

LICENSING SUB-COMMITTEE C

A meeting of the Licensing Sub-Committee C was held on 30 January 2015.

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

ALSO IN ATTENDANCE: Representing the Applicant:

R Botkai - Legal Representative for the Applicant
R Ainsworth & P Colgan - Rontec

Representing Cleveland Police: Sgt P Higgins and PC J Bryan

Objectors: Councillor R Arundale and Secretary of Lodore Residents Association

OFFICERS: B Carr, C Cunningham, J Hodgson

DECLARATIONS OF INTERESTS

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

14/7 **APPLICATION FOR PREMISES LICENCE - CORONATION SERVICE STATION, 245 ACKLAM ROAD MIDDLESBROUGH TS5 7BW - REF: PR0145**

A report of the Senior Licensing Officer, Improving Public Health, had been circulated outlining an application for a Premises Licence in relation to the Coronation Service Station, 245 Acklam Road, Middlesbrough, TS5 7BW, Ref No. PRO145.

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

Summary of Proposed Licensable Activities and Hours for Proposed Licensable Activities

The applicant's Legal Representative advised that following discussions with Cleveland Police, the applicant wished to amend the proposed Licensable activities and hours for proposed Licensable activities as follows:

Supply of Alcohol - 8am - 11pm
Provision of Late Night Refreshment - 11pm - 5am daily

The applicant had also offered additional conditions in respect of the following:

- Refusals;
- Incidents;
- Till Prompts;
- Single cans
- Single bottles;
- Perry;
- High strength beers.

Full details of the proposed conditions were circulated to all present at the meeting.

The Chair introduced those present and outlined the procedure to be followed at the meeting. The Senior Licensing Officer presented the report in relation to an application for a Premises Licence in respect of the Coronation Service Station, 245 Acklam Road, Middlesbrough, received on 13 November 2014, as outlined above.

The applicant had advertised the application, as required by the Licensing Act 2003, in the Evening Gazette on 17 November 2014. It was highlighted that the premises consisted of a garage amongst other commercial premises, on Acklam Road, in close proximity to residential

premises.

Representations had been received from the following:

28 November 2014 - Lodore Residents Association - on the grounds of the prevention of crime and disorder and the prevention of public nuisance - attached at Appendix 2 to the report;

28 November 2014 - Councillor R Arundale and Councillor H Pearson OBE - Ward Councillors for Kader Ward on the grounds of the prevention of public nuisance and prevention of crime and disorder - attached at Appendix 3 to the report;

5 December 2014 - Mr A Jones - resident - on the grounds of crime and disorder - attached at Appendix 4 to the report;

11 December 2014 - Cleveland Police - on the grounds of the prevention of crime and disorder, prevention of public nuisance, protection of children from harm and public safety - attached at Appendix 5 to the report.

The Chair invited the applicant's Legal Representative to present the case for the applicant.

The Applicant

The applicant's Legal Representative introduced Rupert Ainsworth from Rontec Head Office and Paul Colgan - Rontec Area Manager. The Committee was advised that Rontec was a national operator owned by Gerald Ronson. The Coronation Service Station was one of 200 petrol stations owned by the company and virtually all of the stations were licensed.

The applicant's Legal Representative advised that Rontec were very experienced in operating licensed premises. The company had standard operating conditions in relation to the provision of CCTV and the operation of the Challenge 25 policy. The Legal Representative had drafted the additional conditions above following discussions with the Police and after taking into consideration the representations received from residents and other parties in respect of the application.

Reference was made to the Government Guidance in relation to hours of trading and it was noted that shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet was open for shopping unless there were good reasons, based on the licensing objectives, for restricting those hours.

The applicant's Legal Representative stated that Middlesbrough Council had a good individualised Licensing Policy. The Coronation Service Station was not based in a cumulative impact area so the applicant was not required to prove to the Committee that the grant of the licence would not have an adverse impact on the licensing objectives.

