

GATESHEAD METROPOLITAN BOROUGH COUNCIL

LICENSING SUB COMMITTEE MEETING

Tuesday, 31 October 2017

PRESENT: Councillor K Dodds (Chair)
Councillor(s): B Goldsworthy and M Ord

LSC1 APPLICATION FOR VARIATION TO A PREMISES LICENCE

RESOLVED - That the decision of the Committee as per the attached notice be noted.

**GATESHEAD COUNCIL
LICENSING AUTHORITY**

SUMMARY OF DECISION OF LICENSING SUB-COMMITTEE

Name of Premises : Durham Road Service Station
Address : Durham Road Birtley DH32PF
Applicant : Penny Petroleum North East Ltd
Date of Hearing : 31 October 2017
Type of Hearing : Application for the variation of an existing premises licence

The Sub Committee has decided as follows:

To modify the Premises Licence by increasing the authorised hours for the sale of alcohol to 24 hours every day; and to add the following condition to the licence -

“The licence holder is to provide a sales report to Northumbria Police and the Licensing Authority detailing alcohol sales by value, brand and pack description every four weeks commencing 31 October 2017”

(Note – the following conditions are also to be added to the licence having been volunteered by the Applicant –

- (1) “There will be no sales of beer or cider above 6.5% ABV with the exception of premium products”; and
- (2) “There will be no sale of single cans of beer and cider”)

Reasons

The Sub Committee had regard to the Applicant’s variation application dated 11 September 2017, seeking to amend the authorised hours for the sale of alcohol to 24 hours every day. The Sub Committee also had regard to the supplemental documents provided by the Applicant prior to the hearing.

The Sub Committee noted also that during the hearing, the Applicant volunteered that the following conditions be added to the licence -

- (1) “There will be no sales of beer or cider above 6.5% ABV with the exception of premium products”; and
- (2) “There will be no sale of single cans of beer and cider”

The Sub Committee had regard to the representations of the Director of Public Health, and the Licensing Authority and supplemental documents as set out in the Licensing Officer's report dated 23 October 2017.

The Sub Committee noted that no representations were made by any of the other Responsible Authorities, or other persons.

The Sub Committee noted that the representations made by the Director of Public Health and the Licensing Authority raised concern as to the impact that the proposed amendment of the licence was likely to have on the promotion of the Licensing Objectives.

The Sub Committee heard from –

- Ms Clover on behalf of the Applicant
- Mr Charalambides on behalf of the Director of Public Health; and
- Mr Bradley on behalf of the Licensing Authority

The Sub Committee had due regard to the Act, the Home Office Guidance and the Council's Statement of Licensing Policy.

The Sub Committee noted that they could only have regard to 'relevant representations', meaning that they should disregard any information put before them which they did not consider to be about the likely effect of the grant of the applications on the promotion of the Licensing Objectives.

With regard to the fact that Northumbria Police had not made a representation, the Sub Committee noted that –

- The Council's Statement of Licensing Policy states that the Licensing Authority will have particular regard to representations from the Police when deciding whether issues about the prevention of crime and disorder have been adequately addressed; and
- The Home Office Guidance states that the Police should be the Licensing Authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective.

Taking this into account when assessing the weight to attach to their concerns regarding the potential impact that modifying the licence may have on crime and disorder, the Sub Committee found it relevant that Northumbria Police had not made a representation. The Sub Committee were nevertheless concerned that the data presented by the Licensing Authority showed that the Applicant was seeking to be authorised to sell alcohol from the premises during the peak time for alcohol related crimes in the vicinity of the premises; and were concerned to ensure that permitting sales during the times sought by the Applicant would not exacerbate the existing concerns.

The Sub Committee's attention was drawn in particular to the cases of –

- Daniel Thwaites Plc (claimant) v Wirral Borough Magistrates' Court (defendant) & Saughall Massie Conservation Society (first interested party) & Wirral MBC (second interested party) [2008] EWHC 838 (Admin)
- Matthew Taylor v Manchester City Council & TCG Bars Ltd [2012] EWHC 3467 (Admin)
- R (on the app of Hope, Glory Public House Ltd) v City of Westminster Magistrates' Court [2011] EWCA Civ 31; and
- East Lindsey District Council v Hanif (t/a Zara's Restaurant & Takeaway) [2016] EWHC 1265 (Admin)

The Sub Committee were reminded of their duty under the Act is to carry out the Licensing Authority's functions with a view to promoting the Licensing Objectives; and that the Home Office Guidance states that they should do so with regard to the overall interests of the local community.

The Sub Committee determined that they were not satisfied that the measures proposed by the Applicant would be adequate for the promotion of the Licensing Objectives were the licence to be modified in order to authorise the sale of alcohol 24 hours every day. The Sub Committee determined, however, that the licence could be modified to authorise this activity with the addition of the following condition –

“The licence holder is to provide a sales report to Northumbria Police and the Licensing Authority detailing alcohol sales by value, brand and pack description every four weeks commencing 31 October 2017”

The Sub Committee imposed the above condition to address concerns regarding the potential for sales of alcohol during the additional licensed hours to adversely impact on crime and disorder and alcohol-fuelled anti-social behaviour, and the potential that this may also have an adverse impact on public nuisance and harm to children. The Sub Committee were particularly concerned as to the potential for 'dial a drink' type operations to utilise the premises, and emphasised that they would expect the Applicant and its staff to be vigilant regarding the risks of proxy sales on behalf of persons who are underage or drunk. The Sub Committee noted that the existing conditions on the licence require that the premises are not open to the public between the hours of 11pm and 5am so sales of alcohol between those times should only take place through the hatch. The Sub Committee stated that they would expect the staff on duty at those times to be in a position to monitor whether the same person or people are making repeat purchases of such a nature as may indicate that they are providing a 'dial a drink' service; and if so then they should be prepared to refuse such sales and raise concerns with Northumbria Police and the Licensing Authority.

Prior to imposing this condition, the Sub Committee called all parties back into the hearing and explained the concern they had and the rationale for the condition they sought to impose. In order to ensure that the condition was understood and capable of being adhered with by the Applicant, the Sub Committee invited the Applicant to comment on the proposed wording. The Applicant then proposed that the condition be imposed as above.

The Sub Committee considered that imposition of the condition as above was a proportionate measure to address the concerns they had regarding the impact that granting

the extended hours for sale of alcohol was likely to have on the promotion of the Licensing Objectives.

Right of appeal

Should the Director of Public Health or the Licensing Authority be aggrieved by the Sub Committee's decision, a right of appeal to the Magistrates' Court exists pursuant to section 181 and paragraph 4(3) of Part 1 of Schedule 5 of the Act.

Should the Applicant be aggrieved by the Sub Committee's decision to modify the conditions of the licence, a right of appeal to the Magistrates' Court exists pursuant to section 181 and paragraph 4(2) of Part 1 of Schedule 5 of the Act.

Any appeal is to be brought before Gateshead Magistrates' Court within 21 days of the date on which the appellant was notified of the decision.

In reaching this decision the Sub Committee has been persuaded by the individual circumstances of this Application and does not intend to create a general exception to its Policy or to create a precedent.

Dated : 6 November 2017

Chair.....