

## **DURHAM COUNTY COUNCIL**

At a Meeting of **Statutory Licensing Sub-Committee** held in Council Chamber, County Hall, Durham on **Monday 5 September 2022 at 1.30 pm**

### **Present:**

**Councillor D Brown (Chair)**

### **Members of the Committee:**

Councillors R Adcock-Forster (substitute for C Hampson), C Bihari and E Waldock

### **Also Present:**

Mrs G Proud (Council's Solicitor)

Ms H Johnson (Licensing Team Leader)

Mr M Foster (Applicant's Solicitor)

Mr D Handy (Applicant and Director of Claypath Delicatessen Ltd)

Councillor Freeman (Other Person)

Ms J George (Other Person)

Mrs E Ashby (Other Person)

Mr J Ashby (Other Person)

Ms R Taylor (Other Person)

Mr F Newton (Other Person)

Mrs H Newton (Other Person)

## **1 Apologies for Absence**

Apologies for absence were received from Councillors C Hampson and M Wilson.

## **2 Substitute Members**

Councillor R Adcock-Foster substituted for Councillor C Hampson.

## **3 Minutes**

The Minutes of the meeting held on 20 June 2022 were agreed as a correct record and were signed by the Chair.

#### **4 Declarations of Interest**

There were no declarations of interest.

#### **5 Application for the grant of a Premises Licence - Claypath Delicatessen, 57 Claypath, Durham**

The Chair welcomed everyone to the meeting and introductions were made.

The Sub-Committee considered a report of the Licensing Team Leader regarding an application for the grant of a Premises Licence in respect of Claypath Delicatessen, 57 Claypath, Durham (for copy of report, see file of minutes).

The Licensing Team Leader circulated to all parties in attendance at the meeting a copy of the operating schedule for Claypath Deli that had been omitted from the report.

The Licensing Team Leader presented the report and advised Members that the application was for a café/bakery/pizzeria and was submitted to the Licensing Authority on 8 July 2022.

Following mediation with Environmental Health the applicant agreed to amend the application to revise the timings for the supply of alcohol on Sundays and Bank Holidays to 11:00 – 17:30 with a closing time of 18:00 and also to add two conditions to the operating schedule for the promotion of the licensing objectives.

Mediation had also taken place with Durham Constabulary where the applicant amended a condition relating to off sales of alcohol and confirmed that no deliveries would be provided from the premises.

During the consultation period, six representatives opposing the application were received from other persons and nine representations were received in support of the application.

The Fire Safety Authority, Durham Constabulary, Durham County Council's Planning Department and the Durham Safeguarding Children Partnership all replied with no comments to the application.

Additional information had been provided by the Applicant's Solicitor and had been circulated to all parties prior to the meeting.

Details were provided of the options open to Members.

There were no questions of the Licensing Team Leader.

Councillor Freeman who was representing local residents in his ward was asked to address the Sub-Committee and indicated that a number of residents had contacted himself and Councillor Ormerod raising their concerns to the application, and they supported their concerns. He indicated that a number of residents had written in support of the application that was not surprising as the Deli had been a welcomed addition to the area although not supportive of the recent planning application for an outdoor seating area to the rear of the property due to its effect on neighbours.

He stated that those objecting to the application largely lived in close proximity to the premises and commented that those in support of the application largely lived far enough away to not experience any issues that may arise from the premises. He indicated that they felt that the application was a step away from being a small local café to another bar and takeaway in the city centre with already too many of both.

He went on to say that Claypath Deli opened in 2010 as a small café whose sole cooking on the premises was the heating of food. This proposal altered the premises substantially to a pizzeria and a bar later in the day.

In 2010 when the planning application was granted it was a condition that there should be no hot food cooked, prepared or served on the premises other than previously prepared food which may only be reheated.

The Council's Solicitor indicated that Councillor Freeman was referring to planning matters and the Licensing Team Leader had indicated that there were no objections from the Planning department and advised Members to consider the application in relation to the supply of alcohol and not planning matters.

Councillor Freeman continued that planning permission was not granted for a pizza service or the serving of alcohol. This part of Claypath was a residential area and the proposed change could lead to disruption to the community and would be made more so by there being a garden area to the rear where noise could travel compared to indoors.

