

LICENSING SUB-COMMITTEE C

A meeting of the Licensing Sub-Committee C was held on 18 August 2015.

PRESENT: Councillors B E Taylor (Chair) and R Brady and J A Walker.

PRESENT AS OBSERVERS: Councillors Goodchild and Lewis.
J Etherington - Legal Services, Middlesbrough Council.

ALSO IN ATTENDANCE: On Behalf of the Applicant:-
Mohan Palani Samy - Applicant
J Subramaniam - Member of Applicant's Staff.
R Botkai - Applicant's Legal Representative.

Making Representations:-
Sergeant P Higging, PC J Bryan - Cleveland Police, Licensing Unit.

OFFICERS: J Dixon, J Hodgson and D Joy.

DECLARATIONS OF INTERESTS

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

15/2 **LICENSING ACT 2003 - APPLICATION FOR VARIATION OF PREMISES LICENCE:
TUDOR LODGE SERVICE STATION, MARTON ROAD, MIDDLESBROUGH TS4 3SE, REF:
OL/15/10.**

A report of the Assistant Director of Improving Public Health had been circulated outlining an application to vary the Premises Licence in respect of Tudor Lodge, Marton Road, Middlesbrough, TS4 3SE, Ref No. OL/15/10.

The premises currently operated during the following hours:-

Summary of current Licensable Activities and Hours

Sale of Alcohol (off sales) - 6.00am to midnight daily.
Late Night Refreshment - 11.00pm

Full details of the application to vary were attached at Appendix 1 and a copy of the current premises licence and accompanying operating schedule was attached at Appendix 2 to the submitted report.

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

The applicant, who was present at the meeting accompanied by an employee at the premises in question and his legal representative, confirmed that copies of the report and Regulation 6 Notice had been received.

Details of the Application

The Senior Licensing Officer presented the report in relation to an application to vary the premises licence in respect of Tudor Lodge, Marton Road, Middlesbrough, received on 30 June 2015, as outlined above. The applicant had advertised the application, as required by the Licensing Act 2003, in the Evening Gazette on 2 July 2015, 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 operated in association with a petrol filling station, located at the junction of Marton Road and Ladgate Lane, in close proximity to residential properties. A location plan was attached at Appendix 3.

The premises had operated with the benefit of a Premises licence since November 2005 and,

on 9 July 2013, the Premises Licence was transferred to the current licence holder.

The Panel was advised that the applicant had submitted applications to vary the Premises licence on two previous occasions and those applications were considered by Members on 28 November 2013 and 11 August 2014 respectively.

On 28 November 2013, Members considered the application to vary the Premises Licence to allow the sale of alcohol 24 hours daily and determined to grant the application in part by granting the sale of alcohol from 6.00am to midnight daily and to grant the variation for late night refreshment until 5.00am. Members also modified a number of proposed conditions to ensure they were clear, enforceable and appropriate to promote the licensing objectives.

On 11 August 2014, Members considered a further application to vary the premises licence to allow the sale of alcohol 24 hours daily and refused the application on that occasion.

A representation was received from Cleveland Police on 23 July 2015, objecting to the application on the grounds of the prevention of crime and disorder, the prevention of public nuisance, public safety and the protection of children from harm (attached at Appendix 4).

Further information submitted by Cleveland Police to support its representations were circulated to all relevant parties, under separate cover, on 12 August 2015.

Applicant in Attendance

The applicant's legal representative presented the case in support of the application to vary. The applicant's legal representative pointed out that the original application to vary, in 2013, had been for the sale of alcohol 24 hours daily, however, the applicant had voluntarily reduced the terminal hour to 12.00 midnight.

The Committee was informed that there had been some confusion as to the planning status of the premises and it was confirmed that the premises was initially granted temporary permission to trade 24 hours daily. The position had been reassessed and found not to have a detrimental impact on the surrounding area and was subsequently granted permission to trade 24 hours daily in June 2015.

It was highlighted that there had been objections from local Councillors and Environmental Health in relation to previous applications to vary and the application was refused on the grounds due to existing anti-social behaviour. The Police had expressed concerns in relation to having insufficient resources to cope with any adverse impact on crime and disorder that might occur as a result of an extension of the licence, however, it was highlighted that there had been no Police call-outs during the night since the premises had been operating on a 24-hour basis. It was also noted that Police Officers visited the premises most nights in a different capacity as they would call in to enjoy a coffee and the applicant liked the fact that there was a regular Police presence.

Members were advised that the applicant kept an incident log and refusals log - with the majority of refusals relating to tobacco sales - and occasional alcohol refusals. All staff working at the premises had been appropriately trained and there had been no incidents of people being drunk on the forecourt of the premises. The applicant's legal representative stated that the incidents of anti-social behaviour that had occurred were not directly associated with the premises and had generally occurred on the nearby housing estate. There had been no complaints made by local residents since the 12.00 midnight licence was granted or since the store had been trading 24 hours daily.

