

LICENSING SUB COMMITTEE A

A meeting of the Licensing Sub Committee A was held on Thursday 7 July 2022.

PRESENT: Councillors E Polano (Chair), C Cooke - Elected Mayor and T Higgins

ALSO IN Mr M T Butt – Applicant

ATTENDANCE:Those Making Representations:

PC J Arbuckle – Cleveland Police

F Helyer – Public Health

T Hodgkinson – Licensing Authority

Councillor L Lewis – Central Ward Councillor

OFFICERS: S Bonner, J Dixon and C Cunningham

22/1 DECLARATIONS OF INTEREST

There were no declarations of interest received at this point in the meeting.

22/2 LICENSING ACT 2003: APPLICATION FOR A PREMISES LICENCE - 85 BOROUGH ROAD, MIDDLESBROUGH, TS1 3AA - REF: OL/22/01

A report of the Director of Public Health and Public Protection was circulated outlining an application for a Premises Licence in respect of 85 Borough Road, Middlesbrough, TS1 3AA, Ref No: OL/22/01.

Summary of Proposed Licensable Activities:-

Sale of Alcohol (Off Sales) - Monday to Sunday: 8.00am – 10.00pm.

Full details of the application and operating schedule were attached at Appendix 1.

The Chair introduced those present and explained the procedure to be followed at the meeting. It was confirmed that all parties had received a copy of the Regulation 6 Notice and copy of the report and accompanying documents, in accordance with the Licensing (Hearings) Regulations 2005.

Details of the Application

In the absence of the Licensing Officer, the Council's Legal Representative, briefly presented the report outlining the application for a Premises Licence in respect of 85 Borough Road, Middlesbrough, TS1 3AA. A copy of the application was advertised in the Evening Gazette on 12 April 2022, as required by the Licensing Act 2003.

It was noted that, under Regulation 11 of the Licensing Act (Hearings) Regulations 2005, the time limit for this hearing to take place had been extended as the Council considered it to be in the public interest to do so to allow for the training of Members of the Licensing Committee following the Council's Annual General Meeting, as required in accordance with the Council's Constitution and Government Guidance. All parties were notified of this decision on 30 May 2022.

The premise was situated in a terrace of other commercial properties in Borough Road, Middlesbrough. The applicant intended to operate it as a 'Go Local' convenience store, with the sale of alcohol. A location plan was attached at Appendix 1a.

An application for the premises was considered by a Licensing Sub Committee on 27 January 2022 and a copy of the Committee's decision was attached at **Appendix 2**.

Members were advised that the premises were situated in Central Ward, which since 2016 had been in a cumulative impact zone for “off-licence” premises under the provisions of the Council’s Licensing Policy. However, this policy expired in January 2022. A new Policy, including a cumulative impact assessment with a view to reintroducing a cumulative impact policy, was currently under review.

Representations

Several representations were received in relation to the application, as follows:-

- 13 April 2022 – Central Ward Councillors Lewis, M Storey and Uddin, 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 and that the premises were located in a cumulative impact area. Copy attached at Appendix 3.
- 3 May 2022 - F Helyer, on behalf of Public Health, objecting to the application on the grounds of the prevention of crime and disorder; public safety and the protection of children from harm. Copy attached at Appendix 4.
- 5 May 2022 - Cleveland Police, objecting to the application on the grounds of the prevention of crime and disorder; the prevention of public nuisance and the protection of children from harm. Copy attached at Appendix 5.
- 6 May 2022 - Licensing Manager, on behalf of the Licensing Authority, objecting to the application on the grounds of the prevention of crime and disorder and the prevention of public nuisance. Copy attached at Appendix 6.
- On 10 May 2022 an email was received from the applicant’s representative (copy attached at Appendix 7) to amend the operating schedule to include a further condition as follows:-

‘No alcohol shall be sold unless contingent to and accompanied by a sale of other goods (excluding tobacco and mobile phone cards) to a minimum value of £5’.

