

LICENSING SUB-COMMITTEE C

A meeting of the Licensing Sub-Committee C was held on 23 November 2017.

PRESENT: Councillors T Higgins, J Goodchild and L Lewis.

OFFICERS: C Breheny, C Cunningham, S Wearing.

DECLARATIONS OF INTERESTS

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

16/11 **LICENSING ACT 2003 - APPLICATION FOR A PREMISES LICENCE: FAMILY SHOPPER, (FORMER PARK END MEDICAL CENTRE) 170 OVERDALE ROAD, MIDDLESBROUGH, TS3 7EA**

DECISION

Family Shopper, 170 Overdale Road Middlesbrough - Notice of Decision of Licensing Sub-Committee on 23 November 2017

1. The Committee considered the matter on its own merits, Section 19 of the Licensing Act 2005 ("the Act"), the licensing objectives, the relevant part of the Guidance under Section 182 of the Act and the Council's Statement of Licensing Policy ("the Policy"); the Report, the Application and the Relevant representations in respect of the Application.

Preliminary Issues and Decisions

2. Initially, an objector requested to submit a file of information to support her case, however, the Licensing Act 2003 (Hearings) Regulations 2005 ("the Regulations") state that the Committee can only consider supporting documentation produced at the hearing with the consent of all parties. The Hearing started at 10.00 however, time was given to the Applicant to look at the documentation and make representations. As a preliminary matter the Committee considered the Regulations and whether to admit the additional documentation. The Applicant did not consent to the documentation being admitted to the hearing because it was a lengthy file of documents going back a long period and the Applicant would not be in a position to respond. The Committee decided under Regulation 18 that the documents were presented at the hearing (not prior to the hearing), that the Applicant did not agree to the documentation being submitted and, therefore, the Committee decided that the documentation should not be submitted. In addition the Committee considered that it would be unfair to the Applicant to be served with such documents at the hearing even if they are in the public domain because it would not have sufficient time to consider the contents, assess the truth of the contents or be in a position to respond to the contents. Therefore the committee did not consider it could allow a failure to comply with the Regulations as such failure to comply would result in prejudice to a party under Regulation 32 of the Regulations.

3. The Committee was informed that a different Designated Premises Supervisor ("DPS") had been appointed a couple of days before the hearing and was present at the hearing. It was also informed that the applicant for the Premises Licence was not present and a representative informed the Committee that he was told not to come.

4. The Objectors were concerned that they were unaware of the new DPS. The Committee was informed by the Licensing Officer that the police had no objection to the new DPS.

5. The Committee were concerned whether they could hear an Application for a Premises Licence when the Applicant, the proposed Premises Licence Holder, whom (if granted) would have overall responsibility for upholding the licensing objectives, was not present.

6. In order to be fair to the parties in light of the information, the Committee asked whether the Objectors require some time to consider whether the change in the DPS would affect their representations. A proposal was put forward that the matter be adjourned until 2.15pm or to a

later date. All parties made representations that they would prefer the matter to be adjourned to the afternoon. Some Objectors had appointments but confirmed it could proceed at 2.15pm. The Applicant's representative confirmed that the Applicant would be present.

7. The Committee therefore in accordance with Regulation 12 and Regulation 20 decided to adjourn the hearing until 2.15pm later that day (namely 23 November 2017) in order for the objectors to consider the changes made by the Applicant's representatives and for the Applicant to attend.

Decision

8. The Committee decided to grant the Application for a Premises Licence at 170 Overdale Road Middlesbrough TS3 7EA for the off sales of alcohol and the provisions of recorded music between 8.30am and 11.00pm Mondays to Saturdays and from 10.00am and 10.30pm on Sundays subject to conditions attached to this Decision. The operating schedule in the Application is modified by the deletion of the text proposed and the addition of the conditions attached.

9. The Committee considered that the conditions are required in order to promote promotion of the prevention of crime and disorder, public nuisance, for the protection of children from harm and for public safety.

10. The Committee did not consider it had grounds to refuse the DPS or to reject the Application in whole or to reduce the amended hours proposed.

11. The conditions agreed by Public Health and the Police are agreed (as amended to ensure enforceability) and the Committee considers it is appropriate to impose them on the licence in order that the objectives are upheld.

12. However, the Committee considered that it is appropriate and necessary that the following additional conditions be imposed on the licence to ensure that premises do not add to the anti-social behaviour, crime and disorder, problem drinking in the area and to prevent children being harmed by proxy sales or by seeing alcohol fuelled unlawful behaviour.

13. The additional conditions are set out in full in the attachment to the decision, however, the first condition is that all alcohol sold from the Premises shall have a mark clearly identifying that it was sold from that particular premises.

14. This was a proposal put forwarded by an objector and agreed by the Applicant. Its purpose is to assist in the traceability of alcohol which is being drunk by either underage people or people who go on to cause anti-social behaviour or carry out disorderly, criminal or nuisance behaviour. It will assist the premises too, in that, being a responsible retailer, the alcohol used in such a manner could be shown not to be sold by that premise, so other premises would be responsible.