Page 40 of the Licensing Policy set out what the Council expected of Off Licences and it stated that the Licensing Authority would not usually seek to limit the hours during which alcohol could be sold for consumption off the premises but that particular consideration should be given to staff training particularly in relation to refusals/proxy sales.

The Committee was advised that Rontec had a thorough training programme which was refreshed every six months which covered the issue of proxy sales. All of the premises licensed by Rontec had a refusals book in operation and all of the staff employed in the store were used to dealing with restricted products such as tobacco and petrol and complying with legislation. Every employee would receive training with regard to Challenge 25 and the type of ID acceptable was already restricted by legislation.

Signage was already in place at the premises in respect of restricted products but additional signage would be placed at the store if the licence was to be granted. The premises already had an up to date digital CCTV system and the display of alcohol would be placed next to the cashier away from the entrance/exit to the premises with spirits being stored behind the

cashier. There would be a limited range of wine/beer/cider. Products such as perry and strong strength products which were attractive to under age people would not be sold at the premises.

It was highlighted that there had been no incidents of anti-social behaviour or crime and disorder at the premises itself apart from a small number of drive offs in respect of petrol. The Committee was advised that this was not unusual as it happened at petrol stations across the country and it did not indicate that alcohol was likely to be stolen.

The Manager at the premises had advised that children did not usually visit the store, he did not have a problem with theft and there were no issues with children congregating outside the store. The Legal Representative urged Members to read the incidents referred to in the Police evidence carefully and consider whether they were serious enough to warrant refusing a licence at this store. He pointed out that none of the incidents referred to had occurred at the actual premises - many occurred on the parade.

The applicant's Legal Representative stated that although there was an incident at the back of the Tesco's store, it was generally a well-run responsible store with a small selection of alcohol. The Spa store had a very large selection of alcohol displayed on a large shelf. The applicant's Legal Representative produced a selection of products purchased from Spa and Bargain Booze including high volume (7.5%) white cider purchased from Spa and high volume (15%) Schnapps and a Strawberries and Cream Product (10%) volume purchased from Bargain Booze.

The applicant's Legal Representative stated that if all the stores were adhering to the same rules as the Tesco store, there would be fewer problems involving the sale of alcohol. He advised that he had attended a meeting with the Local Government Association and they had produced guidance for authorities hoping to introduce a policy in respect of the sale of reduced strength alcohol. Ipswich local authority had persuaded retailers to remove some high strength products and as a result there had been a 48% reduction in alcohol related crime. He pointed out that local authorities could introduce the policy even if the area was not situated within a cumulative impact zone.

The applicant's Legal Representative advised that if the Committee chose to grant a licence to Rontec for the sale of a restricted range of alcohol, it would have no impact. The Coronation Service Station was a small well organised store with CCTV. It was unlikely that children would come into the store because the range of alcohol was restricted, the alcohol for sale was not likely to be attractive to young people and the prices were likely to be higher than the other stores in the vicinity.

The Committee was advised that if they had concerns regarding the hours requested, the applicant would not object to the hours being reduced. He pointed out that Bargain Booze currently closed at 9pm and the Spa at 10pm. The Committee could restrict the hours on a morning to 9am if required. He acknowledged that there were concerns regarding anti-social behaviour but the grant of a licence to this store taking into account the limited range of alcohol on sale would not add to the problems of anti-social behaviour.

The Committee was advised that Finlays had applied for a licence which was refused and they did not appeal against the decision. Tescos had also applied for a licence which was refused but granted on appeal. The Committee was reminded that they needed to consider each case on its own merit. There was no evidence that the sale of alcohol would impact on drink driving.

The applicant's Legal Representative pointed out that the staff at the store, were well trained and used to dealing with legislation with regard to licensing and the store had a good CCTV system.

