

**LICENSING ACT 2003**

**HEARING OF THE LICENSING SUB-COMMITTEE**

**Regarding Delfan Stores, Market Lane, Swalwell**

**Date of Hearing :** 8<sup>th</sup> October 2021

**Chair :** Cllr Kevin Dodds

**Member (1) :** Cllr Marylin Ord

**Member (2) :** Cllr Marylin Charlton

**Licensing Officer :** Tracey Johnson

**Legal Advisor :** Roddy Currie

**Democratic Services Officer :** Sonia Stewart

**Type of Hearing**

- Application for the grant of a new Premises Licence under s.17

**Parties to Hearing**

**Applicant :** Asghar Zafarabadi

**Representative :** Mr Sajadi ( Visa Advisor)

**Legal Rep. :** N/A

**Also present** Mr Hossain (business partner)

**Responsible Authorities:**

- Chief Officer of Police : No
- Fire Authority : no
- Health & Safety : no
- Planning Authority : no
- Environment/EHO : no
- LSCB : no
- Weights and Measures : no
- Public Health : yes
- Licensing Authority : yes

**Interested Parties :** n/a

### **The Issues to be considered by Licensing Sub Committee:**

An application was made by Mr Asghar Zafababadi for the grant of a Premises Licence for Delfan Stores, Market Lane, Swalwell

Representations were received from three Responsible Authorities, relating to the Licensing Objectives of –

- (1) the prevention of crime and disorder
- (2) the prevention of public nuisance
- (3) public safety; and
- (4) the protection of children from harm.

The Sub Committee having regard to the application, the relevant representations and the evidence of all parties, considered whether it was appropriate to take any steps in order to promote the Licensing Objectives.

The steps the Sub Committee could take include :

- (a) to grant the licence subject to any mandatory conditions and to conditions that are consistent with the operating schedule
- (b) to grant the licence with the addition of such conditions as the committee considers appropriate for the promotion of the licensing objectives (and for shorter hours than requested)
- (c) to reject the application.

### **THE HEARING**

The Sub Committee has :

- Considered the Agenda papers dated 30 September 2021
- Considered the Report of Licensing Consultant Tim Robson submitted by the Applicant dated 5<sup>th</sup> October 2021
- Considered the opening remarks of the Licensing Officer
- Considered the National Guidance issued under s182 of the Licensing Act 2003 and Gateshead Council Statement of Licensing Policy as outlined in the Licensing Officer's Report
- Heard – The Applicant
- Heard – the Responsible Authorities

The Sub Committee took into consideration the further points made by the Parties or their representatives –

Mr S - Language barrier was a problem when TJ visited  
Applicant has a personal licence, got online  
After training, will uphold licencing objectives  
Has improved his knowledge and will put it into practice.

Mr A - Personal licence 8 months ago. Spoke to Tracy, she asked about 4 licencing objectives. Did not understand that then, but Tim Robson has trained him and he now understands the objectives.

Shop is open, but no alcohol. Worked in an off licence in Newcastle for 2 years. Does not intend to deliver alcohol – he just asked the question.

No intention to do deliveries. Will apply to vary in the future if he decides to do so. Will ask for ID for people under 25.

Mr S – knows about how to train staff, Mr A was working as a supervisor in an off licence previously

Mr A - uses example of where he has asked for ID under 25 . Used the refusal register.

Question from TJ – do you now understand after training from TR. -yes

Who else will work there – Mr Hossain, who has also been trained by TR.

TJ – Concern that Mr A could not explain challenge policy

Had done online 1 day personal licence course , which did not seem to be adequate

1<sup>st</sup> visit - Gave Mr A a refusal register , he was not sure how it was to be used.

Didn't know about licencing objectives

CCTV was fine, could operate it.

Suggested that he would have done deliveries 6pm – midnight. Has now dropped the deliveries.

2<sup>nd</sup> visit – could explain challenge 25 , but not licencing objectives. Advised to get some further training.

JS – suggests that a condition preventing deliveries could be attached.

Ms A – has done training , will ensure community safety by complying with licencing objectives

Sum Up-

TJ – shop close to premises where homeless/recently released live – difficult clientele so need to be able to meet objectives.

Mr A – Has got the training and now has the necessary knowledge.

