

LICENSING SUB-COMMITTEE C

A meeting of the Licensing Sub-Committee C was held on 16 November 2015.

PRESENT: Councillors B E Taylor (Chair); R Arundale and R Brady

ALSO IN ATTENDANCE: Representing the Applicant:

Applicant - S Ladheep - North East Convenience Stores
Applicant's Representative - G Sherratt - Licensing Matters

Objectors:

Councillor S Biswas and S Dean - Acklam Ward Councillors
Chair and Secretary of Acklam Community Council

OFFICERS: B Carr, C Cunningham and J Hodgson

DECLARATIONS OF INTERESTS

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

15/4 **APPLICATION FOR PREMISES LICENCE: NISA LOCAL, 1 NEWBRIDGE COURT, MIDDLESBROUGH TS5 7NQ**

A report of the Assistant Director of Improving Public Health had been circulated which outlined an Application for a Premises Licence in relation to Nisa Local, 1 Newbridge Court, Middlesbrough, TS5 7NQ. Ref No. OL/15/11

Summary of Proposed Licensable Activities:

Sale of Alcohol from 6.00am to 11.00pm daily in line with the opening hours of the proposed convenience store.

Full details of the application and accompanying operating schedule had been reproduced at Appendix 1 to the report.

The Chair introduced those present and outlined the procedure to be followed at the meeting. The applicant confirmed that he had received a copy of the report.

The Senior Licensing Officer presented the report in relation to an Application for a Premises Licence in relation to Nisa Local, 1 Newbridge Court, Middlesbrough, TS5 7NQ, as outlined above.

Details of the Application

The Premises consisted of a ground floor unit situated in a parade of other retail units located close to residential properties. The premises were currently not in use, however they had previously been used as a convenience store that traded with the benefit of a Premises Licence between the introduction of the Licensing Act in 2005 and the subsequent surrender of that licence in December 2007.

The Licensing Section did not have any record pertaining to the use of the premises and any alcohol licence in place at the premises prior to the introduction of the Licensing Act.

A representation had been received from Councillor Biswas, Ward Councillor on 28 October 2015, objecting to the application on the grounds of the protection of children from harm. A copy of the representation was attached at Appendix 3 to the report.

A representation had been received from Councillor Dean, Ward Councillor on 26 October

2015, objecting to the application on the grounds of the prevention of public nuisance. A copy of the representation was attached at Appendix 4 to the report.

A representation had been received from Carole Taylor, a local resident on 18 October 2015, objecting to the application on the grounds of the prevention of public nuisance and the prevention of crime and disorder. A copy of the representation was attached at Appendix 5 to the report.

A representation had been received from Acklam Community Council, on 5 October 2015, objecting to the application on the grounds of the prevention of public nuisance, the protection of children from harm and the prevention of crime and disorder. A copy of the representation was attached at Appendix 6 to the report.

A letter was received from S Rodgers, a local resident, in support of the application. The letter of support was attached at Appendix 7 to the report.

Following consultation with Cleveland Police, the applicant had agreed to place additional conditions upon the licence, should the application be approved. A copy of the suggested conditions was attached at Appendix 8 to the report.

The applicant confirmed that the information contained within the report was correct.

Applicant in Attendance

The applicant's representative advised that North East Convenience Stores (NECS) was a family run retail business which was established in 2002. NECS operated 27 convenience stores and 10 post offices throughout the North East employing over 300 people. The businesses operated in a very professional manner and co-existed with the local community, contributing to local charities on a regular basis.

The equipment used by the store was of the highest standard; the CCTV system was fully comprehensive and it covered both inside and outside the premises. The premises intended to operate a Till Prompt and Refusals system which prompted staff members to ask for ID whenever alcohol or age restricted products were scanned. The transaction was not able to continue until an entry was made to confirm that the customer was over the age of 18. The system was used in tandem with the written refusals system.