- On 26 June 2022, a video was received from the applicant’s representative showing the nature and quality of the premises. The video was made available to Members at the meeting.
- 29 June 2022 - additional evidence in support of the representation from Public Health was received from the Director of Public Health. Attached at Appendix 8. The Responsible Authority provided data as part of its representation to support its view that there was sufficient evidence to support the cumulative impact zones and maintain a cumulative impact policy.
- 29 June 2022 - additional evidence in support of the representation from Cleveland Police was received from Cleveland Police. Attached at Appendix 9. The Responsible Authority provided data as part of its representation to support its view that there was sufficient evidence to support the cumulative impact zones and maintain a cumulative impact policy.

Applicant in Attendance

The applicant, Mr Butt, was in attendance and presented the case in support of his application and addressed the issues within the representations. Members of the Committee, the objectors, Licensing Manager and the Council’s legal representative asked questions of the applicant which were responded to accordingly.

Those Making Representations

Those making representations presented their objections individually to the meeting as outlined in the Appendices attached to the submitted report. Members of the Committee and the applicant asked questions of those making representations which were responded to accordingly.

Summing Up

All parties were afforded the opportunity to sum up and made closing statements.

It was confirmed that there were no further questions and all interested parties other than the Officers of Legal and Democratic Services, withdrew whilst the Committee determined the application. The Council's legal representative advised that, in accordance with the Regulations, the full decision and reasons would be issued to the parties within five working days. The Chair advised all parties of the Right of Appeal to the Magistrates Court within 21 days of the decision.

Decision

ORDERED that the application for a Premises Licence in respect of 'Go Local', 85 Borough Road, Middlesbrough, TS1 3AA, Ref No: OL/22/01 be refused, as follows:-

Authority to Act/Considerations

1. On 7 July 2022, the Licensing Sub Committee considered an application for the grant of a Premises Licence to Mr Muhammad Tayyeb Butt for the off sale of alcohol at 85 Borough Road Middlesbrough described as Go Local Convenience Store with Off Licence ("the Premises") between 8.00am and 10.00pm daily.
2. Under Section 18 of the Licensing Act 2003, ("the Act") as representations against the grant of the licence had been received from the Police, Public Health and the Licensing Authority - as Responsible Authorities - and Ward Councillors, the Licensing Sub Committee must hold a hearing and, having regard to the representations, take such steps it considered appropriate for the promotion of the licensing objectives.
3. The Licensing Objectives under Section 4 of the Act were the promotion of the prevention of crime and disorder, prevention of public nuisance, protection of children from harm and public safety.
4. The steps the Committee may take were to grant with conditions and/or modify conditions in the operating schedule, exclude a licensable activity, refuse the Designated Premises Supervisor or refuse the application.
5. The Licensing Sub Committee carefully considered all of the information including the report and appendices, the representations made by the Police, Public Health, the Licensing Authority and their representative. It considered the written representations of the Ward Councillors and the representations of the applicant and his representative. The Committee considered the Act, the Government Guidance ("the Guidance") issued under the Act and considered the representations in relation to the Council's Statement of Licensing Policy 2017 to 2022 ("the previous Policy") which had lapsed but, the Committee was informed, was under review.

Decision

6. The Committee decided it was appropriate to refuse the application in the public interest in order to uphold the promotion of the prevention of crime and disorder, prevention of public nuisance, protection of children from harm and public safety.
7. The reasons for the decision were as follows:-

Reasons

8. The Premises was situated in Central Ward, within a terrace of other commercial premises on Borough Road. The Premises would offer a convenience store with the off sale of alcohol and was described as Go Local Convenience Store and Off Licence. The Premises was situated very near to the town centre and the university on one of the main arterial routes in and out of the town centre.

Contested Issues

9. The contested issues were, in summary, (but not limited to) the following:-
10. The applicant submitted that there was no cumulative impact policy in place and the Committee could not have regard to the Policy that had expired; that the Committee

could not have regard to the previous application made by the applicant for the same premises; that although cumulative impact should not be considered, the application and the operating schedule ensured the application negated any risk of the premises adding to current problems; that the Premises Licence Holder did not cause any of the problems and was not responsible for the behaviour of customers away from the property; that the raft of bespoke conditions would ensure the objectives were upheld - there was no evidence to show otherwise and decisions should not be made on speculation.