### **General :**

That the duty of the Licensing Sub Committee was to promote the four Licensing Objectives. Relevant today were the Licensing Objectives of –

- prevention of crime and disorder
- the prevention of public nuisance
- public safety; and
- the protection of children from harm.

In doing this they must take into account the licensing legislation; National Guidance; The Statement of Licensing Policy and information given to them by the parties which was relevant to the promotion of the Licensing Objectives.

As in everything they did as a public body, they must give effect to the Convention rights and freedoms expressed in the Human Rights Act. Particularly relevant today were the rights to a fair hearing and to respect for private and family lives.

They should carefully consider all written material before them and what the parties had said at the hearing. They should look for evidence to support or contradict any assertion that any party had made, then decide for themselves who was most credible.

They should take into account all factors which were relevant to the achievement of the Licensing Objectives and disregard anything not relevant to that. They must give reasons for each decision they made.

Suggested that they might find it helpful to structure their deliberation as follows :

Consider the application and operating schedule in detail.

Consider the information and submissions from the applicant.

Consider the information and submissions from the interested parties.

Decide whether they have concerns as to the promotion of the Licensing Objectives should the application be granted as it has been sought (including any amendments to the operating schedule originally submitted).

If not satisfied that all the problems they have identified from the evidence can be dealt with by the measures proposed by the applicant then consider whether any condition or modification is appropriate.

When looking for conditions or modifications they should ensure that they are understandable, achievable, enforceable and proportionate.

Where possible the conditions should be taken from the Pool of Model Conditions set out in the Licensing Policy.

If no conditions or modifications could deal with the problems they had found then they should refuse the application.

Any decision the sub-committee take should be in accordance with the National Guidance and the Council's Statement of Licensing Policy. The Policy document had been settled after extensive consultation with all interested parties in the Borough and should not be departed from lightly. If they decide that it is appropriate, because of the particular circumstances of this application, to depart from the policy they should state the reasons why and also that this decision is not intended to set a precedent.

The Sub-Committee decided at this point to move to exclude members of the public (including parties) from their discussions. This was in accordance with Reg. 14(2) of the Licensing Act 2003 (Hearings) Regulations 2005 on the basis that the public interest in so doing outweighs the public interest in having members of the public present.

## **DECISION**

The Sub-Committee is aware that it has to act to promote the Licensing Objectives as set out in the Licensing Act 2003 and that any decisions which it takes, or conditions which it attaches to a Licence must be appropriate to achieve those objectives. In reaching its decision it has taken into account :

- Relevant parts of the Council's Statement of Licensing Policy

Paragraph 7 of the Council's Statement of Licencing Policy sets out that –

‘Applicants will need to provide evidence to the Licencing Authority that, in respect of each of the four licencing objectives, suitable and sufficient measures, as detailed in their operating schedule, will be implemented and maintained.’

Paragraph 8 of the Statement of Licensing Policy sets out that -

'It is expected that premises whose primary activity is off licence sales will not normally be open between 23.00 and 7.00. Applicants wishing to operate beyond 23.00 will need to demonstrate to the satisfaction of the licencing authority, in their operating schedule, that there will be no significant disturbance to members of the public living, working or otherwise engaged in normal activity around the premises concerned. Opening hours beyond 23.00 will generally be considered to be more acceptable for premises in commercial or tourist areas with high levels of public transport availability, rather than premises in predominantly residential areas '

The Licensing Committee found that the applicant had addressed the objections raised by Tracey Johnson concerning his knowledge of the licencing objectives, Challenge 25 and the use of the refusals register. They also noted that the applicant stated that he has no intention of doing alcohol deliveries and would apply to the Council for a variation if he did so in the future. They therefore did not consider the objections related to deliveries.

The Committee considered the opening hours requested and found that there was no reason to reduce the opening hours from 12 midnight. The shop is not in a residential area and there is no evidence that members of the public would be significantly disturbed by the sale of alcohol until midnight.

The Committee found that the applicant demonstrated sufficient knowledge of the matters set out in the Operating Schedule, both in his submissions to the committee and evidence through the report of Tim Robson, Licensing Consultant, to uphold the licencing objectives and granted the premises licence with conditions appropriate to the matters set out in the Operating Schedule.