They feared that what was a café was becoming a drinking establishment that would also be playing music by bands on occasion. He appreciated the hours of operation were within the permitted framework, but he was not reassured that an application for the extension of the hours would not be made in the future if this application was granted. He asked what protection residents would have from an extension of hours in the future if the application was granted today.

He continued that those residents who were opposed to the application do so because the application would generate noise and the potential behavioural disturbances due to alcohol consumption. There would be an increase in deliveries to the premises and the change in use contravenes the previous planning permission. There were already many existing drinking establishments in the city centre that were not located in a residential area where noise and anti-social behaviour had become an issue, but this was in a residential area.

He indicated that he was disappointed that Durham County Council had failed to undertake an impact assessment to show how the ever-increasing number of approved licensing applications was having a detrimental effect on the city and its residents. He stated that the licensing criteria made it difficult for alcohol applications to be refused but nearby residents had genuine concerns and there remained the possibility of a further application for an extension of hours to late evening. He asked whether the license could be transferred to a future occupier of the premises who may have a different idea of the venue's role and offer to that which existed at present. He asked Members to consider both the applicant's desire to extend the deli to a different type of venue later in the day and the nearby residents who had concerns on how this could impact on them.

Mr Newton an Other Person indicated that his property was directly behind the garden area of the Deli. He understood that the majority of the submissions to the licensing authority were approved, however, he would like to draw members attention to a number of issues.

He indicated that when planning permission was granted for the Deli in 2010 it was recognised that it was a residential area with homes on all sides and on this basis planning conditions were included with the approval. Since then, the approved opening hours had been extended to allow Sunday opening and into the early evening. As the Deli had not seen to have caused any disruption up to this point no objections were raised by residents.

In November 2021 permission was given for the garden area on the basis that a noise management plan was put into place. At that planning committee the applicant stated that they were not a pub and did not serve alcohol but what he was applying for seemed a complete transformation of the premises from a deli to pizzeria and bar. There also needed to be clarification on the question of live music as they knew that live music events take place on these premises and photos of these events were included in the additional information provided by the Applicant and asked if alcohol was excluded from these events as the application stated that there would be no live music.

In considering this licence he believed that Members should look at the overall impact on the city. It was stated by the Applicant that he was targeting

the twenty-five years plus customer, but the deli was already patronised by students and was difficult to see how this could be achieved other than discouraging existing customers. The cumulative impact of alcohol was reflective in the high number of anti-social behaviour crimes reported in the city area and there was in excess of 750 incidents over the last year to June. A change in these premises to a bar would be adding to the existing problem. Students now outnumbered permanent residents and this factor had a major bearing on permanent city centre residents who could no longer tolerate disruption to their lives from anti-social behaviour.

The application had requested limited hours when alcohol could be served but it was a fact that the alcohol would be available from an hour earlier than the pub at the top of lower Gilesgate. He indicated that if Members were serious about this issue, then the availability of alcohol adjacent to residential premises was a serious and important criteria.

He noted that the Applicant had the support of St. Nicholas Community Forum who had a vested interest in these premises as they used it for their meetings. The Resident's Group had chosen not to consult with the residents who lived in close proximity to the premises. It was a great concern that the responsible authorities had chosen not to identify some of the safety and conservation areas in relation to the application. The transformation of the premises to a pizzeria and bar was likely to affect rubbish, recycling and safety when additional delivery vehicles who parked on double yellow lines obscuring traffic for vehicles. Cars travel up Claypath at very high speed and it had been fortunate that there had not been any serious accidents.

The Applicant seemed to be transforming his premises little by little to limit opposition and they anticipated that a further application may be made in the future to increase the hours of opening and possibly become more like a takeaway offering alcohol as an additional incentive.

Those who opposed the application may be small in comparison to the supporters, but it should be noted that with the exception of one, those supporters do not live near to the premises and benefit at the expense of those living in close proximity. The proposal for alcohol to be available for up to nine hours a day was a concern as the consumption of alcohol loosens people's inhibitions and resulted in greater noise levels being generated. He asked Members to reject this change as there were already sufficient places in the city to obtain alcohol.

