

**LICENSING SUB-COMMITTEE C**

A meeting of the Licensing Sub-Committee C was held on 8 December 2014.

**PRESENT:** Councillors B E Taylor (Chair), P Purvis and J A Walker

**PRESENT AS OBSERVERS:** Councillor McTigue (Beechwood Ward Councillor).  
Councillors Khan and McPartland (Middlehaven Ward Councillors).  
L Henman – Political Assistant, Middlesbrough Council.

**ALSO IN ATTENDANCE:**

On Behalf of the Applicant:-

D Patel – Applicant.  
C Mitchner – Licensing Consultant, Licensing Solutions.

Members of the Public in support of the applicant:-

With written representations:-

Councillor Hudson, Coulby Newham Ward Councillor.  
Local Residents: J Hodds, A Huggan and T Martin.

Without written representations (local residents): D Found, A Galloway, P Knowlson, A Leeson, D Owens, D Stott and J Townson.

Making Representations:-

J Davis and P Thompson – on behalf of Coulby Newham Community Council.  
M Pyle, 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 in the meeting.

14/4 **LICENSING ACT 2003: APPLICATION FOR PREMISES LICENCE - COULBY NEWS & POST OFFICE, 122 LINGFIELD ASH, COULBY NEWHAM - REF. NO: PRO237.**

A report of the Assistant Director of Improving Public Health had been circulated outlining an application for a Premises Licence in relation to Coulby News and Post Office, 122 Lingfield Ash, Coulby Newham, Middlesbrough, Ref No. PRO237, as follows:-

Summary of Proposed Licensable Activities and Hours

Sale of Alcohol (off sales) - 9.00am to 9.00pm daily.

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

The Chair announced that the Regulation 6 Notice had been served showing a start time of 2.30pm.

Subsequently, the Committee considered that, under Regulation 11 of the Licensing Act (Hearings) Regulations 2005, that it was in the public interest to extend the time limit for the start of the meeting to 2.30pm in fairness to all parties.

At 2.35pm the meeting commenced and the Chair introduced those present and outlined the procedure to be followed at the meeting.

The applicant, Mr D Patel, was in attendance at the meeting, accompanied by C Mitchner, Licensing Consultant. It was confirmed that copies of the report and Regulation 6 Notice had been received.

It was clarified that several people present at the meeting wished to have the opportunity to speak. Mr P Thompson and Mrs J Davis wished to make representations in relation to the application on behalf of Coulby Newham Community Council. Mrs J Townson, a local resident living in close proximity to the premises, wished to speak in support of the applicant. A further local resident, Mrs A Huggan, also wished to speak in support of the applicant, however, the Principal Licensing Officer advised that her representation had been received outside of the permitted timescales. The closing date for representations was 17 November 2014 and Mrs Huggan's written representation was received on 18 November 2014. It was highlighted that it was at the Committee's discretion as to whether they would accept the representation. All parties were willing to accept the representation and the Committee, therefore, agreed to accept the representation.

#### Details of the Application

The Principal Licensing Officer presented the report in relation to an application for a premises licence in respect of Coulby News and Post Office, 122 Lingfield Ash, Coulby Newham, received on 17 October 2014, as outlined above. The applicant had advertised the application, as required by the Licensing Act 2003, in the Evening Gazette on 30 October 2014, which was confirmed as being an accurate reflection of the facts by the applicant.

It was noted that the premises consisted of a convenience store and post office, situated in a residential area. The initial application was for a licence to allow the sale of alcohol from 6.00am to 10.00pm, however, following an objection from Cleveland Police, the applicant amended the application to reduce the licensing hours requested to 9.00am - 9.00pm daily. In addition, the applicant had also agreed with Cleveland Police to the addition of a number of conditions. These were attached at Appendix 2 to the submitted report.

Between 3 November and 18 November 2014, a number of representations were received in relation to the application. 36 representations were submitted against the application and 12 in support of the application. In addition, a petition containing more than 600 signatures was submitted by the applicant with seven of the signatories against the application. The representations were attached at Appendices 3 to 51 inclusive.

#### Applicant in Attendance

The applicant's representative confirmed that copies of the training literature, produced by Licensing Solutions, and used by the applicant for training purposes, had been circulated to all parties under separate cover.