The Committee was provided with a snapshot of the training. Employees were required to pass the training before selling age restricted products. The training was refreshed on a six monthly basis. NECS also carried out mystery shopper exercises and they also carried out their own test purchases on a six monthly basis. The mystery shopper and test purchases exercises were carried out on a voluntary basis by NECS. NECS also carried out mystery shopper exercises in respect of signage at the premises.

It was anticipated that 10 staff would be employed at the premises with a full-time Manager and the DPS would be local. There would be a layer of Management including the Area Manager, the full-time Manager, an Individual Training Officer (based at Head Office) and the DPS. The Training Officer would ensure that any training that was delivered would be in compliance with the requirements for selling age-restricted products.

NECS was part of the NISA operation. NISA provided a training academy and tools to assist in providing the support and advice required to operate and work at the premises.

The applicant's representative advised that the merits of the case were significant. The company had an exceptional track record. It was acknowledged that residents may have concerns because NECS was a new operator in that particular area and residents may not be familiar with the company.

The Committee was advised that the business was family run and local which meant that there would be more control over the premises. It was anticipated that the business would be ran by a diligent operator and would become part of the community.

The Police had submitted robust conditions in respect of CCTV requirements, Challenge 25 and the requirement to maintain a Training/Refusals Register. The Police had indicated that they were satisfied that with the inclusion of the additional conditions attached at Appendix 8 to the report, that the application met the requirements of the licensing objectives.

The applicant acknowledged the concerns regarding the fact that schools were located within the vicinity of the premises, however if the premises were operated in the appropriate manner, then there would be no issues with regard to underage sales to children.

It was highlighted that the operating times of 6.00am to 11.00pm were standard operating hours for NECS. The Licensing Guidance stated that stores should be allowed to sell alcohol during the hours that the store was trading. If the hours were restricted, the alcohol would have to be covered during the hours that the store was not allowed to sell alcohol otherwise the operator would be committing an offence. Restricting the hours in respect of the sale of alcohol would be expensive and burdensome for the operator.

The applicant's representative re-iterated that the conditions suggested by the Police were robust, the operator was very professional and she urged Members to grant the application for the hours requested.

A Member queried whether the operator would receive advance warning of the mystery shopper and test purchase exercises. The Committee was advised that the checks were random. The staff at the premises received feedback a few days after the exercise had taken place with regard to whether the store had passed or failed the test. The prompt feedback would enable stores to check their CCTV system to ascertain which members of the staff were on duty at the time of the test purchase/mystery shopper exercise.

The Committee was advised that 20% of the items on sale would constitute alcohol although the alcohol would not take up 20% of the floor space. Members were shown the exact proposed location of the alcohol on the plan included with the application.

In response to a query with regard to the number of staff it was proposed to employ, Members were advised that it depended on how well the store traded. There would be a minimum of three staff but this could be increased dependant on the turn over of the store. There would however be a minimum of three staff working on an evening in the first instance.

The Committee was advised that the applicant had worked with the Police and agreed conditions to ensure that the store would operate in a responsible manner.

In response to a query with regard to whether the store intended to sell perry, Members were advised that the store did intend to stock perry but it was a very small range. The applicant advised that NECS was a responsible retailer and they liked to stock a full range of products as this is what the customers required.

In response to a query from the Council's Legal Officer with regard to whether the premises had planning permission for the opening hours requested, Members were advised that the owner was currently discussing this issue with the Planning Department.

A Member queried whether the facility of a Premises Licence would depend on whether the shop became operational. The applicant advised that the company would not be able to operate a convenience store without the facility of a Premises Licence.

The Ward Councillor advised that many residents had indicated that they welcomed the facility of a new convenience store as it would enhance the area but they did have concerns regarding the operating hours in respect of the sale of alcohol.

The other Ward Councillor advised that the main concern for some residents was the protection for children from harm. He stated that the premises were in the vicinity of two schools, one containing 1000 pupils. He expressed concern that children would see the alcohol on a morning before they went to school. The Ward Councillor stated that in his view,

he could not see any reason why the alcohol could not be covered.