The applicant's legal representative referred to the additional Police evidence and the incidents listed during the period 1 July 2014 to 30 June 2015. There had been 29 incidents of anti-social behaviour in the area, 20 of which were alcohol-related. The applicant's legal representative stated that just two of those incidents had occurred after 10.30pm and both incidents related to people refusing to pay taxi fares. It was highlighted that the applicant was seeking to extend the premises licence between 12.00 midnight and 6.00am daily. The applicant's legal representative stated that, having examined the incidents listed, the majority

had occurred in the housing estate behind the premises, with other incidents occurring on or around Marton Road or Stokesley Road. It did not appear that the Police had identified the area as a hotspot for crime and disorder but acknowledged that there were problems in the area. The Police had submitted that, by granting the variation, there would be an impact on anti-social behaviour, however, it appeared that there was no evidence to suggest that this would be the case and the extension of the premises licence till 12.00 midnight had not resulted in further anti-social behaviour.

The applicant's legal representative referred to the introduction of the statement from the Council's Public Health Officer and confirmed that this had been a one-off incident. It related to a packet of crisps being stolen from the store of the premises and the cashier at the store had not acted correctly in response to the incident. The employee was later disciplined and no longer worked at the premises. It had also been highlighted that the applicant was in breach of his licence conditions as Lambrini had been on display in the store. The breach related to the condition of 'no perry to be sold' and the applicant advised that he had been unaware that Lambrini was a perry product and had not intentionally breached the condition.

Members were advised that during the night, the premises operated a 'pay window' and that the doors to the store were locked, therefore, there was no risk of theft from the store during the additional hours being sought.

Reference was made to page 40 of the Council's Licensing Policy in relation to off licences and a range of conditions that should be considered, including CCTV, Challenge 25, maintaining a refusals log, sensible alcohol displays - all of which had been complied with by the applicant.

The applicant's legal representative stated that Section 182 of the Government Guidance stated that shops should be able to match their hours for the sale of alcohol with their trading hours unless there was good reason not to and that good evidence was available to show that it was likely to add to crime and disorder.

The applicant's legal representative acknowledged that it was difficult for the Police and for the applicant as the Police evidence did not support that there was a problem late at night.

The applicant's legal representative reminded Members that the Licensing Act was permissive legislation, allowing licences to be granted. Should problems arise, a mechanism for review was in place. It was highlighted that there had been no objections from local residents or local Councillors and Members were asked to consider granting the variation.

Questions to the Applicant from those making representations - Cleveland Police

Sergeant Higgins, Cleveland Police, was present at the meeting to make representations and was afforded the opportunity to ask questions of the applicant. The following issues were raised:-

- It was noted that Mr Talari was named as the DPS on the Premises Licence at that his address was in Cambridge and it was queried whether this was still the case. The applicant confirmed that Mr Talari worked at the premises and rented a property locally.
- Sergeant Higgins referred to the breaches of the premises licence conditions identified by the Public Health Officer, who had been working as a Licensing Officer at the time, and it was queried who was in day to day control of the premises. The applicant advised that the DPS was in charge of the premises and stated that he had not been aware that Lambrini was a perry product but removed it immediately once the breach was identified. A further visit from a Licensing Officer was made within six months and everything was fine.
- The applicant was asked what control he had over the alcohol once it had been sold to a customer. The applicant's legal representative responded that it was an impossible question to answer and that the applicant could not be responsible for what happened to the alcohol once the customer had left the premises and that this was the case for any store.
- It was queried what type of customers the applicant expected to use the premises to

- purchase alcohol between 12.00am and 6.00am. The applicant's legal representative stated that there would be a range of people that would use the premises, most likely those who worked night shifts on their way home from work, or people travelling home in taxis, as those people needed to use 24 hour stores for their shopping.
- Sergeant Higgins expressed concern that people who were already drunk would go to the premises to buy more alcohol. The applicant's legal representative stated that the applicant was responsible enough not to sell alcohol to a drunken person.
 - Sergeant Higgins highlighted that the applicant had last applied to vary the premises licence in August 2014 and asked what had changed since that time. The applicant's legal representative stated that the premises had been trading 24 hours a day (without the sale of alcohol) but had been selling alcohol up to 12.00 midnight and that no incidents had been linked to this.
 - Sergeant Higgins queried whether, during the past year, there had been any change to the operation of the store or to the area in which it was situated. The applicant's legal representative stated that the area had not changed but there had been investment nearby with the development of the new sports complex.

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 Panel Member felt that if there was a good reason for the sale of alcohol between midnight and 6.00am, there would be a significant amount of refusals recorded in the refusals book between those hours and it was queried how many refusals of alcohol sales there had been after midnight and before 6.00am. The applicant's legal representative responded that he had seen some refusal entries but not many.
- The issue of staffing was raised and it was highlighted that the Public Health Officer's statement stated that she considered that staffing levels had not been sufficient at the time of the incident and it was queried whether this had now changed. The applicant advised that there were two members of staff on the premises between 5.00pm and 8.00pm, then one member of staff present between 8pm and 6.00am. The night-time cashier changed at 10.00pm (till 6.00am) and at this point the door was locked and there was no entry to the premises, with a pay window being in operation during this time.
- Reference was made to the sale of perry products and the instance when the licence holder was found to be selling Lambrini from the premises. The applicant's legal representative reiterated that this had been rectified immediately and highlighted that many licence holders were not aware that Lambrini was a perry product covered by the condition.