The applicant's representative presented the case in support of the application for a premises licence and highlighted that the store was already trading between the hours of 6.00am and 10.00pm. The applicant had amended his application to request the licensing hours of 9.00am to 9.00pm daily.

The Committee was informed that the premises were well-established and had been trading for around 19 years. The premises had gradually evolved from a newsagents to include a Post Office four years ago and a convenience store. An off-licence was now planned as part of the business and the store had been converted in line with the Post Office strategy to encourage turnover. It was highlighted that there had been a steady decline in Post Office businesses and a further £12,000 income would be taken out of the Post Office side of the business in September 2015, therefore, the Post Office wanted the store to broaden its range of goods available. The Post Office planned to extend its opening hours, including weekends.

The Committee was informed that the applicant was the DPS at the premises and had successfully obtained his Personal Licence. He was previously a licence holder in his own right for 12 years prior to taking over the current premises.

The applicant's representative referred to paragraphs 9.11 and 9.12 of the Government Guidance and felt it was important to note that no representations had been received from any of the responsible authorities in relation to the application and highlighted that it was reasonable for the applicant to provide alcohol sales at any time the outlet was open and trading.

It was noted that representations had been received from 38 local residents and two Ward Councillors as well as the local Community Council. The applicant's representative stated that a circular had been distributed in the local area by the Ward Councillors (not included within the bundle of representations circulated) and that a number of residents had made representations and assumed that this was due to the circular being distributed.

The applicant's representative stated that the applicant had obtained letters of support and a signed petition, left on site at the premises, and also support from the Post Office. More than 600 people had signed the petition in support of the application, with only seven signatories against the application.

The applicant's representative stated that the underlying theme of the letters of objection appeared to reflect the circular that had been distributed and that some contained references to fireworks. It was confirmed that the applicant had not sold fireworks at the premises for three years.

In response to the representation submitted by Coulby Newham Community Council, the applicant's representative stated that most local shops were situated in residential areas and that 600 people wanted the application to be granted to sustain the Post Office within the Community. Cleveland Police were happy for the application to proceed without making representations. Reference was made to litter outside the premises and it was highlighted that any litter from alcohol was not from alcohol being purchased from the premises as it currently did not sell alcohol. The applicant was addressing the issue of litter outside the shop. In relation to the comments around parking, the applicant's representative stated that this was not a consideration for the Licensing Committee and that such issues should be addressed via planning and highways.

It was highlighted that the applicant was the proprietor of the premises and was a local businessman, resident and sub-postmaster. The Post Office was moved to the premises four years ago after closing in the main Parkway shopping centre and was a vital part of the community. The applicant's representative stated that local Councillors had objected to the post office being moved at the time.

Reference was made to Appendix 10, a letter of objection from a local resident, who stated "...local residents should be consulted and have the right to vote on the proposal..." The applicant's representative highlighted 600 local residents had signed a petition in support of the application.

The applicant's representative pointed out that the landlord of the premises, 13 Housing Group, had not objected to the application and that any litter around the area was their responsibility and that steps were being taken by them to address the problems.

The Committee was informed that staff working at the premises must be trained to sell alcohol and that training would be refreshed at three-monthly intervals. Staff must answer all questions correctly at each training session in order to continue to sell alcohol. In addition, a monthly record would be kept to record staffs' views as to whether they felt satisfied that they understood the rules around the sales of alcohol. A Challenge 25 Scheme would be operated at the premises by the applicant and a refusals log and incident book would be maintained.

In relation to the concerns regarding potential underage sales, the applicant's representative stated that some of the representations referred to youths congregating outside the premises, this was despite the store currently not selling alcohol. Reference was made to paragraph 2.24 of the Guidance which stated "Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law ..." The applicant believed that there was no evidence that the sale of alcohol from the premises until 9.00pm

would give rise to concerns and the applicant was fully aware of his social responsibilities. The applicant's representative commented that any representations must relate to the Licensing Objectives and have substance and not be based on supposition.

