

LICENSING SUB-COMMITTEE C

A meeting of the Licensing Sub-Committee C was held on 19 January 2016.

PRESENT: Councillors B E Taylor (Chair); L Lewis and J A Walker

ALSO IN ATTENDANCE: Representing the Applicant:

Robert Botkai - Legal Representative for the Applicant
R Ainsworth - Rontec
S Neil - Area Manager - Rontec

Representing the Police:

Sgt Higgins

Objecting to the Application:

Secretary of Lodore Residents Association

OFFICERS: B Carr, C Cunningham and J Hodgson

APOLOGIES FOR ABSENCE There were no Apologies for Absence..

DECLARATIONS OF INTERESTS

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

15/6 **APPLICATION FOR VARIATION TO PREMISES LICENCE: CORONATION SERVICE STATION, ACKLAM ROAD, MIDDLESBROUGH: REF.NO. OL/16/01**

A report of the Senior Licensing Officer, Improving Public Health, had been circulated outlining an application for a Variation of Premises Licence in relation to the Coronation Service Station, 245 Acklam Road, Middlesbrough, TS5 7BW, Ref No. OL/16/01.

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

Summary of Current Licensable Activities:

Late Night Refreshment - Monday - Sunday - 11pm - 5am

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

- Recording of refusals;
- Recording of Incidents;
- Till Prompts;
- Sale of single cans, beer, lager or cider;
- Sale of single bottles;
- Perry;
- High strength beers;
- Production of transaction data.

Full details of the proposed conditions were included within the application documentation.

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

The Chair invited the Senior Licensing Officer to present the report in relation to an application for a Premises Licence in respect of the Coronation Service Station, 245 Acklam Road, Middlesbrough, received on 18 November 2015, as outlined above.

It was highlighted that the premises consisted of a garage amongst other commercial premises, on Acklam Road, in close proximity to residential premises. In November 2014 an application was submitted for a Premises Licence. At that time the licensable activities requested were Late Night Refreshment between the hours of 11pm and 5am and the Sale of Alcohol between the hours of 6am - 11pm. Following representations made in objection to the application, the matter was referred to the Licensing Sub Committee where Members subsequently chose to grant the Premises Licence, however the sale of alcohol was excluded from the scope of the licence.

Representations had been received from the following:-

1 December 2015 - Lodore Residents Association - on the grounds of the prevention of public nuisance and the protection of children from harm - attached at Appendix 3 to the report;

16 December 2015 - 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 4 to the report.

The applicant confirmed that the report was correct.

The Chair invited the applicant's legal representative to present the case for the applicant.

The applicant's legal representative advised that the Committee was well aware of the issues surrounding the application and he stated that he did not want to dwell on the issue of primary use.

The Sub Committee was advised that the legal representative had made representations to the Home Office with regard to the Home Office Guidance. Following discussions with the Home Office, the legal representative advised that the Home Office had agreed that the Guidance was incorrect and had reworded Paragraph 5.22 and 5.23 concerning the sale of alcohol at garages to provide clarity.

The legal representative advised that Section 17 of the Licensing Act specified the information that an applicant was required to produce as part of the application process for a Premises Licence and it did not include any requirement to submit information with regard to primary use. The Sub Committee was advised that since the Guidance had been changed none of the other local authorities had requested the submission of data to prove primary use prior to consideration of an application.

The legal representative advised that the applicant had applied for a licence to sell alcohol between the hours of 8.00am until 11.00pm. He advised that the Spa was licensed to be open until 11.00pm but the premises closed at 10.00pm and the applicant would be happy to match the hours of the Spa, if the application was to be granted. The legal representative advised that the applicant had not received a copy of the Late Night Refreshment Licence that had been approved on 30 January 2015.

The Sub Committee was advised that the original application that was submitted on 30 January 2015 had attracted objections from the Police, local residents, Councillors and the Residents Association in comparison to the current application which had only received objections from the Police and the Residents Association.

The legal representative advised that the premises were not situated in a cumulative impact area and he stated that Members needed to be satisfied that the grant of the licence would not have a negative impact on the licensing objectives. Members needed to consider the scale of what the premises were applying to do and how the premises would operate if the licence was to be granted.

The legal representative produced a number of samples of bottles/cans of alcohol that were currently on sale in the stores in the vicinity of the application premises. The legal representative provided Members with a description of the product and the price that the product was available for sale. He advised that many of the products were aimed at young

people.