Relevant Representations

Cleveland Police

Sergeant Higgins and PC Bryan from Cleveland Police were in attendance at the meeting to present the representations in relation to the application.

Sergeant Higgins stated that there were problems with alcohol-related anti-social behaviour in the area where the premises were situated and it was the view of Cleveland Police that the sale of alcohol beyond 12.00 midnight would increase problems. Sergeant Higgins stated that the premises was situated close to a housing estate and that PC Bryan's statement showed the levels of anti-social behaviour that had occurred in the area in the past 12 months. A map was attached showing where the incidents had occurred.

It was highlighted that PC Bryan had recorded 20 of the incidents as being alcohol-related. This was due to the information provided by the caller when reporting the incident. The other 29 incidents were not reported as alcohol-related, however, that did not mean that alcohol was not involved.

Sergeant Higgins referred to PC Bryan's statement and read aloud the details of several of the

incidents. Sergeant Higgins highlighted that whilst Cleveland Police were the sole objectors to the application, local residents and Councillors had opposed the previous application and pointed out that some of the reports made by residents to the Police referred to anti-social behaviour happening every night and that alcohol was a common factor.

PC Bryan stated that she knew the local area well and had spoken to local PCSOs and it would appear that residents were reluctant to come forward with representations and to attend the Licensing Committee. The Council's legal representative advised that it was for the Panel to determine how much weight it gave to this information as no residents were present to confirm or deny this. Sergeant Higgins stated that although no local residents were in attendance, the levels of anti-social behaviour in the area had not reduced since the previous application was made when local residents had objected.

Reference was made to the statement submitted by the Public Health Officer. Sergeant Higgins stated that it was of concern to the Police that there had been breaches of the licence conditions at the premises.

Sergeant Higgins summarised that the area in which the premises was situated suffered from alcohol-related anti-social behaviour. It was acknowledged that the problems tended to occur prior to 12.00 midnight, however, the Police wished for it to remain that way.

Reference was made to 7.5 of the Council's Licensing Policy which stated that, in residential areas, the local authority would expect all licensable activity to stop at 11.00pm to prevent public nuisance. Sergeant Higgins contended that the premises was situated in a predominantly residential area that already suffered with anti-social behaviour. Sergeant Higgins believed that if a later licence was granted, there would be an increase in anti-social behaviour later at night and that the licensing objectives would be undermined.

Summing Up

Those Making Representations - Cleveland Police

Sergeant Higgins summed up by reiterating that Cleveland Police believed that there was existing anti-social behaviour in the area and that this problem would extend into the night if the variation was granted, undermining the licensing objectives.

Applicant

The applicant's legal representative summed up by stating that the premises was already trading 24 hours a day and that this had not had any impact on the surrounding area. He stated that the existing problems with anti-social behaviour occurred during the day and evening and predominantly occurred on the nearby housing estate. The applicant's legal representative considered that there was no evidence within the Police statement to suggest that there were problems after midnight and highlighted that just two of the Police incident reports referred to problems occurring after midnight.

The applicant's legal representative referred to the Council's Licensing Policy, 9.39 which stated that the Licensing Authority would not normally seek to limit the hours during which alcohol could be sold for consumption off the premises. It was highlighted that the premises was not located in a cumulative impact zone.

The applicant's legal representative stated that the statement submitted by the Public Health Officer was historical and that no action was taken by officers and that it had been a one-off incident and the issues identified had been addressed and rectified by the applicant.

The applicant's legal representative stated that the Police had acknowledged that there was little anti-social behaviour in the area late at night and suggested that if the variation was granted, the applicant would be happy to return to Committee in six months' time, if there was an increase in anti-social behaviour beyond midnight - at which point the Police would be in a strong position to request a review of the licence.

The applicant's legal representative stated that the applicant was confident that the variation would have no impact on crime and disorder.

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 Tudor Lodge, Marton Road, Middlesbrough, TS4 3SE, Ref No: OL/15/10, be refused, for the following reasons:-

1. Having considered all evidence and submissions, the Committee believed there was a risk of an increase in crime and anti-social behaviour if the current licensing hours for the sale of alcohol were extended beyond midnight.
2. The Committee had regard to the location of the premises, which were situated in a primarily residential area.
3. The Committee had considered paragraph 9.12 of the Government Guidance which stated that the Police were the main source of advice on matters relating to crime and disorder.
4. The Committee had considered paragraph 9.39 of Middlesbrough Council's Licensing Policy and decided to depart from the policy statement because of the increased risk in crime and disorder.
5. The Committee considered that it was not possible to grant the application in whole or in part without undermining the Licensing Objectives of preventing crime and disorder.

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 Cleveland Police.

The Chair advised the applicant that a letter, with full, detailed reasons for the decision, would be sent to him within five working days.

The applicant was also advised of his Right of Appeal to the Magistrates Court within 21 days of the decision.