

LICENSING SUB-COMMITTEE C

A meeting of the Licensing Sub-Committee C was held on 2 June 2016.

PRESENT: Councillors B E Taylor (Chair); T Lawton and J A Walker

ALSO IN ATTENDANCE: For the Applicant: Mr K Singh - Applicant and Mr M Foster - Applicant's Legal Representative

Objectors: J Ableson, Councillor B Hubbard, M Milburn and M Woods

OFFICERS: B Carr, T Hodgkinson and K Metcalfe

DECLARATIONS OF INTERESTS

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

16/2 **LICENSING ACT 2003: K&K HARDWARE, 4A CARGO FLEET LANE, ORMESBY, MIDDLESBROUGH, TS3 0LW, REF: OL/16/11.**

A report of the Senior Licensing Officer, Improving Public Health, had been circulated outlining an application for a Premises Licence in relation to K & K Hardware, 4a Cargo Fleet Lane, Ormesby, Middlesbrough, TS3 0LW, Ref No. OL/16/11.

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

Summary of Proposed Licensable Activities:

Sale of Alcohol (Off the Premises) - Monday - Sunday - 7.00am - 10.00pm

Following consultation with the Council's Public Health Officer on 29 April 2016 and Cleveland Police on 8 May 2016, the applicant had agreed to amend the Premises operating schedule to include a further condition as follows:-

The premises will not stock, display or sell any beer, cider or perry product with an ABV content above 6.5%.

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

The applicant's legal representative referred to Section 18, Paragraph 6a of the Licensing Act 2003 which states that "For the purposes of this section "relevant representations" means representations which are about the likely effect of the grant of the premises licence on the licensing objectives"

The Sub Committee was advised that it was the view of the applicant's legal representative that the representations should relate to the likely affect that the grant of the licence would have on the licensing objectives. The majority of the representations that had been received related to "need" which was not a relevant consideration. It was pointed out by the applicant's legal representative that the issues raised with regard to problems with parking in the vicinity of the premises were not relevant representations.

The applicant's legal representative advised that in his view the representations attached at Appendices 4, 6, 7 and 8 were not relevant representations. The representation submitted by Councillor Hubbard referred to public nuisance so in his view that could be considered as a relevant representation and Councillor Hubbard had also referred to the petition submitted by Park End and Beckfield Community Forum in his representation.

The representation submitted by Mr and Mrs Ableson was border-line, with regard to whether

it was a relevant representation, because although it referred to anti-social behaviour it did not explain how the anti-social behaviour affected the licensing objectives.

The Chair asked Councillor Hubbard if he had any observations on the comments by the applicant's legal representative. Councillor Hubbard advised that it was up to the Council's legal officer to decide whether the representations were relevant but he advised that he would like to point out that the applicant's legal representative had placed a petition in his evidence that was compiled after the cut-off date for representations and in his view it should not be considered.

The Council's legal officer advised that she was very grateful to the applicant's legal representative for marking up a duplicate set of papers to indicate which representations that he had concerns about. The Sub Committee was referred to Paragraph 9.9 of the Home Office Revised Guidance issued under section 182 of the Licensing Act 2003 dated March 2015, which stated, "It is recommended that, in borderline cases, the benefit of the doubt about any aspect of a representation should be given to the person making that representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it".

The Council's legal officer advised that in her view, as the representations were made by member of the public, they could not be expected to have the knowledge with regard to making representations that responsible authorities had and therefore it would be reasonable to apply Paragraph 9.9 in the case of those representations submitted in relation to the application.

The applicant's legal representative advised that in his view it was not acceptable to apply Paragraph 9.9 to all of representations other than Councillor Hubbard's and the petition submitted by Park End and Beckfield Community Forum as the remainder of the representations did not address the licensing objectives.

The Chair advised that the Committee would go into private session to make a decision with regard to whether the representations submitted should be accepted as relevant representations under the Licensing Act 2003.