11. The Responsible Authorities and Ward Councillors submitted that cumulative impact could be considered; the Committee could have regard to the Policy and the previous application; that the area remained saturated with Off Licensed Premises and the cumulative effect was having a detrimental impact on the Licensing Objectives; that the operation of another convenience store selling alcohol irrespective of conditions would only add to the serious issues in the area; that the condition relating to a minimum spend would not deter problem customers and may add to the issues.

Cumulative Impact

12. In the previous Policy, Central Ward was covered by a special cumulative impact policy. This meant that the area was saturated with premises providing off sales of alcohol and there was good evidence that the cumulative impact of such off sales was having a detrimental impact on the promotion of the prevention of crime and disorder, public nuisance, public safety and the protection of children. It meant that, although there was no blanket ban on new applications being granted, the Policy created a rebuttable presumption that applications would be refused, where representations had been received, unless the applicant showed that there would be no negative cumulative impact on any of the objectives.
13. The applicant submitted that the Policy expired and currently there was no special cumulative impact policy in place. Where there was no special policy in place there was no presumption in favour of refusal. The applicant submitted that because the Policy expired the Committee could not have regard to it.
14. The Committee agreed that the Policy had expired and currently no special cumulative impact policy existed which in effect removed the rebuttable presumption.
15. However, it disagreed that it could not have regard to the Policy. The Committee could consider any relevant information before it that it considered would assist in its decision.
16. The Committee did and should have regard to the fact that for the period 2017 and 2022 there was a policy as a result of evidence, that the cumulative impact of the saturation of off licensed premises was having a detrimental impact on the objectives in Central Ward and that it also had a special cumulative impact policy for on licensed premises in that Ward. It considered that although the Policy had expired, the Responsible Authorities provided evidence, information and data as part of their representations that the area remained saturated with off licensed premises and, as such, the saturation was continuing to have a detrimental impact on the objectives. It was confirmed that a Cumulative Impact Assessment was being carried out with a view to continuing to have a special policy for off licensed premises and on licensed premises in Central Ward. Guidance paragraph 14.42 confirmed that the absence of a Cumulative Impact Assessment does not prevent representations that the premises would give rise to a negative cumulative impact on the objectives.
17. Therefore, although no special policy technically exists currently, the Council was satisfied in accordance with the information provided by the Responsible Authorities the area was already saturated with convenience stores selling alcohol and that the cumulative impact of current off sales of alcohol in the area was impacting adversely on the area to an unacceptable degree and undermining the objectives.
18. The Committee considered that the aggregate effect of another convenience store selling alcohol would only further undermine the objectives.

Previous Application

19. On 27 January 2022, the Licensing Sub Committee considered an application from

the applicant for the same premises for a convenience store to sell alcohol. This was refused for the reasons set out in the Decision Notice which was appended to the Report. The main ground for the refusal was that it was within a special policy area as, at that time, the Policy had not expired and the grant of a premises licence for a convenience store would add to the then current serious problems in the area.

