

LICENSING ACT 2003 SUB-COMMITTEE

Thursday, 2 October 2014

Present:

Councillors G Davies
T Norbury
L Reecejones

26 **APPOINTMENT OF CHAIR**

Resolved – That Councillor T Norbury be appointed Chair for this meeting.

27 **MEMBERS' CODE OF CONDUCT - DECLARATIONS OF INTEREST**

Members of the Sub-Committee were asked to declare any disclosable pecuniary and non pecuniary interests in connection with any application on the agenda and state the nature of the interest.

No such declarations were made.

28 **APPLICATION FOR A PREMISES LICENCE - NEWSMAG, 13-15 ALBERT ROAD, HOYLAK**

The Strategic Director of Regeneration and Environment reported upon an application that had been received from Sutharmika Sivagnamoorthy for a Premises Licence in respect of Newsmag, 13-15 Albert Road, Hoylake, under the provisions of the Licensing Act 2003.

The hours requested were outlined within the report.

The applicant had submitted an operating schedule setting out how the business would be conducted/managed in accordance with the four licensing objectives. A copy of the full application was available. Members were advised that the proposals set out in the operating schedule may become conditions of the licence should the licence be granted.

Representations had been received from two local residents. The representations related to noise nuisance and anti-social behaviour which was currently a problem within the vicinity of the premises. The representation also related to noise nuisance currently being caused by the day to day operation of the premises. Copies of the representations were available.

The applicant attended the meeting with his representative, Mr Jordan.

A local resident, Mrs Tucker, was also in attendance.

The Licensing Manager confirmed that all documentation had been sent and received and that another local resident who had made a representation was unable to attend due to extenuating circumstances.

Mrs Tucker requested permission to submit a plan of her premises and Mr Jordan requested that a training programme be taken into consideration. These documents were therefore accepted and considered by Members.

Mr Jordan addressed the Sub-Committee and outlined the application. He advised Members that the application was for off sales only and that the Designated Premises Supervisor would deliver a comprehensive training programme to staff which he believed would uphold the licensing objectives. He referred to the representations made by local residents and offered to meet with them to discuss any problems should the application be granted. Mr Jordan referred to the issues raised within the representations and informed Members that the issues were not related to alcohol sales and that the applicant had no intentions of causing any further issues for local residents.

Mr Jordan, responded to questions from Mrs Tucker, Members of the Sub-Committee and Mr D K Abraham, Legal Advisor to the Sub-Committee.

In response to questions, Mr Jordan explained that the applicant had successfully run a licensed premises in Moreton for two years. Mr Jordan also confirmed that alcohol would only be stored in the storage room which had no outside access.

Mrs Tucker outlined the concerns and issues she had experienced whilst living above the premises. She provided dates when she had been disturbed late at night by builders who had been refurbishing the premises and the measures she had taken to have her own premises soundproofed. She informed Members that it was acceptable that the premises opened early, however, did not find it acceptable for the premises to open until 11 pm. Mrs Tucker advised the Sub-Committee that noise could be heard in her accommodation during the hours that the premises were open. Mrs Tucker suggested that an acceptable time for the premises to close would be 8 pm. She requested that Members consider the application carefully in light of the number of licensed premises already situated in the vicinity and the proximity of the premises to residential properties.

Mrs Tucker responded to questions from the applicant, Members of the Sub-Committee and Mr D K Abraham.

In determining the application the Licensing Act 2003 Sub-Committee had regard to the Licensing Objectives, the Council's Statement of Licensing Policy and the Statutory Guidance issued under section 182 of the Licensing Act 2003.

Members considered the representations made by the applicant and had regard to the representations made by local residents.

Members also gave consideration to the measures proposed by the applicant that would be put in place to ensure that the licensing objectives would be upheld and ensure that alcohol would not be sold to young persons under the age of 18.

Members heard evidence from Mrs Tucker that she currently experienced public nuisance from the premises. Mrs Tucker gave examples of incidents relating to the nuisance that she had been caused since the applicant had occupied the premises including the siting of an air conditioning unit which had caused her to complain to Environmental Health who had instructed the applicant to relocate the unit.

Members heard how noise from the shop travelled up to the two residential properties above the premises and how residents had sought to mitigate this nuisance.

