

DURHAM COUNTY COUNCIL

At a Meeting of **Statutory Licensing Sub-Committee** held in Council Chamber - County Hall, Durham on **Tuesday 22 January 2019 at 10.00 am**

Present:

Councillor L Marshall (Chair)

Members of the Committee:

Councillors L Brown, D Hicks and L Kennedy

Also Present:

H Johnson – Licensing Team Leader

S Grigor – Solicitor, DCC

Bells Fish and Chips

Mr T Robson – Licensing Consultant

Cllr A Hopgood – Supporter

Bar 33

Mr M Foster – Applicant's Solicitor

Mr J Wyatt – Director of 33 Durham Ltd

Mr M Hughes – Director of 33 Durham Ltd

1 Apologies for Absence

An apology for absence was received from Councillor J Blakey.

2 Substitute Members

There were no substitute Members.

3 Declarations of Interest

Councillor L Brown declared an interest in the application for the variation of a Premises Licence in respect of Bar 33. The Councillor was a member of Durham Parish Council who had made representation on the application which was then withdrawn. The Councillor left the meeting when the application was considered.

4 Minutes

The Minutes of the meeting held on 20 and 27 November 2018 and 4 December 2018 were agreed as a correct record and were signed by the Chair.

5 Application for the Grant of a Premises Licence - Bells Fish and Chips, Finchale Road, Durham

Members: Councillors L Marshall (Chair), L Brown and D Hicks

The Committee considered a report of the Corporate Director of Regeneration and Local Services regarding an application for the grant of a Premises Licence in respect of Bells Fish and Chips, Finchale Road, Durham (for copy see file of Minutes).

A copy of the application and supporting documentation had been circulated to Members. The Licensing Team Leader informed Members that both the applicant and his Agent were unable to attend the hearing and had asked Mr T Robson, Licensing Consultant to make representations in their absence. Councillor A Hopgood was in attendance as a witness in support of the application. Other person Mr Christison was not in attendance.

Since the application was submitted the applicant had removed late night refreshment and had reduced the hours for the sale of alcohol. The Applicant proposed additional conditions to alleviate the concerns of residents and had mediated with Durham Constabulary.

Mr T Robson was invited to address the Sub-Committee. He apologised on behalf of J Gillead and Mr Kennedy for their unexpected absence. Mr Robson advised that the premises was a fish and chip shop which would serve alcohol when food was provided. The Applicant had taken on board the concerns of residents and had modified the application accordingly.

There were a number of other licensed premises in the locality with a terminal hour of 11.00pm. The premises bordered a residential area but was located in a small industrial site and was formerly a garage. He believed that sufficient measures had been put in place to uphold the licensing objectives. The Applicant owned other premises in the Durham area providing a high quality product which was a good indication of how this premises would be managed. Mr Kennedy was dedicated and professional.

The application was for on-sales only and alcohol would be served with food. He acknowledged that there had been issues regarding the site notices which had been taken on board. He hoped that the Sub-Committee would consider the application favourably; the reduced hours would ensure that the licensing objectives would not be undermined in Finchale Road or in the locality.

In response to a question from Councillor Brown, the Member was advised that there was parking at the rear of the premises. There were spaces for in excess of 26 cars in total with at least 10 spaces to the front.

Councillor Hopgood was invited to make representation as a witness in support of the Applicant. The Member advised that she had initially objected to the application as the hours requested were beyond those of other licensed premises in the area. The Applicant had been willing to reduce the hours for the sale of alcohol and the

opening hours from midnight to 21.00 and 22.00 hours respectively. Alcohol could not be sold for consumption off the premises. The Applicant intended to sell small individual bottles of wine would be sold to complement the food.

Councillor Hicks asked if a delivery service was offered, and was informed that the premises offered takeaway food for collection only.

At 10.15am the Sub-Committee **Resolved to** retire to deliberate the application in private.