Questions to the Applicant from those making representations – Coulby Newham Community Council

P Thompson and J Davis, representing Coulby Newham Community Council, were present at the meeting to make representations and were afforded the opportunity to ask questions of the applicant. P Thompson raised the following issues:-

- It was queried whether it was correct to say that the reason for the Post Office's reduction in income was due to it withdrawing the salary for sub-postmasters and that this was the reason it was now encouraging expansion of the goods on offer at the premises, ie sale of alcohol, in order to supplement the reduction in income. The applicant's representative responded that the Post Office believed that post offices were an integral part of the community, however, the post office had lost, or would lose in future, some of the services it offered (eg car tax) and had adopted the concept of having no 'stand-alone' post offices. The Post Office had also examined and reviewed its salary structure. Post offices wanted to open later at night and at weekends and to be able to offer a wider range of products.
- It was queried whether the local Police in Coulby Newham had been consulted in relation to the application as they had produced a report for the Community Council and had indicated they were not keen on the idea of the application. The applicant's representative confirmed that no representations had been made by the Neighbourhood Police team in Coulby Newham.
- Reference was made to the litter problem in the area and it was stated that this had been ongoing for many years. The applicant's representative advised that the applicant was working on what could be done to improve the situation and highlighted that the areas to the left and right of the premises belonged to 'Thirteen Group' and that they were dealing with the issue.
- Reference was made to an earlier comment by the applicant's representative when he stated that local Councillors had objected, at that time, to the post office being moved from the Parkway Centre. Mr Thompson wished to clarify that local Councillors had tried to persuade the Post Office to remain within the Parkway Centre and had not objected to the applicant taking over the running of the post office from his premises.
- It was queried how many of the 600 people who had signed the petition in support of the application were actually local residents. The applicant's representative responded that one did not have to be a local resident in order to sign a petition and that it had been signed by customers who used the store. Mr Thompson stated that it appeared many of the signatories did not live in the immediate vicinity of the store and would not be affected by what happened in the area.

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 stated that the case presented by the applicant's representative suggested that without the sale of alcohol the post office would close and queried whether this was the case. The applicant's representative clarified that this would not be the case, however, in future years viability would be reduced without diversifying and offering a wider range of products, including alcohol.
- The Chair highlighted that the petition did not mention the sale of alcohol and stated that it was in relation to 'a licensing application' and that customers may not have been clear what the petition was actually for. The applicant's representative responded that the signatories were users of the shop and supported the application.
- The Council's legal representative asked for clarification on the store's current opening hours. It was confirmed that the current opening hours were 6.00am to 9.00pm and the post office would open from 6.00am to 6.00pm Monday to Saturday and 6.00am to 1.00pm on Sundays. The application for the sale of alcohol, in

- agreement with the Police, was for the hours 9.00am to 9.00pm daily.
- The Committee noted that the Police had withdrawn its representation following the applicant's agreement to amend the hours applied for from 6.00am to 10.00pm to 9.00am to 9.00pm and queried whether they had explained the reasons for this. The applicant's representative stated that the applicant was happy to work in partnership with the Police and had agreed to reduce the hours applied for and to the additional conditions requested by the Police.

### Relevant Representations

#### Those in Support of the Application

Several local residents were in attendance at the meeting and were afforded the opportunity to speak in support of the application, as follows:-

#### A Huggan - in support of the application

A Huggan, local resident, spoke in support of the application and stated that she was shocked that Coulby Newham Community Council had objected to the application. Ms Huggan stated that anti-social behaviour had increased by 1% in Coulby Newham over the past year but that this was related to the Parkway Centre and not Lingfield Ash. Ms Huggan suggested that the Committee should take into account the struggle that small businesses were experiencing as they were a vital part of the community. She added that for every £1.00 spent, around 60p went back into the community and considered that the application should be granted.

#### J Townson - in support of the application

J Townson, a local resident, spoke in support of the application and stated that the store was her local newsagents. She stated that it would be too far for her to walk to the Parkway Centre, especially if she had a couple of bags of shopping and that she would not walk to the Parkway Centre at night time. In relation to the litter outside of the premises, Mrs Townson stated that her grandson often helped with litter picking outside the shop and she felt that there was more of a problem with drugs in the area than with litter. Mrs Townson added that the applicant was very nice and always helpful and that the objections should not be considered.

#### Those Making Representations

#### Mr P Thompson - on behalf of Coulby Newham Community Council

Mr P Thompson, representing Coulby Newham Community Council, presented representations in relation to the application.

