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GATESHEAD METROPOLITAN BOROUGH COUNCIL

LICENSING SUB COMMITTEE MEETING

Tuesday, 1 December 2020

PRESENT:

Councillor

Councillor(s): W Dick, H Kelly and D Duggan

LSC2 APPLICATION FOR A NEW PREMISES LICENCE

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

Chair.....

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GATESHEAD COUNCIL

LICENSING AUTHORITY

SUMMARY OF DECISION OF LICENSING SUB-COMMITTEE

Name of Premises : 'Your Local Stores'
Address : 311-313 High Street Gateshead NE8 1EQ
Applicant : Mr Sajaad Ali
Date of Hearing : 1 December 2020
Type of Hearing : Application for the grant of a Premises Licence

The Sub Committee has decided as follows:

To refuse the application.

Reasons

Prior to the commencement of the hearing, the Sub Committee had regard to the Licensing Officer's report dated 23 November 2020, the supplemental bundle of the same date and the additional documentation provided by Northumbria Police dated 30 November 2020.

The hearing was attended by –

- The Applicant Mr Sajaad Ali (represented by Ms Gill Sherratt)
- Acting Inspector Phil Hamlani of Northumbria Police and Helen Thompson (Force Solicitor)
- Julia Sharp – Public Health Programme Lead; and
- Tracey Johnson – Assistant Manager (Trading Standards and Licensing)

As a preliminary matter, the Sub Committee heard submissions from the parties in respect of Northumbria Police's request to produce documentation which had not been provided prior to the hearing.

The Sub Committee noted that in accordance with Regulation 18 of the Licensing Act 2003 (Hearings) Regulations 2005, in considering any representations or notice made by a party the Authority may take into account documentary or other information produced by a party in support of their application, representations or notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing.

The Sub Committee heard from Ms Sherratt that the application had previously been scheduled for hearing and which was adjourned in order to allow the police to produce additional documentation; that substantial documentation had been provided on 30 November 2020; and that she considered the introduction of further documentation at the hearing to be unprofessional and unfair.

The Sub Committee heard from Ms Thompson that Inspector Robson, who had appeared before the Sub Committee on the previous occasion, was unable to attend the rescheduled hearing and that being able to produce the brief statement of Acting Inspector Hamlani would facilitate the hearing being able to proceed without the need for further adjournment.

The Sub Committee noted that both the Applicant and Northumbria Police submitted that they wished the hearing to proceed without further adjournment; and briefly adjourned the hearing to consider the representations. The Sub Committee determined that it would be appropriate to proceed with the substantive hearing having regard to Acting Inspector Hamlani's statement; and adjourned again briefly to enable Acting Inspector Hamlani's statement to be circulated and read.

On behalf of the Applicant, Ms Sherratt stated –

- The premises that are the subject of the application are a convenience store
- The Applicant has been involved with the premises previously, having relinquished that involvement in 2013 and then returning to it more recently
- The Applicant has spend £25-30,000 renovating the premises; and
- Having listened to the concerns of the Responsible Authorities, the original application has been amended to now seek authorisation for off-sales of alcohol between 9and and 11pm

Ms Sherratt then stated that -she had concern about the fairness of the representations submitted by Northumbria Police; and that there was a lack of evidence to substantiate what had been alleged. Ms Sherratt stated that the police are not above the requirement to provide primary evidence including incident logs to support their submissions; and queried why the police had refused to provide this evidence.

Ms Sherratt submitted that financial issues are relevant to the Sub Committee's decision; and stated that refusal of the application would be catastrophic for the Applicant and that the shop would close.

Ms Sherratt stated that she is a former police officer.

Ms Sherratt stated that at the first hearing of the application, the Applicant was legally represented by Ms Clover of Kings Chambers; and that Ms Clover was unable to attend on this occasion.

Ms Sherratt stated that Northumbria Police were 'trying to cloud the issue'; and referred to paragraph 9.12 of the Home Office guidance issued under section 182 of the Licensing Act 2003 noting that it is incumbent on all Responsible Authorities to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.

Ms Sherratt also referred to commentary by –

- (a) the Local Government Association, that the quality of information is critical to decision making; and
- (b) a firm of solicitors called Poppleston Allen whom she said have been critical of a 'summary approach' being taken to the provision of information to Licensing Sub-Committees, without the substance of the allegations being provided.

Ms Sherratt then stated that the House of Lords Scrutiny Committee have said that it is wrong to give police evidence more weight than it deserves.