After re-convening at 10.20am the Chair delivered the Sub-Committee's decision. In reaching their decision the Sub-Committee had taken into account the report of the Licensing Team Leader, which included amendments to the application and proposed additional conditions, the written representations of Mr Christison, and the verbal representations of Mr Robson and witness on behalf of the Applicant. Members had also taken into account the Council's Statement of Licensing Policy and Section 182 Guidance issued by the Secretary of State.

Resolved:

That the Premises Licence be granted with the following conditions:

- Alcohol will only be available with a table meal
- A rubbish bin will be located outside of the premises (this will be emptied and washed out daily-as is practice at other sites)
- Staff will carry out regular checks and clear away any rubbish in the vicinity of the premises during opening times and just prior to closing
- There will not be any tables or chairs outside
- The terminal hour for closing will be 10pm, with the intention to close at 9pm each evening
- Late night refreshment has been removed
- The sale of alcohol will cease at 9pm

Councillor L Brown left the meeting.

6 Application for the Variation of a Premises Licence - Bar 33, First Floor, 29-33 Neville Street, Durham

Members: Councillor L Marshall (Chair), D Hicks and L Kennedy.

The Committee considered a report of the Corporate Director of Regeneration and Local Services regarding an application for the variation of a Premises Licence in

respect of Bar 33, First Floor, 29-33 Neville Street, Durham (for copy see file of Minutes).

A copy of the application and supporting documentation had been circulated to members, together with representations from Mr McKeon, other person.

In presenting the report the Licensing Team Leader advised that the comments from the Planning Authority should be disregarded as they related to a separate business on a different floor in the building.

Mr Foster of Mincoff's Solicitors was invited to address the Sub-Committee on behalf of 33 Durham Ltd. He commenced by explaining that the additional information provided background to the premises and the management structure. The location plan showed the proximity of Mr McKeon's home to the premises which was at the opposite end of Neville Street.

The information also included details of TENs for Sunday evenings over a 3 month period, showing that the hours requested had already been tested. Mr Foster referred Members to photographs of the premises included in the additional information. The premises did not look like a bar, having an industrial theme. This was a small quirky bar, with buzzer entry. The menus provided showed that the premises specialised in cocktails which could take 5 minutes to make; this was not a bar where customers consumed drinks quickly. Their aim was to provide an experience for discerning clientele.

The Applicant had liaised with the Police and Environmental Health since June 2018 and had agreed a number of conditions. Police had suggested piloting the hours proposed on Sundays using TENs, which they had done without problem. There were no objections from the Police or other Responsible Authorities. Mr Foster referred Members to paragraph 9.12 of Section 182 Guidance which stated 'The police should usually be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective'. The Guidance suggested that other Responsible Authorities should be viewed in the same light.

Mr Foster stated that Mr McKeon's home was at the opposite end of Neville Street and there was no clear line of sight between the two properties.

The bar already operated every day until 2am except Sunday without problem. Late night refreshment was requested to provide tea and coffee, not food.

Mr Foster then asked questions of Director Mr Wyatt who explained that the venue was very relaxed and could be described as an experience rather than a venue for people to consume a lot of alcohol in a short space of time. This was a small venue providing a calm environment; the music was never above conversation levels. It could only accommodate a small number of people and this created a relaxed atmosphere which was different to other premises in Durham.

During the application process the issue of noise had been raised as the premises had previously operated as a music venue, when sound boards and a noise limiter had been required. With the agreement of the Police and Environmental Health these

requirements were removed from the Premises Licence. They had retained the noise limiter but it was not needed.

The Directors had met with Councillor Liz Brown and one other Councillor from Durham Parish Council on site to discuss concerns the Councillors had raised on behalf of local residents. The Councillors' concerns were allayed at that meeting and the Parish Council withdrew their objections.

The company had received no complaints either from Environmental Health or directly from local residents regarding their operation of the premises.