All of the interested parties including officers of the Council, other than representatives of the Council's Legal Services and Democratic Services department, withdrew whilst the Committee determined whether the representations would be accepted.

Subsequently all interested parties returned and the Chair announced the Committee's decision. The Chair advised that all of the representations submitted in relation to the application would be considered by the Committee. The applicant's legal representative would be given the opportunity to challenge the representations as part of the Committee process.

The Chair outlined the procedure to be followed at the meeting and invited the Principal Licensing Officer to present the report in relation to an application for a Premises Licence in respect of K & K Hardware, 4a Cargo Fleet Lane, Ormesby, Middlesbrough.

It was highlighted that the premises consisted of a community Post Office and hardware store and would also offer general convenience retailing, incorporating an off licence facility, selling wines, beers and spirits. The premises were located on Cargo Fleet Lane, Middlesbrough close to residential properties and they had been taken over by new management. A location plan was attached to the report at Appendix 2.

Details of the application had been sent to the responsible authorities as required and the application had been advertised in the Evening Gazette on 14 April 2016.

Representations had been received from the following:-

4 May 2016 - Mr & Mrs Ableson, local residents, objecting to the application on the grounds of the prevention of crime and disorder and the prevention of public nuisance. A copy of the representation was attached at Appendix 3.

9 May 2016 - Allison Wilson, a local resident, objecting to the application on the grounds of the prevention of public nuisance. A copy of the representation was attached at Appendix 4.

10 May 2016 - Ward Councillor B Hubbard, objecting to the application on the grounds of the prevention of public nuisance and in support of the petition (detailed below) submitted by the Park End and Beckfield Community Forum. A copy of the representation received from Councillor Hubbard was attached at Appendix 5 to the report.

10 May 2016 - Park End and Beckfield Community Forum, in the form of a petition representing the views of 520 residents of the Park End and Beckfield Wards, objecting to the application on the grounds of the prevention of crime and disorder and the prevention of public nuisance. A copy of the representation was attached at Appendix 6.

10 May 2016 - Councillor F McIntyre - objecting to the application and supporting the petition submitted by the Park End and Beckfield Community Forum. A copy of the representation was attached at Appendix 7 to the report.

10 May 2016 - M Woods, a local resident, 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. A copy of the representation was attached at Appendix 8 to the report.

The Chair invited the applicant's legal representative to address the Committee.

The applicant's legal representative referred Members to aerial and interior views of the premises which occupied a prominent position on Ormesby roundabout. The hardware store had been in operation for over forty years and it consisted of a post office/hardware convenience store. The applicant had secured the Post Office as part of the business, but he needed to increase footfall in order to make the business viable.

The premises currently offered a strong convenience offering but required a licence to sell alcohol in order to improve the retail offering. The alcohol would represent 10% of the retail offer of the store. The applicant had held a licence for a store in Crescent Road three years previously and had been operating in the retail trade for over twenty years.

The applicant's legal representative advised that the premises previously operated by the applicant in Crescent Road were situated in a more problematic area than the application premises and there had been no issues with the operation of these premises or with the responsible authorities. This was attributed to good management, a robust operating schedule and having relevant licensing policies in place at the premises including Challenge 25. The premises also had a good CCTV system in place and offered regular training to all staff.

In respect of the application premises, the applicant had agreed to a condition not to stock, display or sell any beer, cider or perry product with an ABV content above 6.5%. The applicant had no desire to upset residents and intended to provide a quality service.

The applicant intended to invest £500k in refurbishing the premises with match funding from the Post Office and he had committed to saving the jobs of the seven existing staff who worked a mixture of full time and part time hours. Following the refurbishment of the premises the applicant expected to be able to employ a further three members of staff.

The applicant intended to install a new CCTV system at a cost of £5k and intended to increase the size of the premises by 20%. He intended to operate a full Post Office service and operate the same licensing training and policies as the premises on Crescent Road.