Many of the residents in close proximity to the premises were elderly and did not require alcohol. He advised that he agreed in principle with the application but he did not agree with the operating hours. The Councillor stated that in his view the sale of alcohol should not commence until 9.00am however he did not have any issue with the sale of alcohol until 11.00pm.

The Secretary of Acklam Community Council stated that residents had indicated that the 6.00am time for the sale of alcohol was too early and the 11.00pm finish was too late. In response to a query with regard to the approximate percentage sale of alcohol between 9.00pm and 11.00pm, the Committee was advised that it depended on the demographics. The stores did sell off-licence products on a morning but they also sold other convenience goods.

A Member of the Committee suggested that the applicant might want to consider restricting the sale of perry products.

Summing Up - Objectors

Councillor Biswas advised that his objection to the application was mainly to do with the protection of children from harm objective.

The Secretary for Acklam Community Council advised that residents were concerned about the opening time in the morning. A resident from Parkfield Avenue had complained about nuisance in the area and had expressed concern about the lateness of the closing time.

Summing Up - Applicant

The applicant's representative advised that the objections were clearly with regard to the proposed open times for the store. The Committee was advised that this application did protect children from harm. It was the responsibility of the retailer to operate in such a way to ensure that children were protected; it was not about preventing the sale of alcohol.

The applicant intended to ensure that Challenge 25 was operational within the store and there would be till prompts to remind the till operators to question people about their age. The operator had a successful record in ensuring that children were protected since 2002.

The Committee was advised that alcohol was a legal drug. Children would be able to see the alcohol in the shop at 3.45pm after they finished school and at the weekend. What was the difference if they saw it before school because they would still be unable to obtain the alcohol. There should be no restrictions placed on the times for sale of alcohol only if the Committee had evidence backing up residents' concerns.

No parents had individually objected and screening the alcohol would cost thousands of pounds. It was standard practice to grant the same hours for the sale of alcohol as the hours that the store was allowed to remain open. Nobody had disputed the background of the operator and if the licensing operator upheld the licensing objectives on an evening then there would be no reason to not grant the licence for the times when the operator was less busy.

There was the facility to review a licence but it appeared that the responsible authorities were happy with the application. In terms of the sale of perry, this would need to be done on a voluntary basis as there was no evidence of street drinkers in the area.

The applicant's representative requested that Members allow the application and grant the licence as outlined.

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

In reaching the decision Members considered the following:-

1. The Licensing Act 2003 and amended Government Guidance issued under Section 182 of the Act.
2. Middlesbrough Council's Licensing Policy.
3. The case presented by the Applicant and his representative.
4. The representations made by the Ward Councillors.
5. The representations made by representatives from Acklam Community Council.
6. The representations received by residents.

The Committee **ORDERED** that the Application for a Premises Licence in respect of Nisa Local, 1 Newbridge Court, Middlesbrough TS5 7NQ, be granted for the licensable activities listed in the Application, i.e. Sale of alcohol from 6.00am - 11.00pm daily in line with the opening hours of the proposed convenience store, subject to the conditions in the operating schedule modified as follows:-

THE PREVENTION OF CRIME AND DISORDER, PROTECTION OF CHILDREN FROM HARM AND PREVENTION OF PUBLIC NUISANCE**CCTV**

1. A digital closed circuit television system (CCTV) will be installed and maintained in good working order at the Premises and be correctly time and date stamped.
2. The CCTV system will incorporate sufficient built - in hard drive capacity to suit the number of cameras installed, whilst complying with Data Protection legislation
3. The CCTV footage will be of evidential quality in all lighting conditions, particularly facial recognition.
4. CCTV cameras will encompass all entrances and exits to the premises and all areas where the sale or supply of alcohol takes place
5. The CCTV system will have a minimum of 31 days recording.
6. The CCTV system will incorporate a means of transferring images from the hard drive to a format that can be played back on any desktop computer.
7. The CCTV digital recorder will be password protected to prevent unauthorised access, tampering or deletion of images.
8. There will be at all times a member of staff on duty who is trained in the use of the equipment and upon receipt of a request for footage from a responsible authority within 24 hours or such longer period as agreed by the authority requesting the footage or immediately if urgently required for the investigation of serious crime.