In response to a question from the Licensing Team Leader, Mr Newton indicated that the 750 reports of anti-social behaviour in the last year were obtained from the Police website but were not just Claypath but other city areas where residents lived. Anti-social behaviour also happened in the Sands area and there were a number of student properties in that area and

was a major issue for those who lived in the city and there were more students coming every year with 22,000 students by 2025.

The Licensing Team Leader asked if the anti-social behaviour was linked to existing licensed premises or just in general.

Mr Newton responded that the police figures on the website did not delve down into that information, but he suspected that drinking was an issue. The issue of anti-social behaviour had not been dealt with and was why they had anti-social behaviour in areas you would not expect those who knew the city and he had lived in the city since 1974 would be aware that the whole city had changed.

The Licensing Team Leader referred to Mr Newton indicating that the application did not include live or recorded music and confirmed where an application for the consumption of alcohol on the premises if granted than the premises automatically have an exemption for live and recorded music between 8.00 am and 11.00 pm Monday to Sunday for up to 500 people.

Mr Foster, the Applicant's Solicitor referred to the statistics from the police website and asked where these were in the evidence submitted by the representations of the objectors.

Mr Newton responded that he was asked by the Licensing Officer to provide evidence of anti-social behaviour.

Mr Foster was advised that reference was made to the website on page 51 of the pack. Mr Foster then asked that the statistics from the police website be not considered as it had not been provided in advance of the meeting.

The Council's Solicitor agreed that the information should have been provided and not just referenced a website so there was no evidence to back up the quoted statistics.

Councillor Waldock referred to the past Temporary Event Notices (TENs) for the premises where the selling of alcohol occurred and asked residents if there had been any impact when these TENs had taken place.

Mr Newton confirmed that there had been no impact from the TENs up to the present time.

In response to a question from the Chair, Councillor Freeman indicated that he represented all residents in his ward but the number of objectors he was representing were those contained within the report. He then indicated that there were merits to the venue that had a useful role in the community and the residents' association met at the venue. Some residents who lived

nearby had concerns where the premises was going from where it started in 2010 that started as a café now a pizzeria and potential for this to change in the future.

In response to a question from the Chair, Mr Newton stated that he moved to the city in 1998 and previously lived in an area close to the city centre. He stated that the city had changed over the years and not for the better. He was previously Vice-Chair of St Nicholas Community Forum and premises licences had not been an issue until recently. Some residents who lived in the city were tearing their hair out and one resident living on Claypath had found students walking into their property thinking it was student accommodation.

The Council's Solicitor stated that reference to how the premises had developed was fine but concerns to future developments for the premises should be disregarded and Members should only consider what was in front of them and not anticipate what may happen in the future.

Mr Foster was then asked to address the Sub-Committee and indicated that he was accompanied by the Applicant who was a director of the company and the proposed Designated Premises Supervisor and responsible for the day to day running of the premises.

He continued that it was a family run business by husband and wife and the application was submitted in July. He stated that the operating schedule circulated today was included in the application and all parties had had sight of it.

No representations had been received from the responsible authorities with the exception of those stated in the executive summary where mediation had taken place and conditions agreed. He stated that the hours of operation were amended, and this was an error on his behalf and the hours on the Sunday should have been as subsequently agreed with Environmental Health. Durham Constabulary only asked for a small amendment to the application in regard to deliveries, they were not opposed to deliveries they just asked for some additional conditions with regards to deliveries. Deliveries was not part of the business, so they agreed to remove deliveries from the application.

The application was the same as the hours that could be operated under the planning permission and the application was submitted with a robust operating schedule.

The premises currently operated as a café, bakery and a pizzeria, what made the premises unique was the sour dough bakery that was a rarity in the area. The premises had been operating for almost 12 years without any

issues and had 30 covers inside and seating outside. He stated that copies of the menu had been circulated with the papers and all produce was made on site with fresh ingredients.

He then referred to the terms of the conditions and the hours of operation and if they were going to be a bar, they would not be applying for hours that ended at 8.30 pm. It was a café and bakery and without the bakery the premises would not be viable. The addition of alcohol was to help with the running of the premises, it was not going to be every night until late, it currently closed on a Sunday and Monday and the later hours would be a Friday maybe a Saturday that would be planned in advance. The premises had previously operated under TENs with live music which was usually acoustic music with amplified voice with served alcohol.