The applicant's legal representative referred to Tab 3 of the bundle he had submitted which related to a letter received from a resident that had originally signed the petition objecting to the application. The resident indicated that they were originally informed that the petition was objecting to the closure of the Post Office. As this was not the case, the resident had advised that they were now in favour of the application.

The applicant's legal representative advised that the petition objecting to the application had been located in a rival store and it did not indicate what people were signing. The letter at the end of the petition appeared to give people the impression that the Post Office was closing which may have misled people into signing the petition.

The Chair asked if the letter that the applicant's legal representative had referred to had accompanied the petition when people were asked to sign it. It was clarified that the letter was placed with the petition after the petition was completed.

In response to a query from Councillor Hubbard with regard to the type of clientele expected to buy alcohol at 7.00am, the Committee was advised that it would likely be shift workers. Councillor Hubbard queried whether the applicant was concerned that he would not be able to make a profit without the sale of alcohol. Members were advised that the Post Office would open longer hours in line with the hours that the convenience store was open.

An objector advised that she had requested a copy of the petition that had been submitted by the applicant and the applicant had refused to hand over a copy. The applicant advised that the objector was allowed to read the petition at the counter but she had asked to take the petition away.

Following a request from the Chair, the applicant clarified on the submitted plan which areas of the premises would be designated for the sale of alcohol.

In response to a query from the Chair, the applicant advised that his wife was the DPS at the Crescent Road premises and he was the DPS for the Ormesby Road premises. Councillor Hubbard advised that he did not have any objections to the applicant's business, but he did object to the sale of alcohol and the proposed times for the sale as children would be on their way to school whilst the alcohol was on sale in the morning and in his view 10pm at night was too late in the evening for the sale of alcohol.

Mrs Woods advised that the premises were located 15 yards away from the new flats that had been built and there was already an issue with excess traffic. Mrs Woods pointed out that spirits had an ABV content above 6.5% and she also had concerns with regard to the storage of flammable liquids at the premises. The premises were also located in the vicinity of four schools and there was already two outlets selling alcohol a short distance away from the premises. Mrs Woods also had concerns about the opening hours.

Mrs Woods requested permission to circulate a brochure of extracts of news reports obtained over a period of time from the local newspaper and the health service. The applicant's legal representative objected to the circulation of the documentation as his client had not had access to the information. The Chair advised that usually all interested parties were entitled to receive all of the information that would be relied on as part of the application process. The Council's legal officer advised that in her view, the applicant's legal representative did have a valid point as all of the information should have been circulated prior to the hearing to enable all of the interested parties to consider the information. The applicant's legal representative advised that all interested parties had to agree to any additional information being considered at the meeting and he objected to the information being circulated.

Mrs Ableson advised that when the premises were open previously they did have a problem with litter but the problem had ceased when the shop had closed. The road that the premises was located in was very narrow and she had concerns about deliveries to the premises. Cars often cut through the small estate.

There was also an issue with anti-social behaviour and many of the residents were elderly and vulnerable and in her view another outlet selling alcohol was not needed. The road was narrow and more traffic could lead to problems. The premises could also attract youths hanging around outside. Mrs Ableson pointed out that although the applicant had advised that he would operate the Challenge 25 policy, he did not specify if he would put notices up to this effect.

Mrs Ableson queried the opening times of the Post Office in Crescent Road premises. The applicant advised that the opening times were 7.00am - 7.30pm. Mrs Ableson queried why the applicant had requested a 10.00pm closing time for the premises in Ormesby Road. The applicant's legal representative advised that the applicant intended to operate the Post Office as a main Post Office with four counters rather than a sub-office.

The Chair queried whether residents would be concerned if they lost the facility of a Post Office. Councillor Hubbard advised that the loss of the Post Office would adversely affect the Ward. The Chair queried whether Mrs Woods believed that the sale of alcohol would attract children to the premises. Mrs Woods advised that it was a main thoroughfare for children on their way to school.