Members heard from the applicant that he wanted to increase his business and that he considered this would be achieved through being able to sell alcohol from the premises. The applicant indicated that it was unlikely the premises would open later if the Licence was not granted. Members also heard that there was a possibility the premises would no longer operate if a Licence was not granted.

Mrs Tucker advised Members that whilst the premises did create a public nuisance to both her and her neighbour, she would be willing to tolerate this until 8.00 pm.

In determining the matter Members have also taken into account Section 11 of the Guidance in respect of the review mechanism provided by the Licensing Act 2003 when problems associated with the Licensing Objectives occur after the grant of a Premises Licence.

Resolved -

(1) That in accordance with Regulation 14(2) of the Licensing Act 2003, the public be excluded from the meeting during consideration of the application.

(2) That the application for a Premises Licence in respect of Newsmag, 13-15 Albert Road, Hoylake, be granted with the following hours:

Sale by Retail of Alcohol

Sunday to Saturday 08:00 to 20:00

Hours Open to the Public

Sunday to Sunday 06:00 to 20:00

(3) That the following conditions be attached to the Premises Licence:

- **Between the hours of 08:00 and 20:00 there must be 2 members of staff on duty.**
- **Alcohol must be stored securely in the store room that can be locked and is not accessible from the outside.**
- **All employees must complete training on the following before being allowed to sell alcohol in the shop: the prevention of the sale of alcohol to persons under the age of 18 years, proxy sales, the responsibility to**

refuse alcohol to anyone who is drunk as well not selling alcohol to known street drinkers. Refresher training must be conducted with staff at least every 14 weeks. Written records of this training must be kept at the premises and made available to an Authorised Officer upon request.

29 **13:00 APPLICATION FOR A PREMISES LICENCE - TODAY'S BIRKENHEAD, 65-67 OXTON ROAD, BIRKENHEAD**

The Strategic Director of Regeneration and Environment reported upon an application that had been received from Vigi Paskar for a Premises Licence in respect of Today's Birkenhead, 65-67 Oxtan Road, Birkenhead, under the provisions of the Licensing Act 2003.

The hours requested were outlined within the report. The premises had previously traded as a Public House and had a Premises Licence that permitted the sale of alcohol for consumption on and off the premises.

The applicant sought a substantial variation to the Premises Licence which would include the premises supplying alcohol for consumption off the premises only.

The applicant had submitted an operating schedule setting out how the business would be conducted/managed in accordance with the four licensing objectives. A copy of the full application was available. Members were advised that the proposals set out in the operating schedule may become conditions of the licence should the licence be granted.

Representations had been received from two local residents. A petition signed by 388 residents had also been received. The representations related to public nuisance and anti-social behaviour being caused by street drinkers within the vicinity of the premises and concerns that should the application be granted, public nuisance and anti-social behaviour would increase.

A representation had also been received from Birkenhead and Tranmere Ward Councillors, Councillor Stapleton and Councillor Davies. The representation supported the concerns expressed by local residents.

A petition containing 187 signatures signed by customers attending the premises had also been received in support of the application.

Merseyside Police had submitted a representation which related to the fact that the premises were located in an area which had been highlighted as Wirral's number one hotspot for anti-social behaviour. Merseyside Police were concerned that should the application be granted, there would be an increase in alcohol related crime and disorder. Copies of all the representations and petitions were available.

The applicant attended the meeting together with Mr K Kirkbride, representative of Today's Group, Mr R Baker, Agent, Professor R Light, Advocate, Mr V Paskar, Designated Premises Supervisor, Mr S Ramalingam, Manager and Mr A Kalamohan, Owner.

Sergeant S Barrigan was also in attendance together with Constable P Coley and Constable S Brett.

Councillor P Davies, Ward Councillor, was in attendance together with a local resident, Miss Jones.

The Licensing Manager confirmed that all documentation had been sent and received.

Professor Light informed Members that Mr Baker had perused CCTV footage of the area due to the concerns raised regarding street drinkers and informed Members that this coverage did not show any evidence of street drinking. Members accepted the oral evidence provided by Mr Baker. The CCTV footage was available.