The legal representative referred Members to the additional conditions offered by the applicant and the layout of the premises plan which was circulated to all those present. The legal representative pointed out where the alcohol and spirits would be stored. The Sub Committee was advised that his clients did not intend to compete with any of the other outlets selling alcohol in the vicinity of the premises on the basis of price as it was likely that the Coronation Service Station's alcohol would be priced at a higher rate.

The premises would be operating a suitable, good CCTV system and staff at the premises would have a panic alarm installed and automatic door locks for their safety. Rontec operated a National Training Programme which was used across the 200 stores it operated.

One of the objections submitted by the Residents Association related to the need for another premises, but this was not a relevant factor. Concern had been expressed regarding the abuse of the alcohol on sale at the premises. The Sub Committee was advised that thousands of petrol stations currently sold alcohol as premises needed to be able to compete on a level playing field. The Sub Committee was advised that if they chose to grant a licence to the premises, the grant of the licence would not have a negative impact on the level of anti social behaviour already prevalent in the area.

The Sub Committee was advised that the data submitted by the police contained information in relation to ;-

- 12 alcohol related incidents of which five were related to the public house across the road from the premises;
- 5 of the incidents did not contain any information where they occurred;
- an incident that occurred at the premises where the customer was refused alcohol because they did not have the relevant ID.

There were no recorded anti social behaviour incidents relating to the petrol station itself. One of the comments submitted by the Police had caused the legal representative concern. The comments was in relation to the theft of petrol, confectionary and other goods showing a propensity for theft.

The legal representative advised that he had examined the information submitted by the Police and of the 28 theft incidents, 27 were petrol drive-offs and they were not relevant to the premises because they did not relate to the shop. The remaining incident was where the customer had asked for tobacco as they were paying for petrol and had ran off with the tobacco. The legal representative invited the police to withdraw the statement in relation to propensity for theft.

The legal representative requested the Sub Committee to grant the licence until at least 10.00pm. He stated that it was an ordinary application for an off licence but the products would be restricted. The level of supervision would be very good. The premises were not situated in a cumulative impact area and there was no direct evidence that the grant of the licence would cause harm.

The Committee was advised that they could restrict the area where alcohol was displayed . The applicant's legal representative pointed out where on the plan, the alcohol would be displayed. He emphasised that the premises had a good CCTV system and they did not intend to sell high strength beer or lager or any single cans.

The Committee was advised that a Training Plan was in place and the premises would record any incidents or refusals etc. The impact of the restricted licence if granted, would be minimal.

The Chair referred to the legal representatives comments that the Guidance had changed. The applicant's legal representative advised that the Committee could only take into account what was required in Section 17 of the guidance. If a licence was granted and the primary use changed then it would not be legal to sell alcohol.

He advised that 5.22 of the guidance only applied once a licence had been granted. Section 176 applied all the way through the licence. He advised that he was a member of a group of lawyers who looked at changes to the Licensing Act and he had written to the Home Office and had received confirmation that 5.22 only applied once a licence had been granted.

The Chair referred to 5.23 of the Guidance and advised that the licensing authority may ask the licence holder to provide further information to help establish what the primary use of the premises. The applicant's legal representative advised that the Committee were trying to determine primary use when it was not entitled to as they were introducing a new test and the Committee were not entitled in law to make a decision about primary use. He advised that the Council's Policy was worded in a similar way to the old guidance and had not been updated in line with the new guidance. The applicant's legal representative requested permission to have an email sent from his office which was from the person at the Home Office clarifying the meaning of the guidance.

Sergeant Higgins from Cleveland Police asked questions of the applicant regarding the number of staff on duty at the store. The applicant advised that there was usually 1 or 2, 2 at peak times. In response to a query with regard to whether the number of staff on duty would change if the licence was granted, the applicant replied that it would remain the same.

Sergeant Higgins advised that the premises would have no control over the alcohol once it left the premises. The applicant's legal representative advised that the premises could not be held responsible for what happened to the alcohol once it left the premises. Sergeant Higgins stated that the premises already had issues with theft and he asked how the premises would deal with issues of theft. The Committee was advised that there were no issues with theft at the premises. It was a small premises and the cashier was in close proximity to the alcohol.