The premises clientele was local that also got passing trade and had a local reputation for baking. The premises used to supply other business, but this no longer took place as it was too much work operating alongside the business.

Mr Foster referred to the provided photographs that showed the layout of the premises and stated that it was not a large premises and had a reception area and towards the back the servery and display of products.

This was not a live music venue and was a venue that would have occasional entertainment and was often a place where people came to read a book and the premises had a book deposit scheme in operation and displays from local artists and a potter, where customers could purchase items.

In terms of representations, the Parish had not made representations in this case and a number of residents had made representations in support of the application. This was due to the fact that it was an established business withing the local community for almost 12 years and had a good reputation and was a well-managed premises. They did liaise with the Parish Council and on the basis of what they had agreed with Durham Constabulary they did not have any concerns with the application and did not make any representations. No representations against the application had been received from St Nicholas Community Forum but a letter of support. The fact that the premises had so much support from residents showed the competence of the operators who had been in business for a long time was a strong indication of how the premises would be operated should the application be granted. Mr Foster quoted from some of the representations received from supporters in particular that Mr and Mrs Ashby who were supportive of the application lived across the road from the premises. The supporters were residents who knew the venue and brought their knowledge of the premises and the operators to their representations and explained why



they were good operators and why they had no concerns with the application.

In terms of the representations opposing the application they think that somehow that the sale of alcohol would change the operating of the premises, but there was no change in the hours, it was the same business just adding alcohol to the offer.

There was a complete absence of any evidence that the premises was being ran irresponsibly and would be wrong to assume that by adding alcohol the premises would be operated irresponsibly and could only go on their track record that they were good operators. He asked Members to consider that no representations had been received from Responsible Authorities.

Mr Foster then referred to the Licensing Act 2003, Section 18(6)(a) that stated that representations were about the likely effect of the granting of the premises and the promoting of the licensing objectives. None of the objections pointed to a problem with the way that the premises was operated. The premises had planning permission and that was not the purpose of the meeting and was not about parking, this was the Highways department. He was concerned that the objectors were speculating on the impact of the application and referred to the Thwaites Case that warned against speculating on what might be the impact of the application without any evidence. They were not looking to extend the permitted hours and it was not relevant to look at what the premises might do in the future, it was the individual merits of this case.

He referred Members to Paragraph 9.12 of the Section 182 Guidance and that Durham Constabulary and Environmental Health had not objected to the application submitted.

Mrs Ashby who was speaking in support of the application indicated that she had lived in her property sine 1966 so she was familiar with the changes that had happened throughout the city over this period. Both herself and her husband would be speaking on the application as she had a slightly different view to offer as she had a more personal relationship with the premises. She made reference to the original planning application where she had made an objection and stated none of her points raised had been borne out in the 12 years and every one of her objections had been overcome by the way the premises had been managed.

She indicated that the Deli had made a huge contribution to the area, reference had been made to the Deli being used by students and stated that her house was in the middle of three large purpose-built student blocks and there was no other place in this area where students and local residents could meet socially, and the Deli was a hub for this. Students and residents

met in the Deli and there was nowhere else in this area where that could happen and was the valuable contribution this business brought to the area. Her particular focus with the Deli was the community helping to run the garden area and referred to the map at page 19 of the report. She stated that the garden area was fenced from the paving area and on the left-hand side was an overgrown walnut tree and on the right-hand side was a rambling rose on a trellis so there was a division. The garden itself was divided into areas with dense shrubbery, raised vegetable beds, large plastic greenhouse that filled two thirds and acted as a sound barrier, beyond that was dense apple trees and the left-hand edge of the garden was a thick privet hedge, and the right-hand boundary was the adjacent building and its garden. She stated that there was a considerable degree of natural noise reduction to the rear of the premises and the paved area that made a difference to any noise from the premises.

In terms of anti-social behaviour, she referred to the 'stop 7-11 Campaign' that was introduced to try and control noise nuisance in the hours of darkness. The initiative came from St. Nichols Community Forum and the Parish Council. She helped set up this campaign and was extremely sensitive to noise issues on the Claypath area and stated that in all the years this was in operation Claypath Deli had not been reflected in any of the anti-social behaviour in Claypath.