Professor Light addressed the Sub-Committee. He referred to the two previous applications that had been refused regarding this premises and understood the concern that a third application had been made, however, he advised that the way the premises would be run would not undermine the licensing objectives. He advised that the application would change the nature of the building as it would be a shop selling alcohol. He reported that a full range of goods would be offered and that 11.8% of shelf space would be used for alcohol. He made reference to the fact that a Premises Licence had been granted to another premises in Oxtan Road after no representations had been made. He acknowledged that the problem of street drinkers existed in lots of areas, however, he informed Members that no beers or wines with an ABV above 5.5% would be sold at the premises, all alcohol would be stored behind the counter, Challenge 25 would be implemented with till prompts to support this and that strong controls would be in place to ensure street drinkers would not be sold alcohol. Professor Light made reference to the fact that there was no cumulative impact policy in the area and that this had been considered by the Licensing Act 2003 Committee on 18 June 2014.

A short adjournment took place in order that Sergeant Barrigan be given the opportunity to consider documentation which he had not received prior to the hearing.

The meeting reconvened and Mr Kirkbride addressed the Sub-Committee and informed Members that Today's Group was the biggest industrial wholesaler in the UK. He reported that Today's was a Member depot that evaluated and planned stores by category. He advised that alcohol was not the driving force but was an essential product to offer. He further advised that the company supported independent retailers, provided help with training and gave ongoing support. Mr Kirkbride clarified that there would be no external advertisement displayed to highlight the fact that the premises would be selling alcohol and the advert that had been displayed on the window had been due to a misunderstanding with the shop fitters.

Professor Light confirmed that approximately 12% of sales would be alcohol sales and that the Designated Premises Supervisor had four years experience as a Designated Premises Supervisor and eight years experience in licensed premises. Mr Kirkbride referred to the petition in support of the application and informed Members that 62% of the signatories lived within half a mile of the premises. Professor Light referred to paragraphs 4.13 and 4.14 of the Council's Statement of

Licensing Policy and outlined the proposed conditions that would be attached to the Premises Licence. Mr Baker also provided details upon the training programme and what training would be entailed. Mr Baker referred to the CCTV footage he had examined and reported that he had seen no evidence of street drinkers in Tetbury Street.

Professor Light, Mr Baker and Mr Kirkbride, responded to questions from Sergeant Barrigan, Councillor P Davies, Members of the Sub-Committee and Mr D K Abraham, Legal Advisor to the Sub-Committee.

Sergeant Barrigan referred to the two previous applications that had been made for a Premises Licence at this premises that had been refused following hearings of the Licensing Act 2003 Sub-Committee in 2013 as Members had determined that increasing the availability of alcohol at this particular location would undermine the licensing objectives.

Sergeant Barrigan reported that that the premises were located within Wirral's worst hotspot for alcohol related anti social behaviour. Sergeant Barrigan provided statistics that had been presented to Wirral's Anti Social Behaviour Governance Group in May, July and August 2014. The figures illustrated that within the centre of Birkenhead around the Oxtan Road area there was a problem of street drinking and alcohol related anti social behaviour. Incidents of street drinking on streets in close proximity to the location of the premises were clearly identified within the figures provided.

Sergeant Barrigan informed the Licensing Act 2003 Sub Committee that it had been necessary to introduce additional policing resources into the area where the premises were located and develop the Seven Beats Project to operate in the centre of Birkenhead to address criminal activity taking place in this area. Members were advised that alcohol was a significant factor in these crimes. Members were provided with figures highlighting that for the period 1 April 2013 to 31 March 2014, 46% of alcohol related incidents in the Birkenhead area took place in the Seven Beats district. Statistics provided for May, July and August 2014 demonstrated that alcohol related anti social behaviour continued to be a problem in this area.

Sergeant Barrigan provided evidence in the form of a research paper entitled 'Hours and Days of Sale and Density of Alcohol Outlets: Impacts on Alcohol Consumption and Damage: A Systematic Review' that highlighted the link between the number of venues selling alcohol in one area and levels of harm caused by alcohol.

Sergeant Barrigan referred to the decision of the Licensing, Health and Safety and General Purposes Committee in June 2014 to introduce a Designated Public Places Order for the whole of Birkenhead as a method to address the problem of anti social behaviour linked to street drinking. Sergeant Barrigan reported upon concerns that the location and appearance of the premises would attract individuals who misuse alcohol and that this would lead to an increase in alcohol related crime and disorder. He advised Members that street drinking in Birkenhead presented a significant risk to the safety of the public which included the drinkers, retailers and residents in the area and that Merseyside Police were actively involved in ongoing work to reduce street drinking in Birkenhead, together with Wirral Borough Council and Public Health as well as partners from the Community, Voluntary and Faith Sectors and requested that the application be refused.