CHALLENGE 25

9. Staff must require ID in the form of a current ten year passport, photo card driving licence or PASS logo Identity card from any customer who appears to be under the age of 25 and verify the customer is over 18 before any sale of alcohol is made.
10. Notices must be placed in prominent positions advising customers the Premises operates

a Challenge 25 policy and all customers who appear to be under 25 will be challenged for ID proving they are over 18 in the form of a current ten year passport, photo card driving licence or PASS logo Identity card.

STAFF TRAINING

11. Training in relation to Challenge 25 policy, underage sales, sales to adults purchasing alcohol on behalf of a minor (proxy sales), sales to intoxicated persons, refusal registers, incident records and all other conditions on the Premises Licence must be provided and undertaken by all members of staff (whether paid or unpaid) before he / she makes a sale, supply or delivery of alcohol and at least every six months thereafter.

12. Documented training records must be completed in respect of every member of staff (whether paid or unpaid) and must include the name of the member of staff trained, date, time and content of the training and must be signed by the member of staff who has received the training, Designated Premises Supervisor and the Premises Licence Holder.

13. Documented training records must be kept at the Premises and made available to the police, trading standards or licensing officers on request and / or during an inspection.

REFUSAL RECORD

14. 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. The Refusals Record must be signed by the Designated Premises Supervisor, Store Manager or Premises Licence holder on each page and will be made available to police, trading standards or licensing officers on request and / or during an inspection.

The Committee agreed that the following conditions should be added to the operating schedule to uphold the prevention of crime and disorder, protection of children from harm and the prevention of public nuisance:-

INCIDENT RECORD

15. 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 incidents of crime and disorder at the premises or directly outside of the premises. The incident book must be signed by the Designated Premises Supervisor, Store Manager or Premises Licence Holder and will be made available to the police, trading standards and licensing officers on request and / or during an inspection.

DISPLAY OF ALCOHOL

16. Alcohol must be displayed in the areas specified on the plan attached to the Application for a Premises Licence and must not be extended without the prior written consent of the police and the licensing authority.

17. Super strength beer, lager, cider or Perry of 5.5 % (alcohol by volume) or above should be displayed behind the counter / till area or next to the counter / till area.

REASONS

The Committee acknowledged the fact that residents welcomed the facility of a new convenience store. The Committee recognised the fact that North East Convenience Stores Ltd intended to operate the premises in a responsible manner.

The Committee noted that some residents accepted the premises will open until 11.00pm, but had concerns about the premises opening as early as 6.00am. However, based on the information before it the Committee considered there was no evidence to justify reducing the hours from 6.00am.

The Committee noted that the store would be a convenience store and alcohol would form a

small part of the convenience and therefore agreed to the sale of alcohol being permitted during the convenience store's opening hours. The Committee therefore decided that it was appropriate to include a condition that the display of alcohol is to be in accordance with the plan and that the Premises Licence Holder cannot extend the areas for display of alcohol without the consent of the police and the licensing authority.

In view of the concerns raised by residents in respect of school children visiting the store from nearby schools and the general problems set out in the policy about alcohol related harms in Middlesbrough the Committee decided to impose a condition requiring super strength beers, lagers, ciders and Perry based products to be kept behind or next to the counter.

The Committee also advised that the Premises Licence Holder should give consideration to not selling products which were attractive to an underage or problem drinking market and consider any voluntary arrangement schemes if operating in the area.

The Chair informed the parties to the hearing of their right to appeal the decision within 21 days of receiving the notice and full details of the decision and reasons will be sent in writing to the parties within five working days.