

LICENSING SUB-COMMITTEE C

A meeting of the Licensing Sub-Committee C was held on 29 February 2016.

PRESENT: Councillors B E Taylor (Chair) and T Lawton and J Rathmell.

ALSO IN ATTENDANCE: On behalf of the applicant:-

A Emakpor - Applicant.
S Catterall - Applicant's legal representative.
J Wilson - Applicant's mother.
W Emakpor - Applicant's partner
M Spencer - Local Resident

Making Representations:-

Councillor A Hellaoui - Ward Councillor for Newport Ward.
Councillor L Lewis - Ward Councillor for Central Ward.
P Armstrong - Resident.
U Scott - Secretary, Newport Settlement Hub.

OFFICERS: C Cunningham, J Dixon and T Hodgkinson.

DECLARATIONS OF INTERESTS

Councillor Lawton advised all parties that he was a distant relative of Councillor Hellaoui; who was present at the Hearing to make representations. None of the parties had any objections to Councillor Lawton considering the application.

15/11 **LICENSING ACT 2003 - APPLICATION FOR PREMISES LICENCE: 16 GARRETT WALK, NEWPORT, MIDDLESBROUGH, TS1 5NE. REF: OL/16/3**

A report of the Assistant Director of Improving Public Health had been circulated outlining an application for a Premises Licence in relation to 16 Garrett Walk, Newport, Middlesbrough, TS1 5NE, Ref No. OL/16/13.

Summary of Proposed Licensable Activities and Hours

Supply of Alcohol (off sales) - 9.00am to 8.00pm Monday to Friday and 8.00am to 8.00pm Saturday and Sunday.

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

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

The applicant, accompanied by her legal representative, family Members and a local resident; and Ward Councillors and local residents (making representations), were in attendance at the meeting and confirmed that copies of the report and Regulation 6 Notice had been received.

The Principal Licensing Officer advised that Cleveland Police had submitted a representation on 20 January 2016 objecting to the application on the grounds of the prevention of crime and disorder and the prevention of public nuisance. Following negotiations with the applicant, several additional conditions were agreed between the Police and the applicant, resulting in the Police withdrawing its representation. The conditions agreed with the Police were outlined in the submitted report.

Details of the Application

The Principal Licensing Officer presented the report in relation to an application for a Premises Licence in respect of 16 Garrett Walk, Newport, Middlesbrough, TS1 5NE 6PN. The

application was received on 23 December 2015 and was advertised in the Evening Gazette on 31 December 2015, as required by the Licensing Act 2003.

It was noted that the premises consisted of a ground floor retail unit located close to the town centre and in close proximity to residential properties, community centre and a primary school. A location plan was attached at Appendix 2. It was highlighted that a Licensing Sub Committee had previously considered an application in respect of the premises on 4 April 2014. On that occasion Members considered representations from local residents and community groups and chose to refuse the application on the grounds that granting the licence would undermine the four licensing objectives.

The premise was located within the Newport Ward (not Central Ward as stated within the report) which was currently subject to a cumulative impact policy as detailed in the Council's current Licensing Policy.

Between 7 - 20 January 2016, five representations were received in respect of the application - one of which had now been withdrawn (Cleveland Police). There were four remaining representations to be considered, as follows:-

- Councillors Lewis and Uddin - Ward Councillors for Central Ward (attached at Appendix 3).
- Councillor Hellaoui - Ward Councillor for Newport Ward (attached at Appendix 5).
- Councillors Brady and Harvey - Ward Councillors for Newport Ward (attached at Appendix 6).
- A petition submitted by the applicant in support of the application. (The petition did not detail any reasons why the licence should be granted). (Attached at Appendix 4).
- Cleveland Police - attached at Appendix 7 - now withdrawn.

Applicant in Attendance

The applicant was in attendance at the meeting accompanied by her legal representative and two family members. The applicant's legal representative presented the case in support of the application.

The applicant's legal representative stated that the premises consisted of a corner shop serving a small community. The applicant had operated the small convenience store for four years and was familiar with the majority of people living on the estate and the applicant's two children were friends with many of the children in the community. The application for a premises licence was to enable the applicant to sell alcohol from 9.00am to 8.00pm Monday to Friday and from 8.00am to 8.00pm Saturdays and Sundays.

