to how long the store had been trading from 6.00am and in relation to the DPS. It was confirmed that the store had been trading from 6.00am since December 2012 and the DPS at the store was Michelle Faulkner.
- It was queried whether the store had a dedicated area for alcohol display. The

- Committee was advised that spirits were kept behind the counter and the alcohol aisle was along the left hand side of the premises - staff were able to see this aisle from behind the counter and it was also covered by CCTV.
- In response to a question, it was confirmed that the store sold a full range of alcohol products including spirits, beers, lagers, wines and ciders (including white cider).

#### Relevant Representations

##### Councillor N Walker - Hemlington Ward Councillor

Councillor N Walker, Hemlington Ward Councillor, was in attendance at the meeting and presented representations in relation to the application to vary.

Councillor Walker stated that she had no concerns whatsoever in relation to the way in which the store was run. She believed that the store was well-run and an asset to the community, however, she had concerns regarding the presence of alcohol and sales of alcohol in the shopping precinct at such an early time. The Centre was located near to schools and vulnerable people.

Councillor Walker referred to her email (Appendix 4) and stated that she objected to the extension of hours as there was an existing problem with drinking in the shopping centre. Councillor Walker stated that the issue was frequently raised at Community Council meetings and alcohol-related anti-social behaviour at the Viewley Centre had been a policing priority on several occasions, including more recently. Both Ward Councillors had recently requested that a DPPO (Designated Public Places Order) be introduced in the centre to stop the consumption of alcohol. Councillor Walker stated that people were drinking in the centre and not just at night time. It was highlighted that there was a particular issue with adults drinking in the centre during the day.

Councillor Walker stated that she regularly took part in litter picks of the centre and that there was evidence of alcohol consumption by way of empty spirit bottles and empty lager and cider cans.

The store was located close to a main bus stop and this was used by school children. Councillor Walker had concerns that school children passing through the centre on the way to school before 8.00am would witness people buying and consuming alcohol at such an early hour. Young people had raised similar concerns themselves with Councillor Walker.

Councillor Walker expressed concerns that the Area Manager had previously mentioned customers becoming aggressive when informed they could not purchase alcohol prior to 8.00am and felt this was another reason not to grant a variation to the licence as this was not the type of person that the premises should want to attract. Councillor Walker reiterated that there were many people using the centre prior to 8.00am including school children. In addition, the Ward Councillors' social media site had attracted more than 780 people commenting that they were opposed to the premises selling alcohol prior to 8.00am.

##### Councillor J Walker - Hemlington Ward Councillor

Councillor J Walker, Hemlington Ward Councillor, was also in attendance at the meeting and presented representations in relation to the application to vary.

Councillor Walker stated that she was a frequent user of the shopping centre and was aware of people gathering in the centre and drinking and that this had been brought to the attention of the Police. She stated that there were two other off licensed premises at the centre - each licensed to sell alcohol from 8.00am - and that she believed One Stop should not be permitted to sell alcohol before 8.00am in order to ensure all premises were in line with each other.

Councillor Walker praised the local Community Police but felt that many residents assumed the Community Police were aware of the problems within the centre and, therefore, did not report them. Failure to report incidents and concerns would mean that the crime figures did not reflect what was actually happening in the centre. Councillor Walker believed that if the

license was varied to allow sales of alcohol from 6.00am, this would exacerbate the problems with anti-social behaviour in the shopping centre and that this would have a knock-on effect for the whole area. Councillor Walker wished to point out that the store was of great benefit to the community and was well-run but believed it was morally wrong to sell alcohol from 6.00am.

#### 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:-

- When asked what times of day the Councillors had found people drinking alcohol in the centre, Councillor N Walker responded that teenagers tended to gather from 4.00pm onwards, however, it was adults gathering during the day drinking that were causing the problems. Councillor Walker believed if these people had access to alcohol from 6.00am, this would cause further problems.
- The applicant's legal representative acknowledged the Ward Councillors' concerns in relation to street drinkers in the area but stated she would be surprised if those people would get up so early as to go to the premises to purchase alcohol at 6.00am and considered that the customers who would make use of this would be people going to work or finishing work and that it was very unlikely that people would buy alcohol to consume in the street at 6.00am. Councillor N Walker reiterated that the current problems in the centre were caused by adults drinking during the day and that people who had drink problems would use the premises to obtain alcohol as early as possible. There was also a possibility that people would come from outside of the area to purchase alcohol.

