

Licensing Sub Committee

A meeting of Licensing Sub Committee was held on Thursday, 2nd June, 2011.

Present: Cllr Paul Kirton, Cllr Miss Tina Large and Cllr Mrs Kath Nelson.

Officers: M Vaines (DNS); A Pilgrim (LD).

Also in attendance: Mahason Limited (Mr M Balamyuram)
Mr L Charalambides (Legal Representative)
Mr C Lockett (Lockett and Co, Licensing Consultants)
Mr Daley, Mr Leek (Cleveland Police) and Mrs Nevison, Solicitor on behalf of Cleveland Police
16 Members of the public, Councillor Maureen Rigg, Councillor Allan Lewis and Councillor Phillip Dennis.

Apologies: None.

LSC 1/11 Appointment of Chairman

RESOLVED that Councillor Kirton be appointed Chairman for this meeting only.

LSC 2/11 Declarations of Interest

There were no interests declared.

LSC 3/11 Eagle Service Station, 502-506 Yarm Road, Eaglescliffe, Stockton on Tees - Application for Grant of a Premise Licence Under the Licensing Act 2003

The Licensing Officer presented the report to Members and consideration was given to the application as outlined in the report.

Members noted that a representation had been received from Cleveland Police and took into account the fact that Cleveland Police had agreed conditions with the Applicant to be attached to the licence, should it be granted, and that on this basis they had agreed to withdraw their representation. None of the other responsible authorities/statutory consultees had made a representation.

Representation had been received from sixty two persons living within the vicinity of the premises. Local residents who had made representations were represented at the Committee by Councillor Rigg, Councillor Dennis and Councillor Lewis.

Following with the Police and local residents the applicant agreed to amend his application by reducing the terminal hour for the sale of alcohol to 11.00pm each day.

Mr Charalambides on behalf of the Applicant was invited to initially address the question of whether the premise was excluded from holding a premise licence under Section 176 of the Licensing Act 2003.

Mr Charalambides had regard to the provisions of Section 176(1) of the Licensing Act 2003 and explained the projected figures provided by Mr Lockett from Lockett and Co, Licensing Consultants, in support of the application. Mr Charalambides explained that Mr Lockett had many years experience in dealing with such applications across the country. Mr Charalambides explained that the data was based on actual data from a comparable site operating in

Derbyshire. This site was approximately half the size of the Applicant's premise so the projected figures for convenience and fuel sales were quite modest. Mr Charalambides indicated that the Applicant could expect considerably larger sales figures at a proportion of 2/3 to 3/4 convenience sales to 1/3 to 1/4 fuel sales.

Mr Charalambides submitted that this should satisfy Members that the premise was not excluded from holding a premise licence for the sale by retail of alcohol under the Licensing Act 2003.

The Chair invited questions of Mr Charalambides and Mr Lockett.

Local residents and their representatives were given the opportunity to make representation and spoke about fears of an increase in crime and disorder but no evidence was offered as the premise is currently closed.

The Members initially considered whether the premise was excluded from holding a premise licence for the sale by retail of alcohol pursuant to section 176 of The Licensing Act 2003. Members had a lengthy debate about this issue and noted that the only evidence on which they had to base their view on the primary use of the premise were projected figures produced by Mr Lockett based on his previous experience in dealing with similar applications. However, the Panel accepted that these projected figures were based on actual sales generated by similar premises in Belper, Derbyshire with similar competitors.

In this case, the Panel were aware that the forecourt had relatively few pumps (four in total) and accepted that Applicant's evidence that convenience store sales would be in excess of two thirds to three quarters as compared to petrol sales. Accordingly, the Panel were satisfied that the Premise was not an excluded premise as the evidence presented by the Appellant suggested that shop sales would far exceed petrol sales. In coming to this decision, the Panel had regard to the statutory guidance issued under Section 182 of the Licensing Act 2003 particularly paragraphs 5.24 and 5.25. Members were mindful that the figures were projected and it would be necessary for the Licensing Authority to monitor the situation to ensure that the premise did not become an excluded premise for the purposes of section 176.

Members accepted that there was no evidence to support local residents' fears that the granting of the application would have an adverse effect on the promotion of the four licensing objectives. Indeed, Members accepted that, in light of case law, they could not take fear and speculation into consideration.

Accordingly, after giving consideration to all of the evidence and representations made both in writing and orally Members agreed to grant the application for the hours requested and attached the conditions agreed with the Police but as detailed below.

RESOLVED that the application be granted as follows:-

Late Night Refreshment

The provision of Late Night Refreshment for the following hours:-

- Monday to Sunday from 23:00 to 05:00

- Hot Food as defined within the meaning of Late Night Refreshment in paragraphs 1 and 2, Schedule 2 of The Licensing Act 2003) shall be restricted to the supply of hot food that can only be heated in a microwave.

- A night hatch shall operate between the hours of 23:00 to 06:00 hours and Late Night Refreshment shall only be served through the use of a night hatch during these hours. No persons shall be permitted entry into the convenience store during these hours save for management, employees and persons delivering stock during the operating times of the night hatch.

Sale by retail of Alcohol

The sale by retail of alcohol shall be permitted during the hours:-

- Monday to Sunday from 07:00 to 23:00

Members also attached the following conditions to the grant of the licence, namely:-

1. In order to monitor the possibility of the premise becoming an 'excluded premise' for the purposes of section 176 of The Licensing Act 2003, on the 12 month anniversary of the opening of the premise, the Applicant is required to provide the Licensing Authority with the following actual data over the previous 12 month period:-

- Actual gross profit on shop sales (excluding alcohol)
- Actual gross profit on alcohol sales
- Actual gross profit on fuel sales

2. A digital Closed Circuit Television System (CCTV) will be installed and maintained on good working order and be correctly time and date stamped.

3. The CCTV system will incorporate sufficient built in hard-drive capacity to suit the number of cameras installed whilst complying with Data Protection legislation.

4. The CCTV system will be capable of providing pictures of evidential quality in all lighting conditions particular facial recognition.

5. The CCTV cameras will encompass all ingress and egress to the premises, outside areas and all areas where the sale/supply of alcohol occurs.

6. The CCTV system must have a minimum of 14 days recording.

7. The CCTV system will record 24 hours a day.

8. The CCTV system will incorporate a means of transferring images from the hard-drive to a format that can be played back on any desktop computer.

9. The digital recorder will have the facility to be password protected to prevent

unauthorised access, tampering or deletion of images.

10. There will be at all times a member of staff on duty who is trained in the use of the equipment and upon receipt of a request for footage from a Responsible Authority, such as Cleveland Police or any other Responsible Authority, be able to produce the footage within a reasonable time. "Reasonable" shall mean 24 hours for routine request or less than 24 hours if urgently required for investigation of serious crime.

The mandatory conditions set down in section 19 of The Licensing Act 2003 shall be inserted into the Premise License and the steps set out in the Applicant's Operating Schedule of the application will also be converted into conditions to be placed on the licence where it is reasonably practicable for them to be converted.