Ms Sherratt submitted that the police were making wide ranging allegations to 'pull the wool over the Sub Committee's eyes'.

Ms Sherratt referred to the statement of Inspector Robson, and stated that anti-social behaviour and crime in the town centre does not prevent a licence being issued; and noted that there is no cumulative impact policy in place. Ms Sherratt said that the crime and ant-social behaviour statistics do not support what the police are saying. Ms Sherratt stated that the figures produced do not differentiate between on and off licensed premises; and that the Committee could not make a meaningful refusal of the application based on the police's assertions.

Ms Sherratt noted that the police representations made reference to concerns based on previous occasions when the Applicant had been a Designated Premises Supervisor. Ms Sherratt said that it would be wrong to draw inference from the fact that issues had occurred at premises while the Applicant was not there as a DPS does not have to be on-site at all times. Ms Sherratt noted that the Council's Statement of Licensing Policy sets out an expectation that a DPS will be present 50% of the time in a seven day week that the premises are open for the carrying on of licensable activities.

Ms Sherratt said that it is not known whether the police investigated each of the incidents that are shown in the hot spot maps at pages 38 and 40 of the additional information.

Ms Sherratt noted reference in the police representation to Mr Ali Baz, and said that he is a local landlord but is not relevant to this application.

Ms Sherratt said that when the Applicant had previously held a licence for 311-313 High Street, he sublet the premises to Mr Kathiravel Ushanathan; and was not involved in the running of the premises at the time of the incident that led to the revocation of the licence.

Ms Sherratt said that the police have not substantiated their allegations.

Ms Sherratt said that even if the Applicant had been involved in the incidents referred to by the police, as they occurred six years ago they should be disregarded as the Applicant is entitled to a fresh start.

Ms Sherratt said that the main thrust of the police representation is that the Applicant cannot run premises properly, and submitted that he has no criminal convictions and that the police contentions are utterly misleading.

Ms Sherratt referred to the incident that occurred at the Best One premises on 1 August 2019 which is referred to at page 38 of the Licensing Officer's report. Ms Sherratt said that the police know what happened, which is not what they were presenting to the Committee. Ms Sherratt said that there is CCTV footage of the incident which she has seen. Ms Sherratt said that the Applicant was standing behind a counter; and his girlfriend got angry and attacked him, battering him over the head. Ms Sherratt said that the Applicant pushed his girlfriend away, showing 'incredible restraint'. Ms Sherratt said that the Applicant took a mobile phone that he had given to his girlfriend from her hand and threw it against a wall. Ms Sherratt said that the Applicant's girlfriend accepted a caution for assault, and that the Applicant had no case to answer. Ms Sherratt said that the Applicant was the victim; and that he accepted a caution for criminal damage to his own phone so as not to have to fight the prosecution as he wanted to put the incident behind him.

Ms Sherratt said that whilst the police had not produced logs of other incidents referred to in their representation, they had produced the log in relation to this incident because 'it suited them'.

Ms Sherratt then referred to the incident that occurred on 8 October 2020 which is referred to at page 23 of the additional information. Ms Sherratt submitted that two 'drug dependent shop lifters' were walking past the premises, shouting and balling and swearing at the Applicant (who was stood outside other premises on the High Street). Ms Sherratt said that the Applicant ran for his own safety. Ms Sherratt said that when police attended and asked him to provide CCTV evidence, he said that he was on his own at the premises and did not want to have to close in order to do so. Ms Sherratt noted that as the premises are not subject to a premises licence, there was no legal requirement on the Applicant to provide the CCTV there and then. Ms Sherratt said that the Applicant asked the police to return at a more convenient time. Ms Sherratt said that the Applicant is very frustrated with the way he has been treated by the police.

Ms Sherratt said that there is no substance to the police allegations.

Ms Sherratt said that she did not understand the Licensing Authority's concerns regarding the 'Cake & Shake' business also operating from the premises.

Ms Sherratt said that the Public Health representation is a broad brush approach which is not specific to the premises; and submitted that the data is not meaningful and that 'public health is not a licensing objective'.

Ms Sherratt stated that if the licence were to be granted and issues then arose, it could be reviewed.

Ms Sherratt was then asked whether it remained the Applicant's intention to carry out deliveries between 9am and 11pm; and confirmed that he is.

Ms Sherratt was asked who will make the deliveries; and Ms Sherratt stated that this will either be the Applicant or someone else; and that if it was the Applicant then someone else would be at the premises.

Ms Sherratt was asked what mechanism would be used to take orders for delivery; and stated that it would be the internet.