All parties were invited to ask questions of the Applicant. Mr McKeon asked about the removal of the sound boards and noise limiter and was advised that this had been proposed by the Police and Environmental Health because they were not relevant to their business style. These conditions had been imposed on the previous licence holders because of problems with noise. Mr McKeon then asked if this meant that music could be played at any level which was of concern as the business may change its operations or sell the premises. Mr Wyatt assured the resident that they were responsible operators and did not intend to play loud music.

Councillor Marshall reminded Mr McKeon that the application was to consider an application to vary the existing Premises Licence to include their licensable activities on Sundays.

Mr McKeon asked what time the premises would be cleared of customers and was advised that the supply of alcohol ceased at 02.00 hours with 30 minutes drinking up time. The premises would close at 02.30 hours.

Following a further question from Mr McKeon regarding CCTV coverage, given that ownership of the premises was split, Mr Wyatt confirmed that the premises complied with the Premises Licence and Bar 33 had its own CCTV system.

Following a further question with regard to Framework Licensing Hours in the Council's own Licensing Policy, the Licensing Team Leader clarified that the hours for premises licences authorising the sale or supply of alcohol on or off the premises were 07.00 to midnight Sunday-Thursday and 07.00 to 01.00 Fridays and Saturdays. Local policy was in place in the City Centre for premises wishing to operate beyond the Framework Hours but the hours could not be extended beyond 02.00.

Mr McKeon made representation and said that he had lived in the City Centre for 40 years. He worked closely with the Police with regard to problems as standards across premises in the City had slipped. An absence of objections from students did not mean that there was no public nuisance; he had knocked on all doors in the area and had the names of students who were concerned. He pointed out however that in fairness their concerns did not relate to Bar 33. He was also concerned that when customers left the premises they congregated around the takeaway, although there was no evidence that the customers were from Bar 33. Sunday was the only evening where the hours of operation ceased before 02.00, and from a residents point of view this application, if granted, would interfere with their one quiet night.

Mr Wyatt stated that the company had taken all reasonable steps to minimise disturbance. There was no evidence to suggest that residents were disturbed on any other evening, and therefore no evidence to suggest that the extra night would be any different. This was borne out by the TENs.

Following a general comment by Mr McKeon about enforcement where premises caused problems, the Licensing Team Leader advised that Licensing Enforcement made regular inspections in the City, and there was no evidence of anti-social behaviour or complaints associated with these premises. Any complaints would be acted upon.

All parties were invited to make a closing statement.

Mr Foster concluded by referring Members to the provisions of the Licensing Act 2003 which stated that relevant representations should be about the likely effect on the promotion of the licensing objectives. Mr McKeon had made general representations which did not relate specifically to Bar 33 and were therefore not relevant. There was no evidence presented by Mr McKeon that the proposals would adversely impact upon the licensing objectives.

Referring to the Thwaites case he advised that to refuse the application would require speculation by the Sub-Committee. The case had established that 'real evidence' must be presented to support imposing additional conditions. The Applicant was asking for an extension to the hours of operation on a Sunday, in line with current operations for the rest of the week. There were no problems with the management of this venue and there should be no need to impose additional conditions.

At 11.20am the Sub-Committee **Resolved** to retire to deliberate the application in private. After re-convening at 11.30am the Chair delivered the Sub-Committee's decision. In reaching their decision the Sub-Committee had taken into account the report of the Licensing Team Leader, additional information provided by the Applicant, the written and verbal representations of Mr McKeon, and the responses of Responsible Authorities. Members had also taken into account the Council's Statement of Licensing Policy and Section 182 Guidance issued by the Secretary of State.

Resolved:

That the Premises Licence be varied as follows:

Supply of Alcohol (on sales only)	Sunday 12.00 hrs-02.00hrs
Late night refreshment	Sunday 23.00hrs-02.00hrs
Live music (indoors)	Sunday 12.00hrs-23.00hrs
Films Indoors and Recorded Music Indoors	Sunday 12.00hrs-02.00hrs
Opening hours	Sunday 12.00hrs-02.30hrs