It was pointed out that the store did not need a Late Night Refreshment Licence (LNR) to sell hot drinks prior to 11pm. The licence was only needed for LNR after 11pm. The Legal Representative referred to the representations submitted by the Ward Councillors and the reference to there being two public houses and three outlets selling alcohol and emphasised

that the sale of alcohol, should the licence be granted would cease at 11pm.

The Committee was advised that the suggested conditions by the applicant had been forwarded to the Police in December. The Police position remained the same in that they were concerned about anti-social behaviour and an additional licence would exacerbate the problem. The Police had concerns that dependent drinkers would come into the store to buy alcohol but the prices in the Coronation Service Station store would be more expensive and there would be no single cans available for sale and no high strength products.

The Legal Representative pointed out that there had been no alcohol related incidents at the store and the incidents referred to in the Police evidence, other than the petrol drive offs were not relevant to the store and there was not enough evidence to support refusal of the licence.

In terms of the suggestion that alcohol could be stolen from the store, the Committee was advised that alcohol was difficult to get out of the store because of its size. The other stores on the parade presented bigger targets for thieves. Police Officer Wilkinson had stated in his statement that he had a good relationship with the other stores and acknowledged that none of the stores that had a licence were selling alcohol to children.

The Legal Representative pointed out that alcohol was not a demon and people should be able to purchase alcohol at the store.

A member referred to page 36 of the Home Office Guidance under section 182 of the Licensing Act 2003 and requested if the applicant had any figures with regard to footfall at the premises. The Legal Representative pointed out that under the previous Act an applicant had to prove primary use before an application could be granted however primary use was subject to change. Section 176 of the Act stated that the premises licence does not have effect if the primary use of the premises is that of a garage. Rontec would be required to monitor use at the petrol station at all times to ensure that it was not trading illegally.

The Guidance stated that it was for the local authority to determine primary use and the local authority was not required to look at primary use before issuing a licence. Officers could monitor primary use if required. The Legal Representative had drafted a condition for use by the local authority, should the licence be granted. The Council's Legal Representative requested a copy of the condition and a copy was given to Members for consideration.

Sgt Higgins queried whether the conditions put forward by the applicant were strong enough. He pointed out that of the products produced as evidence of the types of alcohol available at other stores in the vicinity, only the sale of the cider would be prohibited. The applicant's Legal Representative advised that if the Police had concerns regarding the sale of the other products, the applicant could produce a condition to prohibit the sale. The licence could also be reviewed if the applicant sold alcohol aimed at young people as it would not be trading in accordance with the application presented to the hearing.

Sgt Higgins queried whether Rontec required pre-payment for petrol sold in jerry cans as the Police had concerns that the petrol could be used to set fire to things or for motorbikes. The concern was what control Rontec had over products such as alcohol once it left the store. The Legal Representative advised that the applicant could not be held responsible for a product once it left the store. Almost 50% of alcohol was provided to young people in their own home. The store did not expect to be targeted for proxy sales as their prices for alcohol were expected to be much higher than surrounding premises.

Councillor Arundale stated that he was concerned with regard to the control of sales of alcohol after the agreed hours. The Legal Representative stated that staff were well trained and would have till prompts that would alert them to the fact that alcohol could not be sold after a certain time. The shutters would also be pulled down at the terminal hour for the sale of alcohol. The shop in effect would be closed and any sales of LNR would be sold through a serving hatch which would consist of a box and slide tray to pass money and the product to the customer for security and insurance purposes.

In response to a query with regard to how many staff, were employed at the premises, the

Committee was advised that between 8am - 10pm one member of staff would be on duty at all times however the manager was sometimes in attendance at the store. The store had a policy that if a member of staff felt threatened, there was a shunt lock to enable the door to be locked.

In response to a query with regard to people with motorcycle helmets filling up, the Committee was advised that the person was asked to remove their helmet and get off the bike. A member queried what would happen if the person refused to remove their helmet and purchased a bottle of wine. The Committee was advised that the pumps could only be turned on by the cashier and they were given a list of five things to check before the pumps were turned on.

The Chair invited the Police to present their case.