Mr Thompson stated that the premises in question had previously applied to sell alcohol and that this dated back 20 years. The previous landlords of the property had refused to alter the lease to allow for the sale of alcohol. It was highlighted that the premises was built as a bungalow for residential use and was initially not intended as a retail outlet.

Reference was made to the submitted petition and it was stated that it was unclear as to what the petition was actually for. Mr Thompson highlighted that more than 280 people who had signed the petition lived either at the other side of Coulby Newham or out of the area - for example, in Marton or Ingleby Barwick - and that the application would not affect them directly. Approximately 28 people out of the 600 signatories were Lingfield Ash residents.

There were other alcohol outlets available within a short distance of the premises and Coulby Newham Community Council believed that there was no necessity for another off-licence, particularly in Lingfield Ash where there were problems with anti-social behaviour. There had also been issues with parking in the area.

#### Questions to those making Representations

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

- It was queried whether there were any figures available in relation to anti-social behaviour in the area. Mr Thompson responded that information had previously been supplied to Coulby Newham Community Council by the Police.
- The Committee acknowledged that the Community Council was there to be the voice of the people in the area and it was queried whether the application and anti-social behaviour in the area had been discussed more than once at the Community Council meetings. Mr Thompson stated that this particular application had been discussed only once but the issue of anti-social behaviour in Lingfield Ash had been discussed many times.
- In response to a question, Mr Thompson stated that residents were against the sale of alcohol at the premises due to the problems it would cause.

### Summing Up

#### Those Making Representations Coulby Newham Community Council

On behalf of Coulby Newham Community Council, Mr Thompson, summed up by stating that the Community Council would request that the Committee rejected the application as it felt that granting the application would increase problems in the area, particularly in relation to anti-social behaviour.

#### Applicant

The applicant's legal representative summed up by stating that a similar application in respect of the premises was rejected in the Magistrates Court 14 years ago as planning or leaseholder consent was required, but this no longer applied and landlord of the premises had agreed this time.

The applicant's representative considered that there was no reason to believe that granting the application would cause problems in the future. There were no issues at the present time and if the license was granted, Licensing Officers and Police would be involved to ensure that the premises was operating correctly. There was no evidence to suggest that there would be any problems between the hours of 9.00am and 9.00pm.

It was highlighted that the store and post office was well-run and that the distance from Lingfield Ash to the Parkway Centre was approximately half a mile, with busy roads to cross, however need was not an issue for the Committee to consider.

The applicant's representative acknowledged that some of the representations had been made in good faith and that some residents would have genuine concerns but that they could be dealt with outside the remit of the Licensing Act. Any representations must be relevant and relate to the impact the application would have on the Licensing Objectives.

Reference was made to 9.12 of the Government Guidance in relation to representations from the Police and it was reiterated that the Police had not made representations. It was highlighted that the application and the issues in the area had been discussed on two occasions at the Coulby Newham Community Council (extracts from the minutes of those meetings was attached in the submitted bundle) and that only 12 and eight residents had attended respectively. In addition, no representations were received from other responsible authorities in relation to noise or litter.

Reference was made to Thwaites case law and it was stated that 'an application should be granted, as applied for ... should any difficulties arise, they can be dealt with by way of a review in future if concerns prove to be real, rather than a licence being limited or refused.'

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 Coulby News and Post Office, 122 Lingfield Ash, Coulby Newham, Middlesbrough, Ref No: PRO237, be granted for the sale of alcohol (off sales) from 9.00am to 9.00pm daily, subject to the following conditions:-