Ms Sherratt was asked what security and safeguards would be in place for drivers and customers receiving deliveries; and responded to say that the driver would ask the customer for identification, that orders would only be delivered to residential addresses, that a refusals register would be kept and that training would be provided.

Ms Sherratt was asked what procedures would be followed on delivery to prevent underage sales; and stated that a Challenge 25 policy would be in place; and that the people making deliveries would receive online training.

Ms Sherratt was asked whether it was the Applicant's intention to make deliveries where alcohol would be the sole purchase; and responded to ask why this should not be the case. Ms Sherratt stated that there is no evidence that deliveries are a problem nationally; and that anyone with a premises licence can deliver alcohol. Ms Sherratt stated that the vast majority of licences have no safeguards in respect of deliveries; and that there are no problems if the deliveries are dealt with in the same way as sales in a shop.

Ms Sherratt was asked whether a risk assessment had been undertaken in respect of alcohol deliveries; and responded to say that there had been plenty of planning and that the application for the premises licence was the risk assessment. Ms Sherratt said that the Applicant would be prepared to delay commencement of deliveries for a week; and that the training package is online so could be undertaken straightaway.

Ms Sherratt was asked how the Applicant planned to carry out his role as DPS when making deliveries; and responded to say that it would not matter who was at the premises as they would be trained.

Ms Sherratt was referred to the fact that the sole director and shareholder of Your Local Stores North East Ltd which is registered at 311-313 High Street is the Applicant's sister; and was asked if she would be working at the premises. The Applicant responded to say that his sister has nothing to do with the business and that it is being moved into his name. The Applicant stated that he will become the director of that company.

The Applicant was asked whether his company Shake & Cake Ltd which is also registered at the premises is now operational; and said that it is not, but that he has advertised for two members of staff and hopes to be open within two weeks.

The Applicant was asked whether deliveries would be happening through that company; and responded to say that it would only be 'groceries for people who cannot get out and only when the shop is closed'.

The Applicant was asked whether there would be parking available for delivery vehicles; and responded to say that he has installed parking at the rear of the premises and that all deliveries will be supplied from there.

The Applicant was asked what his understanding of Challenge 25 was; and stated that is someone does not look 25 then they should be asked to provide identification.

The Applicant was asked if there would be a delay between orders for deliveries being placed and then being delivered; and stated that there would be a minimum delay of one hour.

The Applicant was asked if there would be a minimum order value for deliveries; and Ms Sherratt responded to say this would be £10.

Acting Inspector Hamrani then stated that he was concerned that the Applicant had previously been obstructive and not helped the police with their enquiries; and that positive action regarding criminal actions had been taken in relation to the Applicant's previous licensed premises as well as these premises when he previously held the licence.

Acting Inspector Hamrani said that he was disappointed that Ms Sherratt had played down the significance of the domestic violence incident that occurred at the Best One premises in 2019, which had happened in front of a young child. Acting Inspector Hamrani noted that the Applicant had not sought to contact the police.

Acting Inspector Hamrani said in relation to the incident that occurred in October 2020, that the Applicant could have produced CCTV footage to assist the police with their enquiries but did not. Acting Inspector Hamrani said that he would have expected the Applicant to have cooperated more than he did.

Acting Inspector Hamrani said that the incidents gave rise to major concern that he would not expect the Applicant to contact the police to prevent crime and disorder.

With regard to the hot spot maps referred to in the police representation, Acting Inspector Hamrani said that they give an overview of anti-social behaviour and crime in the area.

Acting Inspector Hamrani said that there are a number of service providers located in the town centre who support people who struggle with alcohol addition; and would be concerned about the impact that these premises would have.

Acting Inspector Hamrani said that since July there have been 35 dispersal notices used to require people to leave the town centre.

Acting Inspector Hamrani said that very little of the crime in the town centre is domestic; and that the majority is from business premises relating to thefts and assaults.

Acting Inspector Hamrani said that he had concerns about the proposed delivery service, in that drivers may be challenged on the doorstep by people who are drunk, underage, etc; and that he was concerned how effective the proposed safeguards would be in practice.

Acting Inspector Hamlani was asked whether Northumbria Police had requested that a cumulative impact policy be adopted in respect of the town centre, and confirmed that this was not the case but that a Public Space Protection Order was in place.

