

**GATESHEAD COUNCIL
LICENSING AUTHORITY**

SUMMARY OF DECISION OF LICENSING SUB-COMMITTEE

Address: 170 Sheriffs Highway, Gateshead, NE9 5SD
Applicant: Venus Express Ltd
Date of Hearing: 17 October 2022
Type of Hearing: Application for a grant of a Premises Licence

The Sub Committee has decided as follows:

To refuse the application

Reasons

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

The hearing was attended by:

- a) Mr Jaafar Mousa Mohammad Jaafar, the sole Director of Venus Express Ltd (the applicant)
- b) Inspector Kevin Ashurst- and Force Solicitor Hayley Hebb from Northumbria Police
- c) Ms Tracey Johnson and Matthew Harman, Gateshead Council's Local Weights and Measures Authority

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

- That this was an application by Venus Express Ltd and that it was a new applicant to those involved in previous hearings.
- That the company was registered for corporation tax, with Companies House and with HMRC.
- That there had been issues with CCTV but those had been corrected and that he would have a contract with a company that would check and monitor it was working accurately.
- That he would operate a challenge 25 policy and showed Sub-Committee the signs he would put up to promote it.
- That he was aware of the 4 licensing objectives and that he would promote them.
- For the prevention of crime and disorder he stated that he would refuse alcohol sales for people that could not show identification verifying their age and to people who were intoxicated. He added he would be alert to proxy sales too and not allow youths to crowd outside his shop. He went onto tell Sub-Committee he would be vigilant about shop lifting.
- In terms of public safety and prevention of nuisance he explained that the aisles were wide enough and that there as adequate lighting in the shop.
- That alcohol would be kept out of the reach which would help to protect children from harm.
- That the shop itself had been trading since 1973 and that it was relevant to the day to day lives of many in the community. He explained that he interacts with the community and is a proud sponsor of a youth football team.

When asked by Sub-Committee whether he would have other staff, Mr Jaafar replied that it

would just be himself. He went on to add that it was difficult in the current economic climate but that he may go onto employ staff in 2023 if conditions improved.

Sub-Committee then went on to ask Mr Jaafar how he would manage the shop if he had to go to an appointment (for example Doctors appointment). Mr Jaafar stated that he would close the shop.

Tracey Johnson queried why Mr Jaafar was inferring that more emphasis was being placed in the application on weekend compliance than during the week. Mr Jaafar advised that he perceived that people saved up for the weeks and tended to spend more on alcohol at weekends so that extra vigilance would be needed at weekends. He added that he would be vigilant all the time.

In respect of Tracey Johnson's questions relating to previous sales by untrained staff which had failed test purchases, Mr Jaafar said that he would be the only person working in the shop for the foreseeable time and that if he had to leave the premises for any reason, the shop would be closed.

The Sub-Committee then heard from Inspector Ashurst from Northumbria Police as follows –

- That his main concerns were the prevention of crime and disorder and the protection of children from harm. Those concerns were due to the premises having been run without a DPS, that a failed test purchase had taken place, no records had been kept and that there had been spikes in ASB.
- That he was concerned that the working hours were not sustainable.
- That he had concerns over the CCTV and whether Mr Jaafar could operate it.
- That no advice having been sought from Northumbria Police on how to meet the licensing objectives
- That there was no detail within the application about training of future staff
- That he doesn't see anything in this application that changed his view from previous hearings that would give him confidence in Mr Jaafar being the DPS. He went on to explain that the DPS role is a vital cog within Licensing.

In respect of the points raised by the Inspector, Mr Jaafar sought to distance himself from previous dealings with the premises and said that this was an application by Venus Express Ltd and not him personally and therefore the previous issues should not be considered.

The Sub-Committee next heard from Tracey Johnson from the Weights and Measures Authority as follows –

- That the grounds of objections were also the prevention of crime and disorder and the protection of children from harm.
- That Mr Jaafar was the person that was left in charge of the shop by the licence holder when the test purchase took place and was the person that was on site when her Officers visited in 2021 and 2022.
- That she shared the Inspectors concerns regarding management of the shop when it came to working hours and training of any future staff

In respects to the points raised by Ms Johnson, Mr Jaafar stated that training would be provided through a Licensing Consultant.

In summing up Northumbria Police and the Weights and Measures Authority advised that the historical issues from the premises occurred whilst Mr Jaafar held day to day running of the

business and the new application did not address their concerns.

In his summing up Mr Jaafar stated that he would adhere to any other conditions that the Sub-Committee thought should be added and that he welcomed the authorities to visit the premises.

The Sub Committee received legal advice in open session.

The Sub-Committee were advised that in choosing which course of action to take, they should have regard to:

- The Licensing Act 2003,
- the Home Office Guidance,
- the Licensing Authority's own Statement of Licensing Policy
- the individual facts.

The Sub Committee were advised of their duty under the Licensing Act 2003 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 were referred to 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;
- 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 referred to appellate court judgments which may assist:

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 paragraph 42:

"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."

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 para 55:

"Drawing 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."

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;
- 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 advised that if the licence was granted, in part or in whole, any conditions or restrictions were placed on the licence, in the event that you chose to grant the application and chose to place conditions, 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.

If certain conditions were imposed, they should ensure that such conditions are sufficiently clear that they can be understood and enforced.

The Sub Committee were advised that in dealing in particular with:

- The prevention of crime and disorder
- The protection of children from harm

The prevention of crime and disorder is dealt with in detail in the H.O. guidance in paragraphs 2.1 – 2.6

- a) 2.1 Licensing authorities should look to the police as the main source of advice on crime and disorder. However, that is not to say the police should not be looked to as the sole source of advice on crime and disorder. However, in this application due weight as they consider fit, should be given to Northumbria Police and Local Weights and Measures Authority

2.3 Conditions should be targeted on deterrence and preventing crime and disorder including the prevention of illegal working in licensed premises

The Sub Committee were advised that the protection of children from harm is dealt with in detail in the H.O. guidance in paragraphs 2.2 – 2.31

Paras 2.22 and 2.23 focus on the primary considerations in respect of protection of children from harm and refer to sale of and exposure of alcohol to children.

If a licence is granted and if conditions are considered appropriate, para 2.27 provides specific guidance on this

The Sub Committee were advised that the concerns raised by the objectors how long Mr Jaafar would potentially be working while running the business as sole employee was not in respect of his welfare but should be considered as part of the determination of whether overall the licensing objectives were met.

The Sub Committee were advised that in respect of Mr Jaafar stating that Venus Express Ltd

was the applicant and that previous licensing issues in respect of the business should not be considered, the consideration was how the business would be run and to determination was whether the licensing objectives were met.

Matters including the conduct of persons having previous links to the premises could be considered as to how they sit with the licensing objectives being met.

In particular, as mentioned earlier, the guidance in the case of *East Lindsey District Council v Hanif (t/a Zara's)* (2016) EWHC 1265 (Admin) – Mr. Justice Jay paragraph 13- 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;
- a prospective consideration of what is warranted in the public interest, having regard to the twin considerations of prevention and deterrence.

The provisions of the Human Rights Act 1988 were considered.

Rights of appeal

Venus Express Ltd has the right to appeal the Sub-Committee's decision to refuse the application for a grant of a premises licence.

Pursuant to section 181 and Schedule 5 of the Licensing Act 2003, any such appeal is 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: 24 October 2022