The Police

Sgt Higgins advised that the Police did not have any issues with regard to the part of the application in relation to the Late Night Refreshment Licence. The issue for the Police was the sale of alcohol at the premises. If granted it would provide another outlet for the sale of alcohol and there were already a number of outlets selling alcohol in that area and a high level of anti-social behaviour. Sgt Higgins referred to the statement by Police Officer Wilkinson and the list of incidents included in the statement of PC Bryan.

The Committee was advised that there were three off-licences already located in the area together with three public houses. There were also two off licences based on Croft Avenue and one at Sainsburys. Sgt Higgins went through the incidents included in PC Bryan's statement.

PC Bryan advised that one of the issues in the Acklam area was the propensity for youths to gather outside takeaways and stores that sold alcohol and this often lead to instances of anti-social behaviour. The Police also had concerns about the petrol theft because there was no control over what happened to the petrol once it left the service station and the type of clientele who carried out this practice could commit other types of theft.

The Police referred to Operation Guido which involved the implementation of a Dispersal Order which was in force from 17 October 2014 - 7 November 2014 in the area bounded by, and including Acklam Road, Ladgate Lane, Marton West Beck, Emmerson Avenue and Green Lane. It was highlighted that the Dispersal Order was the only one in the Middlesbrough area around that time.

PO Wilkinson had also identified a number of issues in the area in his statement. One of the issues related to drive offs from petrol stations. The Police Officer had also highlighted issues of anti-social behaviour in respect of the Mill Hill Playing Fields. The pattern appeared to be that youths under age and over the age of 18 obtained alcohol, consumed it on the playing fields and caused anti-social behaviour at the shops and in residential areas, affecting residents.

The area had a high level of anti-social behaviour and the incidents included in the evidence of PC Bryan had been included because of the vicinity of the incidents to the precinct. There were many more incidents in the area that had occurred further away which were not included as it would have been difficult to evidence how they affected the Coronation Service Station.

Sgt Higgins stated that he accepted the validity of the conditions put forward by the applicant and he was aware of the reducing strength alcohol campaign. An officer from the Police was currently carrying out work in respect of the campaign. He stated that licensed premises always started off with good intentions however the Police were only able to enforce the conditions on the licence. The Police still held concerns that another licensed premise would add to the existing problems in the area.

The applicant's Legal Representative advised that a condition regarding no self-service spirits could be included on the licence and the spirits in any case would be located behind the counter. He advised that the Committee did not need to consider what would happen if the

licence was to be transferred. The Council could review the licence if a different operator at the premises began to offer cheap alcohol for sale. In respect of the Dispersal Order, he suggested that the Council or the Police could ask retailers not to sell alcohol on Mischief Night. A condition could also be placed on the licence which stated that if the Police requested, operators should not sell alcohol on Mischief Night.

Sgt Higgins advised that the issue of alcohol related crime was not only in relation to Mischief Night that was why the Dispersal Order was in force for a longer period of time although he acknowledged that it was a good idea.

In terms of petrol drive offs the applicant's Legal Representative advised that the applicant did not have any intention to sell alcohol from pumps. Sgt Higgins advised that some operators forced customers to pre-pay for petrol. The Legal Representative advised that very few operators specified pre-payment for petrol. He stated that drive-offs for non-payment of petrol had nothing to do with the risk of people stealing wine.

Sgt Higgins advised that the Police acknowledged the assurances given by the applicant about the spirits being behind the counter but the issue was that the premises could not control the theft of beer. In his view if people stole petrol they could also steal alcohol. The Legal Representative advised that there were no instances of theft at the premises and he found it difficult to accept that the sale of alcohol would present such a risk.

The Area Manager of the premises advised that if a person filled up with petrol and entered the store and left the premises without paying then it was classed by the Police as a civil matter.