She had a knowledge of the licensing objectives and had been involved in many other licensing applications over the years and was aware of any possibility of this premises having any negative impact on the four licensing objectives and stated that this would not happen. If the local community were to express any concerns, she was confident that the owners of the Deli would try and mediate any concerns that may be expressed, but she did not think that there would be any concerns.

She stated that one of the original concerns expressed was that the premises would become a hot food takeaway or drinking establishment but that hadn't happened. There was still a concern about what could happen in the future to the premises, but this was a good and reasonable application by a committed applicant, and it would be a terrible loss to the community if the business could not adjust to the current economic climate and failed.

Mr Ashby also speaking in support of the application stated that he agreed with Mrs Ashby and had spent the last 50 years protecting the amenity of residents in his locality that included objecting to the original planning application. He found that all his anxieties were unwarranted. He had looked at the four licensing objectives and was certain that the premisses application did not offend against any of them. There had been no crime or disorder incidents and the local PCSO meet them in the Deli. Thad been no issues with public safety, prevention of public nuisance he was aware from his time

on the parish council that there had been a complaint of noise and a suggestion of risk to privacy and neither of those were upheld. Protection of children from harm, no harm to any child had arisen or been alleged. He stated that he was confident that the provision of alcohol at these premises would not lead to any breach of the licensing objectives. He added that noise that may arise from the garden and stated that it was fenced off from the outdoor seating area and customers were not allowed into the garden. The outdoor seating area behind the premises was not part of the licensable area. He stated that there was a safeguard that he would personally operate if there was any abuse of the four licensing objectives, he would evoke the powers to have the premises licence reviewed and if necessary revoked.

Mrs George who was speaking in support of the application stated that she lived a few minutes' walk from the premises and had lived there for the last 10 years, she lived among students and next to a student block. She stated that the Applicants were very reliable and a responsible couple who were valued members in the community. The Deli was a place for the whole community for young and old who mix at the Deli, it was a comfortable place which she visited with her friends, it was not rowdy but a gentle relaxed place to sit down and have a cup of tea. She had attended some of the acoustic evenings that was full of older people that were not averse to a glass of wine with their pizza. She had never heard of any problems, or anything negative that had arisen. It was a trouble-free well-kept establishment, and she believed the four licensing objectives would not be affected against. She believed that the offer of alcohol to accompany food would be tightly managed by mature staff and her local observation was that students were not around at the times, and she did not imagine that the alcohol on offer would be the cheapest. She wished to support the premises as it was a nice place to meet friends and worried in these times of economic crisis that not allowing them the ability to add to what they can offer might cause the business to fail. The owners had shown themselves to be very open and receptive and lived near to the premises with young children. She believed that should there be any problems they could talk to them, and they would respond and act upon it.

Ms Taylor speaking in support of the application stated that she had lived in Finney Terrace since the late 1980's. Since moving into her property there had been a series of developments accompanied by the usual objections or support for the project or building. She stated that it was difficult for both sides today as it was speculation, and it was difficult to say what would happen. Since she had lived in Finney Terrace none of the objections had been realised or resulted in trouble and if there were any issues, people know where to go to sort it amicably. She commented that she worked in Public Health in the Drug and Alcohol Action Team and was well aware of the problems that drugs, and alcohol could cause, and she did not see any of these issues being associated with the way the Deli was run. She stated that

she had not noticed any issues from the TENs, and she could not imagine any of the issues that they were frightened of happening when customers leave the Deli. It was a changing city, and the Deli could be a good example of how to drink responsibly.

Mr Newton commented that the notice on the Deli for the premises application stated that the business was to operate as a café, bakery and pizzeria with a café and bakery during the day and pizzeria and bar on the evenings and asked for clarification from the Applicant if the premises was a pizzeria and bar or a deli.

Mr Foster confirmed that during the day the premises would operate as a bakery and a café that also served pizzas during the day and a copy of the menu had been circulated with the papers. On an evening as they do on a Friday currently, they would operate more with pizzas, this would not be every night but would give them some flexibility, alcohol was something that added to the offering and presently people could bring their own alcohol but if they could sell alcohol this would give a greater degree of control.