15. The second additional condition is that warnings be placed in the area where alcohol is sold showing the health dangers of not drinking responsibly. This will educate customers of the risk of drinking unsafe amounts of alcohol and therefore will assist with the promotion of public safety.

16. The third additional condition is to limit the amount of alcohol on display in comparison to other goods in the store. The Applicant confirmed that the premises is a supermarket / convenience store and alcohol is only part of the offer. To prevent the premises from becoming a full "off licence" which only sells alcohol and therefore would attract a different clientele which may detrimentally impact on the area, the Committee decided that the display of alcohol must be limited to be only a percentage of the floor space of the premises which is to sell other goods.

17. The fourth additional condition is that the Premises Licence holder puts litter bins outside of the premises. The Committee heard that litter is a problem in the area and that some litter e.g. plastic beverage cups sold from the premises, have been dropped by its customers. To

ensure the sale of alcohol does not add to this nuisance the Premises Licence Holder is required to provide bins outside of the premises.

18. The Applicant confirmed that there will be three or four personal licence holders working at the premises. In view of the problems of anti-social behaviour in the area as expressed by the objectors, the risks alcohol sales pose, that the premises are near to a primary school and there could be issues of children being exposed to street drinkers trying to obtain alcohol or other children trying to get alcohol from adult customers the Committee has decided to require that a personal licence holder be present on the premises at all times when alcohol is sold.

19. The Committee noted the Objectors concerns. In summary objectors were concerned that another outlet in the area selling alcohol would only add to the current problems in the area. That proxy sales are common. That the premises could be attractive to people with an alcohol problem who could be seen by young school children attending the primary school. That the premises would attract gangs of youths who go on to cause problems. That many people signed a petition stating that they do not want the store to sell alcohol. That litter will be worse. That there are serious health issues and serious issues of anti-social behaviour and crimes which is caused by alcohol. That there may be an issue with people driving to the store under the influence and a danger to children by those drivers and cars generally.

20. The Committee heard from the Applicant and noted that the Applicant's DPS who confirmed would be in day to day management and control of the Premises was competent and responsible. That the DPS was local, knew the customer base and would not allow any staff to allow a proxy sale, sale to drunks, vulnerable people or children. The Committee noted that there are four personal licence holders in the store. That the DPS has moved groups on, that there are procedures in place to move groups on causing problems and would contact the police. That people with an alcohol problem would be recognized and not served. That the Applicant is open to additional conditions, that repairs have been carried out to the Premises to stop children climbing around the premises and causing a nuisance. That the music at the premises would only be background recorded music that is normally played in a supermarket and will not be heard from outside of the store. That the premises has an excellent CCTV system with 14 cameras viewing the outside area. That the Responsible Authorities agree to the grant subject to conditions.

21. The Committee considered that the concerns raised by the Objectors will be addressed by the conditions on the licence and the responsible management of the Premises.

22. The Committee did not consider there was sufficient evidence to support a further curtailment of the hours. The hours that had originally been proposed had been reduced. If the concern was the availability of alcohol when children are going to school then it would also have to be restricted when the leave school around 3.00pm. There is little evidence to show that this is a real risk. The restrictions on the types of alcohol sold and single cans, CCTV and proper management should deter "undesirables" from trying to obtain alcohol in the morning when children are going to school, likewise going home from school. The Committee did not consider it could reduce the hours at night from 11.00pm. That is in line with the Council's policy for closing times in residential areas. With the conditions on the licence and proper management groups that could cause noise issues and problems will be deterred from "hanging" around.

23. The Committee understood the concern of the residents and the problems with alcohol as a whole within Middlesbrough, but that in itself is not sufficient to refuse the application and the Committee urges those residents to approach the Council as a whole to consider a Cumulative Impact Policy if the problem is caused by a saturation of premises in that area. However, the Committee had no power to impose such a policy for this hearing. The Committee considered that the limitations on the licence comply with its Statement of Policy and coupled with good management it should ensure this premises does not add to the current problems in the area. Although the Committee considered the issue of drunk drivers and the risk they cause to the public to be problematic it could not link this to the potential sale of alcohol at this premises. However, it did consider that the safeguards in place would deter problem drinkers from trying to purchase alcohol from this store.

24. The Committee also considered that the CCTV provisions, training, a personal licence holder being on the premises, the knowledge of the DPS of her customer base and the other conditions on the licence will ensure that no proxy sales are made and would prevent gangs from hanging around.

25. The Committee noted the petition and that many from the local area signed up to it, however, although it agrees that other people from outside the area might have concerns, some of the signatures were from premises too far away to be affected. In addition the Committee had to acknowledge that the petition included a statement to object because music will be played as well as alcohol. Again however, the Committee considered that the restrictions on the licence and good management will alleviate any concerns those people who signed up the petition have.

26. The above are the reasons for granting the application subject to conditions and that the Committee is satisfied the conditions are necessarily imposed to ensure the objectives are upheld.