The applicant's legal representative advised that the premises would operate the Challenge 25 policy. There were schools located near the majority of licensed premises. Mrs Woods advised that in her view the premises would attract children on their way to school and during the lunch hour. The applicant's legal representative advised that the way in which the Challenge 25 police operated was that if a person did not look 25 they would be challenged by the staff working at the premises.

As there were no more questions, the Chair invited the interested parties to sum up.

Councillor Hubbard

Councillor Hubbard advised that he was not opposed to the business and he hoped that the applicant's business would be successful and enhance the area. Councillor Hubbard advised that his main objection was with regard to the sale of alcohol and the proposed hours of the sale of alcohol which could lead to anti-social behaviour.

Mrs Woods

Mrs Woods advised that she supported Councillor Hubbard's comments and she urged the Sub Committee to look at the documentation she had produced for the Committee provided by the Council and Public Health. She referred to the "One on every corner" publication which was produced as part of the Committee documentation and stated that the health profile of Middlesbrough had not improved.

Mrs Milburn

Mrs Milburn queried how the Challenge 25 Policy implementation would be monitored if there was no surveillance available and she queried what could be done if adults bought the alcohol for children.

Mrs Ableson

Mrs Ableson stated that the traffic, the litter and anti-social behaviour in the area was likely to increase if the application was to be approved. The houses in the area would be devalued and the roads would be damaged due to the increase in traffic.

The Applicant

The applicant's legal representative advised that the applicant had a proven track record of being a responsible operator. The applicant had worked in partnership with the Police and had agreed to the suggested condition with regard to the sale of high strength beers and ciders being placed on the licence if granted.

The Police had not objected to the application and the Committee would usually take heed of the representations of the Police particularly with regard to issues in relation to crime and disorder. The issue of "need" was not a consideration of the licensing objectives. Any representation should be in relation to the likely affect that the grant of a licence would have on the licensing objectives.

The Committee was asked to look at Tab 9 of the applicant's documentation in particular the case law in relation to Daniel Thwaites v Wirral BC. The applicant's legal representative advised Members that they should consider the application in a balanced way. The responsible authorities had the option of reviewing a Premises Licence if there were any issues with the operation of the premises. The applicant had proved that he was able to operate premises in a responsible manner as in the case of the Crescent Road premises.

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.

Subsequently all the parties returned and the Chair announced the Committee's 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 legal representative.
4. The representations made by Councillor Hubbard, the Ward Councillor and Councillor McIntyre.
5. The representations made by representatives from Park End and Beckfield Community Forum.
6. The representations received by residents.

DECISION

The Committee **ORDERED** that the Application for a Premises Licence in respect of K & K Hardware (Ormesby) Limited, 4a Cargo Fleet Lane, Ormesby, Middlesbrough, TS3 0LW - Ref. No. OL/16/11 be Granted in part for the licensable activities of Sale of alcohol (Off the Premises) Monday to Sunday 9.00am to 10.00pm, subject to the conditions in the operating schedule and the inclusion of two further conditions as follows:-

1. The premises will not stock, display or sell any beer, cider or perry product with an ABV content above 6.5%.
2. The display of alcohol will be limited to the area specified and identified as alcohol display areas on the submitted plan. The Premises Licence Holder cannot extend the areas for display of alcohol without the consent of the police and the licensing authority.

The Applicant is required to provide a scaled plan in respect of the above, to the Council's Licensing Office within 28 days of receipt of the decision of the Licensing Sub Committee in respect of this application.

REASONS

The Committee acknowledged that residents welcomed the fact that the Post Office would, in future, offer the full range of Post Office services. The Committee recognised the fact that the Applicant intended to operate the premises in a responsible manner.

The Committee noted that the Police had not offered any objections to the application and the Applicant had agreed to the inclusion on the premises operating schedule of the condition regarding the stocking, display or sale of any beer, cider or perry product with an ABV content above 6.5%, which was recommended by the Police and the Council's Public Health Section.

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. 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 with regard to 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 restrict the licensable activities of Sale of alcohol (Off the Premises) to Monday to Sunday 9.00am to 10.00pm.

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.