Sergeant Higgins advised that the Police were objecting on the grounds of primary use and he did not agree that the guidance was incorrect. The Police were also objecting because of the location of the premises and the impact that the sale of alcohol would have on anti-social behaviour. He advised that 12 of the incidents of anti-social behaviour were alcohol related and of the further 41, some of the incidents mentioned youths congregating, drinking alcohol.

Sergeant Higgins outlined the incidents detailed at Page 9, 13, 15, 18, 18, 22, 24,30 and 31 of the papers. he accepted that the thefts at the petrol station were primarily petrol thefts but the purpose of highlighting them was to emphasise what occurred when there were only a few members of staff on duty. He accepted that other premises were selling a bigger range of alcohol related products but another premises selling alcohol would add to the problems already in existence.

The applicant's legal representative asked if the Police had visited the other premises in the area selling alcohol recently and he asked what steps had been taken in respect of them selling high strength beers etc to youths. Sergeant Higgins advised that the difficulty that the Police had was identifying which premises the youths had purchased the alcohol from because they could ask the premises to stop selling to youths or review the premises if they had enough evidence.

The applicant's legal representative asked if the Police had requested the premises to refrain from selling high strength alcohol and Sergeant Higgins advised that there was an issue with competition law. The applicant's legal representative asked if Sergeant Higgins was aware of other schemes in operation to reduce the sale of high strength beers. Sergeant Higgins advised that he was aware that a scheme had been challenged in court.

The legal representative for the applicant advised that the LGA had produced guidance on how a scheme could be introduced within competition law. Sergeant Higgins advised that his officers did encourage premises to stop selling high strength alcohol. The applicant's legal representative advised that he was trying to establish what actions the Police had taken to try and prevent the sale of high strength alcohol.

The Chair asked Sergeant Higgins if anti-social behaviour had increased as the number of outlets selling alcohol had increased. Sergeant Higgins advised that there had been problems

in the area for many years and at times, but it was difficult to quantify if anti-social behaviour had got worse because of the increase in premises selling alcohol.

The Chair queried whether there were any Dispersal Orders in place. Sergeant Higgins advised that the law surrounding anti-social behaviour had changed and Dispersal Orders were put in place on a case by case basis by an Inspector. There was no provision to put a Dispersal Order in place for a large period of time. There was a Dispersal Order in place in the town centre for Friday/Saturday nights. The Chair asked that if premises did not sell high strength alcohol or single cans would it assist. Sergeant Higgins advised that it would but the difficulty was getting to that point where premises did not sell such products.

The representative from Lodore Residents Association advised that she was at the Committee because she cared about the area. She advised that if the licence was to be granted she did not think it would make a great deal of difference. She advised that Marlborough Grove was full of empty alcohol bottles and when youths congregated there drinking alcohol, it was intimidating for residents. Youths cut through Honister Grove and broke car wing mirrors but the Police were aware of the issue. There was also an issue with Trimdon Avenue and people cutting through the estate to get there and youths carrying carrier bags with cans of alcohol etc. The Committee was advised that although there was no evidence, residents had advised of the issues.

The applicant's legal representative queried whether if the application was to be granted with the proposed restrictions in place, if the representative thought it would add to the problem. The Committee was advised that she did not think many youths would visit the alcohol for alcohol so did not envisage many problems if restrictions were in place.

A Member commented that it may be that the Licensing authority needed to look at existing licences as part of the public health responsibilities of the authority.

Summing up - Police

The Committee was advised that the area already suffered from significant problems with anti-social behaviour with large groups of youths congregating on the fields and outside the shops carrying out anti-social behaviour to properties. There were already a number of outlets in the vicinity of the premises selling alcohol.

The Committee had heard that the applicant would limit/restrict the range of alcohol to be sold but they had also heard that at times, only one member of staff would be on duty and that raised concerns about the amount of control over the alcohol. There was also no control over what happened to the alcohol once it left the premises. The view of the Police was that petrol stations cannot be granted a licence to sell alcohol and there had been no evidence of primary use provided.

The Applicant

The applicant's legal representative showed members of the Committee a copy of the email he had received from the Home Office clarifying the guidance. The Committee was advised that there was an issue with regard to the way in which Middlesbrough was interpreting the guidance, or the way in which members were being advised. The law did not say that petrol stations were banned from having a licence to sell alcohol because the licence did not have effect if the premises were primarily a garage.