#### Questions to those making representations - from the Committee

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

- A Member of the Panel addressed Councillor N Walker and highlighted that she regularly used the premises early in the morning. Councillor Walker confirmed that this was the case and that, as a dog walker, she was out and about early and used the premises at round about 8.00am.
- The Panel Member queried whether, at that time of day, any other residents had ever approached her in her capacity as a Councillor, to express their annoyance at not being able to purchase alcohol before 8.00am. Councillor Walker stated that this had never happened.
- In response to a query, the Principal Licensing Officer explained that there had been a licence in place previously (with another operator) and that originally a meeting was held to look at reducing the size of the unit and to look at the licensing hours. The Ward Councillors had been supportive of One Stop and McColls operating in the centre and the hours were then discussed. Councillor Walker highlighted that McColls had wished to sell alcohol from 6.00am, however, this was opposed by the Ward Councillors and Chair of the Community Council due to concerns around alcohol being available in the centre prior to 8.00am and this was subsequently agreed by the license holder. The Police had also been part of those discussions.
- It was queried whether the Viewley Centre was currently a policing priority. Councillor N Walker responded that it was not a current policing priority, although, it was a frequent priority and regularly raised by the local Community Council.
- The Council's Legal Representative sought clarification in relation to the previous licence holder of the premises and it was confirmed that the previous licence holders had sold alcohol from 8.00am. Councillor N Walker stated that she had witnessed people waiting outside the store in order to purchase alcohol at 8.00am.

#### Summing Up

#### Those Making Representations - Councillor N Walker

Councillor N Walker summed up by stating that the local community did not want the variation to be granted. Councillor Walker did not feel that it was suffice to grant the variation with an option to review if there were any issues as there were currently issues outside the premises which caused concern. Councillor Walker acknowledged it was not possible in all cases to identify where the alcohol had been purchased but that there was an existing problem with drinking in the shopping centre where the premises were situated. Councillor Walker added that the store was very busy and that the sale of alcohol for an additional two hours at the start of the day would not be required in order to ensure the store kept trading. For the few people who did want to purchase alcohol before 8.00am, there were other places where it was available and where it was not located so close to schools/on a school route. Councillor Walker commented that it was not a good enough reason to sell alcohol from 6.00am in order to appease customers who became aggressive when they could not purchase alcohol before 8.00am.

#### Those Making Representations - Councillor J Walker

Councillor Walker summed up by stating that she objected to the application to vary. The Ward Councillors had been working hard to raise the profile of Hemlington, including working with local traders and the local community. They had established a social media site for use by people living and working in Hemlington. People using the site had responded to the application by stating that they did not want it to be granted. Councillor Walker stated that they wanted residents to feel safe and to shop in the Viewley Centre without feeling threatened or intimidated. Councillor Walker felt that if the variation was granted it would undo all the good work that had been done in the area.

#### Applicant

The applicant's legal representative summed up by stating that the application should be considered on its own merits and that suggesting other traders may follow suit if the variation was granted was not a good enough reason to refuse.

Those making representations had acknowledged that the store was very well run and there had been no concerns expressed by any of the responsible authorities in terms of crime and disorder or public nuisance.

The Viewley Centre was not a policing priority at the moment and the Police had stated that any issues in the area related to later in the day, not early morning.

The applicant's legal representative felt that the representations were speculative and that if there were any problems, a review could be applied for when the applicant would be pleased to consider any real evidence.

Reference was made to 10.13 of the Statutory Guidance which made clear that good reasons were required, based on the licensing objectives, to refuse the hours applied for. The applicant's legal representative considered this had not been provided.

The applicant requested the opportunity to sell alcohol in line with the store's trading hours and had procedures in place to do this.

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 to vary the Premises License in respect of One Stop Stores Ltd, 43 Viewley Centre, Hemlington, Middlesbrough, Ref No: MBRO/PR0123, be refused for the following reasons:-

1. The community, through the Ward Councillors, had indicated that it was opposed to

- the sale of alcohol from 6.00am because of the existing problems in the area and the belief that it would make matters worse.
2. The Committee heard that there were current problems in the vicinity of the premises and Ward Councillors advised that they had witnessed people drinking/being drunk during the day in the shopping area, causing problems. This was also supported by numerous discarded alcohol cans and bottles around the area.
  3. The area had been a Police priority on a regular basis.
  4. Young people had informed the Ward Councillors that they felt unsafe due to drinking and anti-social behaviour in the area.
  5. The premises were situated near to a bus stop which was used by children travelling to school before 8.00am.
  6. It was noted that the shops in the area agreed in 2012 not to sell alcohol before 8.00am because of the potential and existing anti-social behaviour problems relating to alcohol. Since that time, the existing problems had continued as mentioned.
  7. The Committee noted that the Licensing Guidance and the Council's Licensing Policy stated that shops should be allowed to sell alcohol during the times that they were open for trading unless there was good reason to restrict it. The Committee considered that the sale of alcohol from the premises in that location from 6.00am was not appropriate as it would, on balance, be likely to extend the alcohol-related problems currently in the area over a longer time period.

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, in writing, and verbally at the Hearing by both Ward Councillors.

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