

**GATESHEAD COUNCIL
LICENSING AUTHORITY**

SUMMARY OF DECISION OF LICENSING SUB-COMMITTEE

Address : 30-32 Front Street, Whickham, NE16 4DT
Applicant : The Whickham Doghouse Ltd
Date of Hearing : 26 January 2022
Type of Hearing : Application for the grant of a new Premises Licence

The Sub Committee has decided as follows:

To refuse the application.

Reasons

The application was brought The Whickham Doghouse Ltd. Relevant representations were made (and not withdrawn) by four local residents.

The Sub Committee had regard to the Licensing Officer's report, and the verbal representations made at the hearing.

It was noted that the applicant had amended the operating schedule prior to the hearing following mediation with Northumbria police and the Environmental Health Officer.

In considering the application, the Sub-Committee heard from the interested parties as follows –

- That they are residents in the immediate vicinity of the premises
- That they already experience problems with broken glass, littering, discarded drinks, drug taking, sexual activity, urination and vomit which they believe are a consequence of the existing licensable activities taking place in the vicinity; and which is not always reported to the police so will not be fully reflected in the crime statistics for the area
- That during the covid pandemic the Council took steps to widen the pavement outside the premises, to better enable social distancing
- That there is no rear access to the premises so all deliveries will need to be through the front door, with the potential for delivery vehicles to cause an obstruction; with pedestrians having to potentially walk on the road to get past and causing problems for the nearby bus stop
- That unlike other licensed premises in the vicinity, there is no outdoor space at the front of the premises and there is serious concern that use of the rear outside area will cause

disturbance to the abutting residential properties even if this is by members of staff rather than customers

- That on evenings there can be large groups of people moving from one pub to another
- That the absence of provision for smokers could lead to customers causing an obstruction at the front of the premises and/or disturbance to adjoining residential properties from staff using the outside area to the rear
- That the adjoining residential properties at the rear would also be disturbed with noise from inside the premises if the windows were open; and from air conditioning units or other outside equipment for the proposed cool room
- That if bins are kept in the outside area to the rear of the property, this will also cause disturbance when they are filled / emptied
- That noise from staff clearing up after the premises are shut to the public may also be disturbing to nearby residential properties
- That lighting at the rear of the premises would cause a nuisance to adjoining residential premises
- That the premises are located in a conservation area; and
- That there is a high number of licensed premises in the vicinity which already results in cumulative disturbance to residents; and that this means it is effectively an area of sensitivity such that granting the application would lead to the licensing objective of the prevention of public nuisance being undermined.

The Sub-Committee then heard from Mr Hicks (on behalf of the applicant company) as follows –

- That he is a resident in Whickham so has an understanding of the area and does not wish to open a business that would be a detriment to residents
- That he has listened to and responded appropriately to the concerns that have been raised through the application process
- That he has agreed a set of conditions with Northumbria Police and the Environmental Health Officer, and has amended the operating schedule to withdraw the outside seating area for customers so that the area will now only be used for bin storage as it was when the premises operated previously as a pharmacy
- That access and egress will only be through the front door of the premises, other than in the event of an emergency when the fire escape will also be used
- That the premises will be equipped with an alarm system and CCTV

- That the premises will have a ‘no-smoking’ policy for customers and staff
- That deliveries will be from small local breweries so it is anticipated this will be using Transit-sized vehicles rather than wagons, keeping obstruction to a minimum; and that deliveries would be scheduled to take place between 8am and 5pm
- That bins will only be filled and emptied between 8am and 6pm each day
- That lighting to the rear of the property would only come on when someone is outside
- That the capacity of the premises was unknown, but expected to be between 35 and 55 people at any one time
- That it is intended that the premises would be dog-friendly; and that large single sex groups would not be encouraged
- That energy drinks would not be sold at the premises
- That there would not be ‘happy hour’ promotions
- That there would be recorded background music in the rooms on the ground floor of the premises; and that any live events would be led by customer demand
- That any amplification would be at the front of the premises rather than to the rear; and
- That doors and windows would remain shut during any live performances.

The Sub-Committee then received legal advice in open session so that all parties were aware of the advice given.

The Sub-Committee were advised that in choosing which course of action to take, they should have 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 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 noted that paragraph 6.2 of Gateshead Council’s Statement of Licensing Policy states 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 amongst the most important control measures for the achievement of all the licensing objectives”.

The Sub-Committee were reminded 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 were reminded of the Judgment in the case of R (on application of Daniel Thwaites plc) v Wirral Magistrates’ Court and Others (2008) EWHC 838 (Admin), in which the Honourable Mrs Justice Black said:

“[D]rawing on local knowledge, at least the local knowledge of local licensing authorities, is an important feature of the Act’s approach. There can be little doubt that local magistrates are also entitled to take into account their own knowledge but, in my judgment, they must measure their own views against the evidence presented to them. In some cases, the evidence presented will require them to adjust their own impression. This is particularly likely to be so where it is given by a Responsible Authority such as the police.”

The Sub-Committee were reminded of 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 were reminded that any conditions or restrictions they sought to place on the licence must be appropriate for the promotion of the Licensing Objectives; and that they should consider –

- the harm they were seeking to prevent
- what weight to attach to the concerns they had, and

- what would be a proportionate measure to prevent that harm.

The Sub-Committee were encouraged by the understanding that Mr Hicks had of the local area, and his connection to it. The Sub-Committee were also encouraged by the manner in which the applicant had taken on board the concerns expressed by both the responsible authorities and the interested parties, and adapted the operating schedule where possible in light of issues raised.

The Sub-Committee were however seriously concerned about the likelihood of nuisance to nearby residents from –

- the machinery required to operate the premises for the sale of alcohol for consumption on the premises
- the noise and light disturbance to residential properties from the use of the outside area at the rear of the premises arising from the licensable activity including storage, and
- the noise disturbance from patrons inside the premises

They were mindful that none of the statutory responsible authorities had made representations; but noted that both Northumbria Police and the Environmental Health Officer had discussed the application with the applicant and that this had resulted in conditions being included in the operating schedule.

The Sub-Committee considered whether those conditions were sufficient to address their concerns; and found that they were not.

The Sub-Committee noted that the residential properties behind the premises were both noise and light sensitive; and that adherence to the conditions would not adequately alleviate the potential disturbance.

The Sub-Committee considered whether the potential disturbance was sufficient to constitute ‘public nuisance’ for the purposes of the licensing objectives, and noted the judgment in the case of *Colour Quest Ltd and others v Total Downstream UK plc and others* (2009) EWHC 540 that, “A private owner’s right to the enjoyment of his land is not a right enjoyed by him in common with other members of the public, nonetheless any illegitimate interference, being the very same interference contemporaneously suffered by other members of the public, constitutes a common injury satisfying the public nature of public nuisance...”

As such they were satisfied that if the licence were to be granted, there was a likelihood of public nuisance arising.

The Sub-Committee considered whether there were any other conditions or restrictions that could appropriately be imposed that would address their concerns. They found however that due to the nature of the premises and their location, there were no measures that were appropriate that would adequately address their concerns.

In those circumstances, the Sub-Committee determined that it was appropriate to refuse the

application.

Rights of appeal

The applicant company has a right to appeal the Sub-Committee's decision pursuant to section 181 and Schedule 5 of the Licensing Act 2003, such appeal to be made to the Gateshead Magistrates' Court and within 21 days of the date of service of this notice of decision.

In reaching these decisions 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 : 7 February 2022