A member queried the level of impact on Police resources that alcohol fuelled anti-social behaviour could have. Sgt Higgins advised that it made a big impact. The Dispersal Notice in October/November 2014 was not the first Dispersal Notice and the enforcement involved placed a big drain on resources. There had been particular problems in relation to criminal damage on Coniston Avenue which was the link road to the shops and St Mary's Walk.

In response to a query whether there had been an increase in anti-social behaviour because of the sale of alcohol, the Committee was advised that the Spa store had held a licence for a long time. The other two premises licences were relatively new. The Police would need to obtain baseline data for when there was only the Spa store with a premises licence.

The Chair invited the objectors to present their case

Councillor Arundale

Councillor Arundale advised that he was speaking on behalf of the residents of Kader Ward. He advised that he appreciated the conditions offered by the applicant but the issue was the number of premises in the area already selling alcohol. He appreciated that the applicant had addressed the issues about the sale of alcohol, through the night. In respect of the LNR he was concerned about the issue of excess litter. He accepted that the premises were offering to place litter bins at the premises but people often consumed drink after they left the premises.

Secretary of Lodore Residents Association

The Secretary of Lodore Residents Association advised that although she had been impressed by the presentation of the case, and appreciated the fact that Rontec were a responsible firm, residents in the area were still very concerned about the level of alcohol fuelled anti-social behaviour in the area. It was a residential area and there was no requirement for another licensed premise. Residents should be protected and given priority over profit.

Summing Up

The Police

Sgt Higgins advised that although the conditions offered by the applicant were positive and worthwhile, the area suffered from existing anti-social behaviour problems. The Dispersal Order was issued to tackle issues with anti-social behaviour and in the view of the Police, granting the licence and adding further availability of alcohol would increase the existing problems of anti-social behaviour.

The Applicant

The applicant's Legal Representative acknowledged the fact that the Police had no objections to the grant of the LNR licence. He acknowledged the concerns of Councillor Arundale with regard to litter however it was a limited extra facility to sell hot coffee as the applicant could already sell cold drinks.

He noted the objections re availability and more alcohol creating anti-social behaviour however the premises were not located in a cumulative impact area and evidence would need to be provided to prove that the grant of the licence would add to the issues in the area. The Legal Representative stated that it was not about the number of licences in the area, it was about the need for the premises to adhere to strict operating conditions.

If the premises were intending to sell single cans, it would attract young people to the store. At the moment young people did not come into the store. The grant of the licence with restrictions would strengthen the enforcement power of the Police and would not add to anti-social behaviour or crime.

The Legal Representative acknowledged that residents should be protected and the Police and the Council could improve controls on existing licences.

The Legal Representative requested the Committee to grant the licence but he acknowledged that the Members may wish to look at the hours to ensure that the premises were not selling alcohol any later than the existing licensed premises in the area.

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.

All interested parties were called back into the room and the Chair announced that the Council's Legal Officer would like to clarify a legal point.

The Council's Legal Officer referred to Sec 176 of the Guidance paragraphs 5.21 and 5.22 in relation to the sale of alcohol from premises which were used primarily as a garage. The Legal Officer also read extracts from the case *Murco Petroleum Ltd v Bristol City Council* - 30 July 2010 to all those present.

The applicant's Legal Representative referred to a case in Wokenham where none of the representations had triggered the issue of primary use and the decision had been to grant the application.

The Legal Representative advised that his practice under the Licensing Act 2003 was not to submit data with regard to footfall etc. Section 17 of the Licensing Act 2003 specifies the information that an applicant is required to produce. Section 18 states what the Committee is required to do to determine the licence application. It did not include any requirement to submit information with regard to primary use. Section 176 applied after the licence had been granted and it required the applicant to monitor primary use.

The Committee was advised that Rontec did not apply for a licence unless the data had already been checked. The issue was usually raised before the hearing took place but in applications where this was not the case, a condition was usually offered.