The applicant had over 200 licences and none of the other local authorities had asked for evidence of primary use and the production of evidence was not a requirement of Section 17. The Committee needed to consider whether the grant of the licence would be likely to have an impact. There were restrictions on the licence to ensure responsible retailing which would not add to any problems in the area. There were no issues with regard to theft at the premises except through petrol drive offs and the theft of fuel did not lead to the theft of other items.

Most petrol stations operated with 1 or 2 staff and the Police had suggested that if there was only 1 member of staff on duty, they would not be able to control what happened to the

alcohol when it left the store. The number of staff on duty was irrelevant because it would still be the case. Rontec carried out risk assessments and all the relevant policies required were in place. Having a responsible operator in the vicinity of other operators could encourage other stores to trade responsibly. The legal representative referred to a successful scheme in Ipswich which had led to an improvement in conditions.

The grant of the licence would not add to issues of anti-social behaviour and the premises would not be selling high strength alcohol. The representative from the residents association had stated that if the licence was to be granted with restrictions it would probably not add to the anti-social behaviour in the area. The authority did have the power to Review the licence if there were any issues and the Police could always advise the applicant if they had any issues. The representative from the residents association emphasised that she did not want her honesty to imply that she condoned the grant of the licence.

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.

Whilst the Committee were determining the application the Senior Licensing Officer advised that the email that the applicant's legal representative had referred to earlier in the meeting had now been received. The Chair invited all of the interested parties back into the room whilst the Committee examined the email.

All interested parties other than the officers of Legal Services and Members Office, withdrew whilst the Committee determined the application.

DECISION

The Committee considered the Application, representations, Middlesbrough Council's policy and government guidance.

The Committee decided to refuse to grant the application to vary the Premises Licence.

The Committee considered that granting a licence for the Premises to sell alcohol would not be appropriate for the promotion of the prevention of crime and disorder because the sale of alcohol from a garage is a criminal offence under the Licensing Act 2003.

The Committee did not consider the proposed condition in relation to primary use was appropriate in this particular case because irrespective of the condition it is likely that alcohol sales would be illegal from the Premises which is considered by the Committee to be in an area with serious problems of alcohol fuelled anti-social behaviour saturated with licensed premises.

The Committee considered that Section 176 of the Licensing Act effectively makes it illegal and therefore a crime to sell alcohol from a garage. It considered that Section 176 was not amended or revoked by the overhaul of the Licensing Act in 2012 nor was it amended or revoked by the Deregulation Act 2014 which made other changes to the licensing Act from October 2015. Therefore the Committee considered that it is Parliament's intention that Section 176 of the Act remains in force.

The Applicant informed the Committee that in accordance with Government Guidance it was not required to show or provide information whether the premises are or form part of Premises primarily used as a garage.

Therefore, based on the information before it, namely that:

- The Premises are known as the Coronation Service Station;
- The Premises are described as a petrol forecourt store;
- The small size of the Premises where fuel and other goods are sold;
- The local knowledge of the Members of the area and availability of other supermarkets and convenience stores in the area;

- No information as to intensity of use was made available;

The Committee considered it was likely that the Premises would be primarily used as a garage and therefore it was likely the sale of alcohol would be an offence by virtue of Sections 176 and 136 of the Licensing Act 2003. Based on the information received the Committee could not be satisfied that the Premises is not primarily used as a garage.

Members did not consider that the guidance at paragraphs 5.22 and 5.23 prohibited the Committee from considering whether the grant of a variation to what appeared to be a garage, where the sale of alcohol may amount to a criminal offence, would promote the prevention of crime and disorder and other objectives where relevant representations had been received. It considered that it was bound to consider it in accordance with the binding High Court decision in R(on the application of Murco Petroleum Limited) v Bristol City Council 2010 which does not appear to have been overruled.

Relevant representations were received from the Police and the Lodore Grove residents association about the problems with crime and disorder, anti social behaviour and nuisance in the area, many of which were alcohol fuelled and involved youths. The representations also specifically referred to the sale of alcohol from garages prohibited by Section 176 of the Act.

The Committee therefore considered it was not appropriate for the promotion of the prevention of crime and disorder, public nuisance and the protection of children from harm to grant the variation for the sale of alcohol, in an area considered to be blighted by anti-social behaviour and disorder which already has a high number of Licensed Premises, to Premises whereby the sale of alcohol itself may be an offence. For the reasons already given the Committee considered that the conditions proposed by the Applicant would not be appropriate or uphold the objectives.

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.