The applicant's legal representative noted that many of the objections were based on the protection of children from harm objective due to a school being located nearby. The legal representative stated that this was a primary school for children up to the age of 11 years and considered that children from the school would not attempt to purchase alcohol. He felt that the objections in relation to this were a 'red herring' and provided an example of another premise selling alcohol in close proximity to a primary school where there had been no issues.

Some of the other objections were based on groups gathering outside of the premises causing anti-social behaviour which the legal representative considered to be very general.

It was acknowledged that the Police had made initial representations, however, these had been withdrawn following the agreement of conditions to be placed on the licence by the applicant. One of those conditions was not to stock, display or sell any lager, beer, cider or Perry product with an ABV content above 6.5%. The applicant did not intend to sell super-strength lagers or ciders and would store alcohol behind the counter.

The applicant's legal representative stated that the applicant had demonstrated that she was a responsible person as she had sold other age-restricted products, such as lotto and tobacco, during the four years she had operated the store. The applicant had successfully passed at least one test purchase and had never been in trouble.

The Panel was advised that the application constituted a business opportunity as there was no off-licence in the immediate vicinity and local residents would like the option of the facility at the store rather than having to go to Union Street or Princes Road. Local customers had demonstrated their support for the application by signing a petition.

Questions to the Applicant

All parties were afforded the opportunity to ask questions of the applicant and the following issues were raised:-

- The Committee made reference to the premises being located within the cumulative impact zone, as set out in the Council's Licensing Policy, and asked whether the applicant was aware of this. The applicant acknowledged this but stated that the shop was located on its own and that local residents wanted to be able to make all of their purchases, including alcohol, at the premises without having to walk further afield.
- In response to several queries raised by the Council's legal representative, the applicant stated that the premises currently opened from 8.00am to 8.00pm. The applicant also confirmed that she had not had any issues with groups of people gathering outside the premises. The applicant showed the Committee a photograph denoting where the entrance to the shop was located in relation to the entrance used by the children for the school.

Relevant Representations

Councillor Hellaoui - Newport Ward Councillor

Councillor Hellaoui, Ward Councillor for Newport Ward, was in attendance at the meeting to present her representations against the application.

Councillor Hellaoui stated that Newport Community Hub, located near to the premises, was a busy establishment and well-used by people of all ages. Councillor Hellaoui stated that there were many alternative premises nearby where alcohol could be purchased including Aldi and Lidl. Councillor Hellaoui felt that if the licence was granted, there would be temptation to buy alcohol close to senior citizens and young people using the Hub and that there would be an increase in anti-social behaviour. Councillor Hellaoui considered children of primary school age could be very influenced by witnessing adults purchasing alcohol and that they should be protected. The premises was located in close proximity to the school and Councillor Hellaoui considered that there were sufficient outlets for people to purchase alcohol without the need for it to be available in the centre of the community. Councillor Hellaoui added that there would be an increased risk in people purchasing alcohol from the premises and standing outside drinking.

Questions to those Making Representations - Councillor Hellaoui

Members of the Committee and the applicant were afforded the opportunity to ask questions of Councillor Hellaoui (making representations), and the following issues were raised:-

- Clarification was sought in relation to the use of the Community Hub. Councillor Hellaoui stated that the Hub was well-used by all ages and groups, including asylum seekers, senior citizens and the disabled.
- The applicant's legal representative asked Councillor Hellaoui to clarify whether she lived in the Ward in which the premise was situated. Councillor Hellaoui responded that she did not but was a regular visitor to Newport Community Hub and added that she had spoken to local residents regarding the application.
- When asked to clarify the number of residents that Councillor Hellaoui had spoken to and whether she had visited the premises, she stated that she had spoken to several residents and had passed the premises many times and knew where it was situated but had not visited it. The applicant's legal representative questioned whether Councillor Hellaoui had spoken to the applicant and she confirmed that she had not.

Councillor Lewis - Central Ward Councillor

Councillor Lewis, Ward Councillor for Central Ward, was in attendance at the meeting to present her representations against the application.

- Councillor Lewis stated that both she and her fellow Ward Councillor, Councillor Uddin, objected to the application. Councillor Uddin was unable to attend the meeting, therefore, Councillor Lewis spoke on behalf of them both.
- Councillor Lewis stated that Middlesbrough had an issue with alcohol-related problems, particularly in the Central and Newport Wards. The premise was situated approximately 50m from the Primary School's playground. Councillor Lewis stated that children needed guidance and that it was not a good example to see adults purchasing and drinking alcohol. Councillor Lewis commented that local residents had stated they did not use the premises and considered that, if a premises licence was granted, vulnerable adults and children would be at risk and there would also be an increase in anti-social behaviour fuelled by alcohol. Councillor Lewis showed the Panel photographs of the premises and their proximity to the school entrance and playground. It was also highlighted that high railings had been erected around the perimeter of the school following incidents of anti-social behaviour and drinking in the school grounds during the day. Councillor Lewis asked the Committee to refuse the application.