The Legal Representative stated that in the *Murco Petroleum Ltd v Bristol City Council* case, Bristol City Council had not asked for data about garages. The Legal Representative advised

that the Home Office had asked for his views on the guidance and there was no requirement for a Committee to check primary use data before a licence was granted. He advised that this was not a ground under Section 18 of the guidance for the Committee to refuse the licence. The condition offered by the applicant complied with Section 176 of the guidance. There had been no issues with other local authorities with regard to this issue as it was generally accepted as the way forward.

The Legal Representative advised that the final paragraph in the guidance in relation to this issue stated that when there was insufficient evidence to establish primary use, it was for the licensing authorities to decide whether to grant a licence and deal with any issues through enforcement action.

The Committee was advised that the Legal Representative had sought an opinion from Philip Colvin QC on this issue and Philip Colvin was the Legal Representative that had acted for Bristol City Council in the above case.

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.

All interested parties were called back into the room and the Chair announced that as Members had received a vast amount of information in relation to the case, they would like further time to consider the information. The Chair announced that the Committee would convey their decision to all parties within five days.

DECISION

The Committee considered the Applicant's submissions that the authority was not required to look at primary use under Section 176 of the Licensing Act before issuing a licence.

The Committee considered that Section 176 of the Licensing Act was in force and had not been amended or revoked during the review of and changes to the legislation which came into force in 2012.

Section 176 states that "No premises licence.....has effect to authorise the sale by retail or supply of alcohol on or from excluded premises". Excluded premises include premises used primarily as a garage or which form part of a garage which are primarily so used.

Section 4(3)(b) of the Licensing Act 2003 provides that in carrying out its functions the licensing authority must have regard to the Guidance issued by the Secretary of State under Section 182 of the Act.

The revised guidance which had been put before Parliament was produced as recently as October 2014.

Paragraph 5.22 of the guidance is clear in that the licensing authority must decide whether or not premises are used primarily as a garage and that the accepted approach is based on intensity of use to establish primary use.

The Applicant advised the Committee it does not produce data as to use when making applications.

Representations had been received from the police and local residents which engaged the prevention of crime and disorder, the prevention of public nuisance and protection of children from harm objectives in relation to the sale of alcohol from the premises which is or forms part of a petrol garage. Residents also objected to the provision of late night refreshment.

The Committee noted that it could decide whether or not to grant the licence and deal with any issues through enforcement. However, in view that the premises are clearly part of a petrol station, small in comparison to the whole area and the risk that the exercise of activities to sell alcohol could be unlawful under Section 176, the committee has decided to use its case management powers to enable further evidence to be obtained under paragraph 5.23 of the

Guidance.

It was noted that prior to making an application data is examined by the applicant and therefore Members did not consider it burdensome to provide that information to the Committee for a determination.

In accordance with current legislation, current guidance and the authority provided in *Murca Petroleum Ltd v Bristol City Council 2010* the Committee considers it is obliged to consider whether or not the premises are used primarily as a garage and data in relation to intensity of use is required to assess this.

The Committee therefore decided to adjourn the matter under Regulation 12 of the Licensing Act 2003 (Hearings) Regulations 2005 until Friday 27 at 10.00am in the Oberhausen Room Town Hall Middlesbrough in order for the Applicant to provide the following information requested under Regulation 17 of the Licensing Act 2003 (Hearings) Regulations 2005, as it considers this to be necessary for its consideration of the representations.

1. To provide details of transactions over a period of four weeks, or such longer period so as to establish intensity of use, as recent as possible, at the Premises as follows:

1.1 transactions showing fuel and convenience goods sales together;

1.2 transactions showing fuel sales only;

1.3 transactions showing convenience goods sales only.

2. A floor plan of the store area showing the areas displaying alcohol areas, other convenience goods and late night refreshments. The plan is requested to assist Members in assessing potential impact of the licensable activities, if any, on the licensing objectives raised by the representations.

At the adjourned hearing the Committee will consider all of the relevant information heard at the hearing on the 30 January 2015 and the subsequent information provided prior to making its decision in relation to the application.