Sergeant Barrigan responded to questions from Professor Light.

Councillor Phil Davies informed Members that he had represented the area for 23 years and advised that the main problem reported to him was alcohol fuelled anti social behaviour and that the Oxton Road area was the number one hotspot for alcohol related anti-social behaviour. Councillor Davies stated that he received complaints about street drinkers around the Oxton Road area on a daily basis. He explained that through his knowledge of the area and information from the people living in the area that many residents had concerns regarding the level of alcohol fuelled anti social behaviour. He stressed to Members that it was his view as an experienced Ward Councillor working with local people, as well as working closely on local initiatives to address the problems in the area, that increasing the availability of alcohol at this particular location would have an adverse effect on the level of alcohol fuelled anti social behaviour in the area. He believed that the licensing objectives would not be upheld should the application be granted and therefore requested that the application be refused.

Councillor Davies responded to questions from Professor Light.

In determining the application, the Licensing Act 2003 Sub-Committee had regard to the Licensing Objectives, the Council's Statement of Licensing Policy, and the relevant sections of the Statutory Guidance issued under Section 182 of the Licensing Act 2003.

In determining the matter Members considered the representations made by Merseyside Police, Ward Councillors and local residents as well as information provided by the applicant in support of the application.

Members considered the petition in support of the application as well as a petition against the granting of the application. It was considered by Members that there were defects in both petitions. Whilst the existence of both petitions demonstrated that there were people in favour of the application as well as people against the application, Members did not attribute weight to either of the petitions due to the lack of evidence in respect of how the signatures were collected. With regard to the petition presented by the applicant, whilst giving the option for people to sign against the application, Members had concerns that signatures may only have been sought from those in favour of the application. Members were not advised what had been verbally communicated prior to them providing a signature. Members also noted a discrepancy in the details of the opening hours referred to within the petition against the application and were unable to ask questions regarding the petition and how it was gathered.

In determining the application Members had regard to the measures that were proposed and focused their considerations on whether the existence of appropriate conditions would address the representations made or whether it would be an increase in the availability of alcohol at this particular location that would undermine the licensing objectives.

Members noted that the applicant had not disputed that the premises was located in an area that had been identified as a problem area for alcohol related anti social behaviour. However, the applicant had disputed the recorded level of alcohol related

anti social behaviour and had provided a Crime Spreadsheet that had been obtained from the Police UK website showing details of offences recorded in Oxton Road and within a one mile radius of Oxton Road and had challenged the statistics provided by Sergeant Barrigan. Members noted that the crime spread sheets provided by the applicant had not identified when alcohol was a factor in the recorded crime. For this reason Members did not take these figures into account when making their determination.

Members noted the observations made by Mr Baker that during periods in August and September 2014 he could not identify any street drinkers on CCTV footage that had been taken immediately outside the premises. Members took into account that this evidence had been challenged by the Ward Councillor who had explained to the Sub Committee that street drinking did not necessarily take place immediately outside the premises. Members relied upon the evidence provided by Merseyside Police and the Ward Councillor in respect of street drinkers.

In determining this matter Members gave consideration to the conditions proposed by the applicant as well as the proposed operation of the premises as a general store. In accordance with paragraph 9.34 of the Statutory Guidance, Members determined the application with a view to promoting the licensing objectives in the overall interests of the local community.

In determining the application Members assessed the steps put forward by the applicant to address the representations made. Members accepted the evidence and representations provided by Merseyside Police, and took into account the representations made by the Ward Councillor and the local residents that despite the detailed operating schedule provided by the applicant, it was the proposed increase in the availability of alcohol at this particular location which would undermine the promotion of the Licensing Objectives.

Resolved -

- (1) That in accordance with Regulation 14(2) of the Licensing Act 2003, the public be excluded from the meeting during consideration of the application.**
- (2) That the application for a Premises Licence in respect of Today's Birkenhead, 65-67 Oxton Road, Birkenhead, be refused.**