20. The applicant submitted that the Committee could not consider a previous application made by the applicant and could only consider the application before the Sub Committee on 7 July 2022. The Committee disagreed and considered it was able to consider any information before it relevant to its decision. The Committee could have regard to the representations which included previous representations by the Police and Public Health to the Committee on 27 January 2022 which related to the issues in the ward, the area and the licensee and were, therefore, relevant.
21. The Committee noted that the current application differed to the previous one by containing a detailed operating schedule with a suite of conditions, which the previous application did not contain, and an operation time of 8.00am rather than 7.00am.
22. The Committee considered that Central Ward had the highest number of off licensed and on licensed premises in the Borough. It also had the highest number of alcohol related crimes and anti-social behaviour in Middlesbrough. A very high number of those crimes and anti-social behaviour occurred within a radius of 500 metres from the premises. The Police confirmed that alcohol was intrinsically linked to the incidents including violence, criminal damage, domestic abuse and anti-social behaviour in the Ward and the locality of the premises.
23. The neighbouring ward to where the premises was situated was Newport Ward. This Ward had the second highest number of alcohol related crimes and anti-social behaviour in Middlesbrough and the second highest number of licensed premises.
24. Central Ward was one of the most deprived areas of Middlesbrough with high unemployment rates, poor education attainment and poor standards of living. It had the most density of licensed premises and availability of alcohol from competing premises to the most vulnerable members of society. Both Central and Newport Wards had approximately 50% of all licensed premises in the Borough.
25. The Ward and the Borough suffered greatly from the detrimental impact of alcohol misuse. Public Health confirmed there had been a rise in people using premises for off sales to drink away from premises or at home where there were no controls which contributed to an array of problems including an increase in domestic abuse, hospital admissions and mortality rates.
26. The applicant submitted that the Committee could not have regard to public health issues as that was not a licensing objective. However, the Committee was satisfied that the information and data on alcohol harms provided by Public Health covered and was encompassed in all four of the objectives and should be considered.
27. The applicant submitted that the detailed numerous conditions on the licence would prevent any detriment to crime and disorder, public nuisance, public safety and the protection of children from harm. The applicant said that the proposed conditions which included a restriction on strong alcohol, single cans, a minimum price and a contingency condition that no alcohol would be sold unless accompanied by a sale of other goods to a minimum value of £5 would ensure that problem drinkers, street drinkers and those who went on to undermine the objectives would not form part of their clientele.
28. However, the Responsible Authorities submitted that the people from their own direct knowledge who cause issues in the area would simply ignore such conditions and if refused would react badly and most likely cause harm. People who had been banned from other premises would attempt to buy alcohol irrespective of the any conditions and cause harm. There were other harms that another convenience store would add to as a result of saturation and availability.
29. The Committee carefully considered all of the conditions including the above. It

concluded there were too many risks in that the area was saturated with convenience stores in competition with one another. Till prompts could be overridden, customers who were banned from other premises could attempt to enter and cause harm. Refusals to inhabitants or visitors with problems was likely to result in further harm. The proposals could be circumvented. Although the applicant confirmed such contingency conditions were imposed in other areas including Wakefield and Liverpool where there are cumulative impact policies, it was not sufficient for another convenience store in Central Ward and in that location.

30. Irrespective of any conditions the Committee considered that another convenience store selling alcohol increasing the availability was likely to cumulatively, with all the other off licensed premises surrounding and saturating the area, add to the very serious alcohol harms already prevalent in a very deprived area with very vulnerable members of society.
31. The Committee considered that it was likely the aggregate effect would add to the harm irrespective that the applicant may be a suitable licensee with a good track record.
32. The applicant submitted the Committee could not speculate, however, the Committee, in reaching its decision, relied on the data and information from the Responsible Authorities, their direct detailed knowledge of the area, its inhabitants and visitors and the harms already caused by the saturation of premises and availability of alcohol. When assessing a new application it was relevant that prospective likelihood of harm was considered.
33. The applicant stated that a premises licence holder was not responsible for the actions of customers away from the premises and relied on the Guidance paragraph 2.21. This stated "Beyond the immediate area surrounding the premises, these were matters for the personal responsibility of individuals under the law. An individual who engaged in anti-social behaviour was accountable in their own right". However, where there was evidence of detrimental cumulative impact on the objectives as a result of a saturation of premises a decision could be made to refuse on the likelihood of an aggregate effect of yet another premises.
34. Therefore, after considering all of the information in detail, in view of the very serious problems in the area, the Committee decided it would be inconsistent with its duty to promote the licensing objectives to grant the licence even subject to conditions. It considered it was appropriate to refuse to grant the application for the reasons given.
35. Any party to the hearing aggrieved by this decision may appeal to the Teesside Justices Centre, Teesside Magistrates Court, Victoria Square, Middlesbrough within 21 days beginning with the day on which the Party was notified by the licensing authority of the sdecision.