1. A digital colour CCTV system must be installed at the premises, maintained in good working order and be correctly timed and date stamped.
2. CCTV cameras must cover the ingresses and egresses to and from the premises, all internal areas and the immediate external frontage of the premises and must record at all times during the hours the sale of alcohol was permitted.
3. All CCTV recordings must be retained for a minimum of 31 days.
4. The CCTV system will be capable of providing evidential quality footage in all lighting conditions, particularly facial recognition whilst complying with Data Protection Legislation.
5. CCTV footage must be capable of being produced on media which can be viewed on a computer or laptop.
6. The CCTV system will have the facility to be password protected to prevent unauthorised access, tampering or deletion of images.
7. A member of staff who is capable of producing CCTV footage must be on the premises at all times when it is open.
8. CCTV footage must be made available to the Police, Trading Standards officers or Licensing officers on request and / or during an inspection of the premises.
9. 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 the incidents of crime and disorder at the premises or directly outside the premises.
10. The incident book must be made available to the Police, Trading Standards officers or Licensing officers on request and / or during an inspection or visit.
11. A refusals register must be kept at the premises and maintained up to date at all times recording the date, time and reason for every refusal to sell alcohol to a customer.
12. The refusals register must be made available to Police, Trading Standards or Licensing officers on request and / or during and inspection or visit.
13. Staff must require ID in the form of a current ten year passport, photo card driving licence, PASS logo Identity card or other approved recognised proof of age scheme card from any customer who appears to be under the age of 25 and verify the customer is 18 or over before any sale of alcohol is made.
14. At least three notices must be placed in prominent positions advising customers that the premises operates a Challenge 25 policy and all customers who appear to be under 25 will be challenged for ID.
15. All staff will be trained with regard to the sale of alcohol. The training will include the laws relating to the sale of alcohol to under aged persons, persons buying alcohol on behalf of persons under 18 and persons who are drunk attempting to buy alcohol.
16. All staff must be trained on the matters in condition 15 prior to commencing employment at the premises and all staff will be retrained every 12 months. Training records must be signed and dated by the Designated Premises Supervisor and / or the Manager of the Premises and the member of staff trained and detail what training has been provided.
17. Training records must be kept at the premises and must be made available for inspection when requested by Police officers and other responsible authorities.
18. The premises will not stock, display or sell any lager, beer, cider or Perry product with an ABV of 6.5% or above.
19. No alcohol will be displayed or stocked within 5 metres of any entrance or exit to and from the premises.
20. The display of alcohol will be limited to the area specified and identified as alcohol display areas on the plan attached to the application or to such other areas within the store equivalent to and not exceeding the shelf and floor space identified on the said

plan for the display of alcohol.

The reasons for granting the application subject to the conditions are as follows:-

1. It was contested that anti-social behaviour and nuisance occurs at and around the premises. Some residents stated in their letters that youths congregated at the premises and that this would increase if alcohol was allowed to be sold. Some residents also said there was nuisance caused by litter and insufficient car parking currently at the premises and if it were allowed to sell alcohol to a later hour this would increase the problems. However, the applicant and supporters disputed this.
2. It was noted the Police - the main authority on crime and disorder - agreed to the application to sell alcohol from 9am until 9pm, subject to conditions put forward by the applicant.
3. It was also noted that no other responsible authorities, including Environmental Health, had made representations to the application.
4. The Committee also noted that a petition had been submitted with many signatures in support of the application, however, it was also noted that the petition did not explain the details of the application and some signatories were not local residents but were users and supporters of the store.
5. Therefore, on balance, the Committee considered the potential risk of anti-social behaviour and nuisance could be addressed by the granting of the application but subjecting it to the additional conditions in relation to the display of alcohol and CCTV covering the immediate outside area of the premises and the conditions put forward by the applicant following discussions with the Police. These conditions in relation to CCTV, Challenge 25, staff training, incidents book, refusals register, limit on strength on certain alcohol types, location of alcohol away from the entrance / exits, had been amended to ensure they were clear and enforceable.
6. Members considered it appropriate to condition the display of alcohol to ensure alcohol sales formed part of the convenience on offer and did not extend to the whole of the store. The store was a convenience store with a post office serving the local residents and the applicant wanted to diversify the offer to include alcohol to ensure future viability. Without this restriction alcohol could be displayed and sold throughout the store. Members considered that this would attract a different clientele just seeking alcohol and not a diversity of goods. Members, therefore, considered this condition appropriate to prevent potential crime and disorder and nuisance in light of the representations received and the location of the stand-alone store in the centre of a residential area.
7. Members also considered that an additional CCTV camera recording footage immediately outside of the premises would deter potential nuisance and anti-social behaviour based on the concerns of residents that sale of alcohol may result in or increase youths congregating outside 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 representations made, in writing, and verbally at the Hearing by Coulby Newham Community Council, and in writing by local residents, in opposition to the application.
6. The representations made, in writing and verbally at the Hearing, by local residents in support of the application.

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