Questions to those Making Representations - Councillor Lewis

Members of the Committee and the applicant were afforded the opportunity to ask questions of Councillor Lewis (making representations), and the following issues were raised:-

- The Committee noted that Cleveland Police had withdrawn its representations following the applicant agreeing to a number of proposed conditions. It was queried whether the Police had to take action regarding the anti-social behaviour in the area. Councillor Lewis responded that the Newport Joint Action Group had liaised with the Police over the last few years but the school had erected the railings to stop people coming into the school grounds drinking.
- The applicant's legal representative asked Councillor Lewis whether she had visited the premises. Councillor Lewis replied that she had been to the premises many times, the most recent being around six weeks ago.
- The applicant's legal representative asked Councillor Lewis to advise whether she had spoken to residents regarding the application and, if so, how many. Councillor Lewis replied that she had spoken to around three residents all of whom stated they did not use the shop as it was poorly stocked.
- When asked why Councillor Lewis objected to the premises selling alcohol, she stated that the premises were very small and situated next to a primary school and that children needed to be protected. It was possible that people would loiter outside the shop/school as there had been problems previously.
- The applicant's legal representative stated that the applicant was a responsible person and asked Councillor Lewis whether she had spoken to her regarding her application. Councillor Lewis responded that she had not approached the applicant as she was not the Ward Councillor for the Ward in which the premises was situated, however, children living in her Ward attended the primary school.
- The applicant's legal representative asked Councillor Lewis whether she had undertaken research into the application or with residents to which she replied she had not.
- A Member of the Committee referred to the previous problems alluded to with drinking on school grounds and queried where the alcohol had been purchased from. Councillor Lewis responded that it could have been obtained from anywhere as there were many outlets in the area that sold alcohol.
- It was queried whether the problems had continued since the school had erected the high fencing. Councillor Lewis stated that she was not aware of any further problems but was aware that there had been problems in the past and that she had referred to

this within her letter of objection (page 25 of the bundle). Councillor Lewis stated that residents had been plagued with anti-social behaviour occurring at the ball court within the school grounds during the summer of 2014. A multi-agency approach was taken to resolve the problems.

- The Council's legal representative asked Councillor Lewis to expand upon the anti-social behaviour issue in 2014 referred to within her objection. Councillor Lewis stated that the school had had to erect the fence to prevent people coming onto the school grounds drinking alcohol.
- The Council's legal representative queried whether Councillor Lewis was aware of people gathering outside the premises at the present time. Councillor Lewis confirmed that she was not aware of any issues since the incident with the ball court.
- In response to a query as to whether there were currently any litter issues in the area, Councillor Lewis stated that she was not sure.
- The applicant's legal representative stated that the applicant was able to provide clarification in relation to the issue of the fence being erected at the school. The applicant stated that the fence had been erected due to Eastern European males climbing over the previous (lower) fencing to gain access the school fields to play football. The applicant stated that it was not alcohol-related anti-social behaviour but males using the ball court to play football. Residents had held a meeting in relation to the issue, which the applicant had also attended.

Representations in Support of the Applicant

Applicant's Mother - Julie Wilson

The applicant's mother, Ms Wilson, addressed the Committee in support of the application. She stated that the premise was a small family business that they all ran together. She stated that she was at the premises on a regular basis and had not witnessed groups hanging around or any anti-social behaviour. Ms Wilson stated that the shop provided a service to the community and that the applicant wanted to prove to people that she was responsible to hold a premises licence. Ms Wilson added that she, herself, had worked in pubs and would never serve anyone who was drunk.

Local Resident - M Spencer

Ms Spencer, a local resident, addressed the Committee in support of the application. Ms Spencer stated that she lived next-door to the premises and that the majority of residents living in that area were aged over 50. She felt that residents would be inclined to use the shop, for example if they wanted to call in for a bottle of wine, and did not want to walk the distance to other outlets by themselves at night-time. Ms Spencer stated that there were issues in the area with people drinking and taking drugs and that the premises having a licence would be of benefit to older people that felt vulnerable going out at night.