Ms Johnson said that she had concerns regarding the Applicant's level of cooperation in promoting the licensing objectives; and questioned whether he would be able to adequately comply with restrictions on the licence if it were to be issued. Ms Johnson said that the only positive step that the Applicant had taken in response to the concerns raised was to pull back the proposed hours for deliveries, which is insufficient to address the concerns. Ms Johnson confirmed however that the Applicant had cooperated with the recent visit by Council officers in respect of compliance with the Health Protection Regulations compliance.

Ms Johnson said that she was mindful that the Applicant had previously failed to notify the Licensing Authority when he ceased to be involved with the running of premises for which he was the licensee; and was concerned that he had not cooperated when police officers requested his CCTV footage in October this year.

Ms Sharp reiterated concern regarding the potential for harm from alcohol deliveries; and that whilst recognising that the Applicant had amended his proposed operating schedule in respect of the timing of deliveries she remained concerned as to the potential for the licensing objectives to be undermined due to insufficient and inadequate safeguards.

In summing up –

- Ms Thompson directed the Sub Committee to the steps available for them to take as set out at section 18 of the Licensing Act 2003; and invited the Sub Committee to reject the application based on the issues set out in the written representations and as discussed at the hearing
- Ms Thompson said that Northumbria Police were not satisfied that there would be responsible management in place were the licence to be granted
- Ms Thompson directed the Sub Committee to the licensing objectives as set out in the Act, to the Council's Statement of Licensing Policy and to the Home Office guidance issued under section 182 of the Act
- Ms Thompson referred the Sub Committee in particular to paragraphs 5.1, 5.9, 6.2, 7.5, 8.17, 8.19 and 11.3 of the Policy; and to paragraphs 9.12, 9.44 and 10.8 of the Home Office guidance
- Ms Thompson directed the Sub Committee to the civil standard of proof, and noted that hearsay evidence is admissible and that the Sub Committee may attach such weight to the information before it as it sees appropriate
- Ms Thomson noted that there were 1,088 incidents reported in the town centre between April 2019 and March 2020; and submitted that it would be disproportionate to provide incident logs in respect of each one, and that the information provided to the Sub Committee is proportionate to enable it to attach weight to the police representations

- Ms Thompson referred to the fact that the premises licence for the premises had been revoked previously at a time when the Applicant was found to have abandoned his responsibilities under the licence; and submitted that there is insufficient evidence to be satisfied that his attitude towards those responsibilities has changed
 - Ms Thompson noted that the Applicant took no action to inform the police of the incident that occurred at his Best One premises in 2019; nor the incident that occurred outside these premises in October this year
 - Ms Thompson questioned whether the Applicant had shown that he would be able or willing to comply with the conditions he has offered in respect of the provision of CCTV at the premises; noting that when officers requested CCTV footage in October it had not been recorded for 31 days
 - Ms Thompson reiterated the concern regarding the safety of drivers and the potential for underage sales through delivery services
 - Ms Thompson acknowledged that there are businesses that operate alcohol delivery services, but submitted that they are large organisations with adequate risk assessments and that the same is not evident in this application
 - Ms Thompson submitted that a minimum time period of one hour between order and delivery is insufficient to prevent the service being abused
 - Ms Thompson noted that a licence once granted can be transferred, so the controls need to be robust; and
 - Ms Thompson submitted that consideration should be given as to the adequacy of conditions relating to the last time when deliveries may be made; whether alcohol should be paid for in advance; and whether adequate provision of CCTV for deliveries such as body-worn video and dash-cam footage is feasible
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- Ms Johnson reiterated concerns expressed by Ms Thompson; and noted that it is expected that the DPS of premises will be present 50% of the time as above
 - Ms Johnson submitted that having a period of only one hour between an order for alcohol delivery being placed and it then being delivered is akin to a 'dial a drink' operation; and that she would have expected to see a more detailed risk assessment in this respect
 - Ms Johnson said that she was not satisfied that the Applicant would positively engage with the Council or the police; and was not satisfied that robust procedures would be in place to adequately promote the licensing objectives
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- Ms Sharp supported the comments of Ms Thompson and Ms Johnson; and expressed concern that the proposed safeguards would be inadequate to prevent the licensing objectives being undermined
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- Ms Sherratt submitted that the application a straightforward one for a convenience store; and that the premises are not located in a cumulative impact zone
 - Ms Sherratt said that any refusal or limitation on the licence should be evidence-based