In response to a question from Councillor Waldock, the Applicant stated that they would be offering lagers, local brews with a price point of £4-£6. Bottles of wine would range from £20 upwards; it was not the type of alcohol that would be drunk excessively but would be a high-quality product to go with high quality food and they would not expect people to be getting drunk.

The Chair asked the Applicant to expand on the Noise Management Plan.

The Applicant stated that they were asked to produce a Noise Management Plan specifically for the rear garden that they had completed and implemented and included regular checks in the garden, a complaint book which was currently empty as no complaints had been raised. The outdoor area was not noisy was just people chatting and there was plenty of shrubbery around to absorb any noise.

In Summing up, the Licensing Team Leader reminded Members of the options open to them that had been outlined.

Mr Newton clarified that the garden area was not included in the application and indicated that trees and shrubbery made very little difference to noise transmission and commented that physical barriers were needed. He asked the committee to consider while it seemed to be downplaying how the alcohol was going to be implemented if it was just a small item of their sales it would seem hardly worth going through the process and cost. He thought that alcohol was going to be a much more important aspect of the application than what had been outlined. He asked Members to think that this was something that needed to be carefully considered and the evidence was

there, and he highlighted a website in his response that detailed all the crime in the area and the types of crime. He stated that there was damage done on Claypath on a regular basis, he was not saying that the premises was going to make the city full of drunken students, it was just the accumulation of the licensed premises they had in the area, it was stated that there was no place for students to meet but 300 yards down the road were numerous drinking establishments where people could meet. There were so many drinking establishments in the city centre and in the new development there were going to be more than enough places to drink, and these needed to be in a concentrated area rather than spilling out into residential areas.

The Council's Solicitor indicated that reference had been made to a Cumulative Impact Policy that was considered in 2019 and the decision was that the area did not require a policy.

The Licensing Team Leader confirmed that following a request from the local MP and Residents' Association in 2019 a Cumulative Impact assessment was carried out and provided details of that assessment. The assessment concluded that there was no evidence that a Cumulative Impact Policy should be introduced in the city centre as the evidence did not suggest that the figures were coming from existing licensed premises.

The Licensing Team Leader confirmed that the outdoor area was not licensable as the consumption of alcohol was not going to be taking place outside.

Mr Foster in summing up, indicated that they were not here to consider need or demand for premises and they had presented their application. They were also not here to consider planning or information on statistics that had not been presented in advance of the hearing. He drew members attention to the Statement of Licensing Policy and read out paragraph 4.1 that summed up their application. He stated that Mr Ashby was right in that this was not the end of a process and if granted today there was a mechanism for review if there were any problems with the premises. Environmental Health and Durham Constabulary were quick to act but that would not be the case here as it was a proven operator who had operated in this location for nearly 12 years. Local residents had come here today to support the application and Environment Health also had an array of other powers and the Police could close the premises down, but the premises was going to be selling alcohol to 8.30 pm Monday to Saturday and 5.30 pm on a Sunday and closing at 9.00 pm and 6.00 pm on a Sunday, it was not a late-night bar. They had described how the premises was going to trade and it was a nice balance for a community-based premises and urged members to grant the application on the revised terms included in the papers.

At 3.00 pm Councillors D Brown, R Adcock-Forster and C Bihari **Resolved** to retire to deliberate the application in private. After re-convening at 3.20 pm the Chair delivered the Sub-Committee's decision.

In reaching their decision the Sub-Committee considered the report of the Licensing Team Leader, additional information submitted by the Applicant's Solicitor. Members also took into account the written and verbal representations of the Applicant's Solicitor and Other Persons. The Sub-Committee also considered the Council's Statement of Licensing Policy and Section 182 Guidance issued by the Secretary of State.

**RESOLVED:** That the application for a Premises Licence be granted as follows subject to the conditions that had been mediated with Environmental Health and Durham Constabulary and those proposed by the Applicant:

<b>Licensable Activities</b>	<b>Days &amp; Hours</b>
Supply of Alcohol (consumption on and off the premises)	Monday to Saturday: 11:00 to 20:30 hrs Sunday and Bank Holidays 11:00 – 17:30
Open to the public	Monday to Saturday: 08:00 to 21:00 hrs Sunday and Bank Holidays 11:00 – 18:00