Summing Up

Applicant

The Applicant's legal representative summed up by first referring to the letter of objection (Appendix 5) submitted by the Newport Ward Councillor, Councillor Hellaoui, whose main objection to the application appeared to be around the proximity of the premises to Newport Primary School. The applicant's legal representative highlighted that those children were aged 11 and under and would not be interested in alcohol. The letter also objected stating that there was a potential for anti-social behaviour associated with the easy availability of alcohol. The legal representative stated that alcohol would not be easily available from the premises as it would operate a Challenge 25 Policy and there would be restrictions on certain types of alcohol being sold. In addition, the applicant was a responsible retailer with seven years' experience of dealing with age-restricted products. The Police and Public Health had agreed conditions with the applicant that they considered to be sufficient to uphold the licensing objectives. The Ward Councillor's letter also referred to a potential for groups to gather around the premises, however, the legal representative stated that there was no evidence of this happening and if it were to happen, it would not be tolerated by the applicant.

The applicant's legal representative submitted that the licence should be granted from 8.00am to 9.00pm and that it would only be as effective as the people running it. Conditions had been agreed which should allay any anxieties. It was highlighted that, since the previous application was made, a high fence had been erected at the school and there was a consensus that there were no problems there at the present time.

Councillor Lewis - Central Ward Councillor

Councillor Lewis summed up by requesting that the application be rejected in order to protect children and the community.

It was confirmed that there were no further questions and all interested parties other than the Officers of Legal Services and Democratic Services, withdrew whilst the Committee determined the application.

Subsequently all the parties returned and the Chair announced the Committee's decision.

DECISION

ORDERED that the application for a Premises Licence in respect of 16 Garrett Walk, Middlesbrough, TS1 5NE, be refused, for the following reasons:-

1. In January 2016 Middlesbrough Council, as Licensing Authority, brought into force its renewed Statement of Licensing Policy. In this Policy a new cumulative impact policy had been brought into force specifically in respect of off-licence premises in various Wards of the Authority. 16 Garrett Walk was situated in Newport Ward which was subject to the cumulative impact policy.
2. In the Statement of Licensing Policy, from paragraph 10.20 onwards it stated, amongst other matters, that work be carried out to identify the location of off-licence premises and links to crime and disorder, anti-social behaviour and alcohol attributable admissions to James Cook University Hospital. The Policy stated the evidence showed that there was a relationship between the density of off-licence premises and crime and disorder and anti-social behaviour. Members also noted that Newport Ward was one of the Wards with the highest levels of crime and anti-social behaviour and number of off-licence premises.
3. The Policy stated that the density of off-licence premises in Newport Ward had a negative impact on crime and disorder. Members noted that the Cumulative Impact Policy had been applied to Newport Ward due to the number, type and density of off-licences premises. It also considered that the Policy confirmed the Licensing Authority was satisfied that there was good evidence that crime and disorder or nuisance occurring in those Wards, in this case Newport Ward, was being caused by customers of off-licensed premises, and that the cumulative impact of off-licensed premises in Newport Ward was evident.
4. Members also considered that according to the figures in the Policy, Newport Ward had the second highest level of anti-social behaviour and crime out of all of the Wards in Middlesbrough.
5. Members considered that it was disputed whether previous anti-social behaviour in the area involved alcohol, however, Members considered that in view of the history of the location where the premise was situated, that some of the incidents that previously occurred were likely to have been alcohol-related and would have likely affected vulnerable groups attending the school or community centre or local residents.
6. Members considered that the premise was next to a school and playing area and near to other community premises where vulnerable people may attend. The premise was not situated on a main road but was situated on the corner of a row of mainly residential premises. Members noted that various steps had been taken which had the effect of reducing anti-social behaviour. However, the Committee considered that because of its specific location, the offer of the sale of alcohol was likely to add to the problems currently in the Ward and create new

harm to the objectives in the direct vicinity of the premises, which had previously been reduced.

7. Members considered that the proposed conditions agreed by the applicant with the Police and Environmental Health were not likely to prevent the negative cumulative impact of another outlet selling alcohol in Newport Ward on the licensing objectives.

8. Members noted it appeared some local residents were in favour of the provision and some objected to the sale of alcohol. However, the Committee decided to refuse the licence for the sale of alcohol as it considered it would undermine the licensing objectives for the reasons given above and that it considered the applicant could not demonstrate that there would be no negative cumulative impact on one or more of the licensing objectives.

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 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 meeting.