- Ms Sherratt submitted that the police evidence should not be accepted and said it was misleading
- Ms Sherratt stated that the statistics provided in respect of anti-social behaviour are not meaningful
- Ms Sherratt stated that she has not asked the police to provide 1,088 incident logs, but has asked that they provide all those that are relevant to the application which she submitted are those that relate to alcohol from off-licences
- Ms Sherratt submitted that it is irrelevant how often the Applicant is present at the premises, as he can run his business as he sees fit. Ms Sherratt said that the Applicant has invested in the business and intends to run it responsibly
- Ms Sherratt said that there was no evidence as to how often the Applicant is at the premises or how he runs his business
- Ms Sherratt said that costs orders have been made against Councils where excessive weight has been given to selective police evidence
- Ms Sherratt said that the Applicant was the victim of an assault during the incident that occurred at his Best One premises in 2019; and that she was flabbergasted that the police were making out that the fact the incident occurred at licensed premises was relevant to this application as the Applicant's girlfriend could have lost her temper anywhere
- With regard to the incident that occurred in October this year, Ms Sherratt said that the Applicant did not refuse to provide CCTV footage, but did not want to close his shop at the time when the request was made
- Ms Sherratt said that she did not understand the concern regarding deliveries; and that nationally there is no problem
- Ms Sherratt said that the Applicant is being discriminated against
- Ms Sherratt said that the Applicant would take advice and work with the police
- Ms Sherratt submitted that from her experience in dealing with licensed premises she was not aware of any conditions that could be effective over and above what had already been offered, i.e. that deliveries would only be made to residential addresses, that delivery staff would be trained, that age checks would take place at the point of delivery, that drivers could refuse to hand over alcohol if they had concerns and that they would keep a refusals register
- Ms Sherratt said that a requirement to use body-worn cameras would be excessive
- Ms Sherratt said that a 24 hour delay between the ordering of alcohol and its delivery would be as much as the Applicant would accept, as any more than that would go against the nature of the business being that of a convenience store so would not be viable; and
- Ms Sherratt said that alcohol deliveries have been largely deregulated by the Business and Planning Act 2020

The Sub Committee received legal advice which was provided in open session.

In reaching its determination the Sub Committee had regard to the Act, the Home Office Guidance, the Licensing Authority's own Statement of Licensing Policy and the individual facts.

The Sub Committee were mindful of the Judgment in the case of R (on the application of Hope & Glory Public House Ltd) v (1) City of Westminster Magistrates' Court & Ors [2011] EWCA Civ 31 in which Lord Toulson stated, "Licensing decisions often involve weighing a variety of competing considerations: the demand for licensed establishments, the economic benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand, the effect on law and order, the impact on the lives of those who live and work in the vicinity, and so on... They involve an evaluation of what is to be regarded as reasonably acceptable in the particular location."

The Sub-Committee also bore in mind the case of Daniel Thwaites plc v Wirral Borough Magistrates Court (2008) EWHC 838 (Admin) and Meade v Brighton Corporation (1968) 67 LGR 289 with regard to the weight to be attached to the representations they heard from the Responsible Authorities and in particular the Police in relation to the prevention of crime and disorder.

The Sub Committee were mindful 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 noted the Judgment of Mr Justice Jay in the case of East Lindsey District Council v Hanif (t/a Zara's) (2016) EWHC 1265 (Admin) with regard to the approach to be taken to determining the appropriate and proportionate action in light of the salient Licensing Objectives; and in particular their approach should involve –

- consideration of the antecedent facts; and
- a prospective consideration of what is warranted in the public interest, having regard to the twin considerations of prevention and deterrence.

The Sub Committee also had regard to paragraph 6.2 of the Council's Statement of Licensing Policy which emphasises that the Licensing Authority considers –

- the effective and responsible management of premises
- instruction, training and supervision of staff; and
- the adoption of best practice

to be the most important control measures for the achievement of all of the Licensing Objectives.

The Sub Committee were concerned that the Applicant had appeared to take the law into his own hands during the incidents that occurred in 2019 and October this year rather than contact the police; and were not satisfied that he would carry on the licensable activity in a sufficiently responsible manner so as to ensure that the objectives are duly promoted.

The Sub Committee considered whether there were conditions that could be imposed on the licence if granted to allay their concerns, but were not satisfied that such conditions were either practicable or enforceable.

The Sub Committee was cognisant of the Applicant's proposals but was not satisfied that the measures would adequately safeguard against the risk of the licensing objectives being undermined.

In all the circumstances, the Sub Committee determined that the application should be refused.

Right of appeal

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

Any appeal is to be brought before Gateshead Magistrates' Court within 21 days of the date of notification 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 : 9 December 2020