

DURHAM COUNTY COUNCIL

At a Meeting of the **Statutory Licensing Sub-Committee** held in the **Council Chamber, County Hall, Durham** on **Tuesday 25 January 2022** at **1.30 pm**

Present:

Councillor J Blakey (Chair)

Members of the Committee:

Councillors I McLean, E Peeke and M Wilson

Also Present:

Stephen Buston (Solicitor)

Helen Johnson (Licensing Team Leader)

Mohammed Asif Shariff (Applicant)

David Wilson (Applicant's Agent)

Councillor Nicola Brown of Durham City Parish Council (Other Person)

1 Apologies for Absence

Apologies were received from Councillor R Potts.

2 Substitute Members

No substitute Members were present.

3 Minutes of the meetings held on 14 September 2021, 22 November 2021 and 30 November 2021

The minutes of the meetings held on 14 September 2021, 22 November 2021 and 30 November 2021 were agreed as correct records and signed by the Chair.

4 Declarations of Interest (if any)

No interests were declared.

5 Application for the Grant of a Premises Licence - 11 North Road, Durham

The Council's Solicitor advised that four Sub-Committee Members were present to hear the application however only three would make the decision.

The additional Member was present to hear the application and in the event that a Member should need to retire due to unforeseen circumstances, the additional Member could participate as a substitute, thereby avoiding the necessity to rearrange the hearing. The Council's Solicitor then outlined the procedure for the hearing.

The Licensing Team Leader presented a report of the Corporate Director of Neighbourhoods and Climate Change, to determine an application for the grant of a Premises Licence for 11 North Road, Durham, DH1 4SH (for copy of report see file of minutes).

The Sub-Committee noted the application, which included a comprehensive operating schedule with regard to the promotion of the licensing objectives, was submitted to the Local Authority on 2 December. The application originally requested the provision of late night refreshment indoors between 23.00hrs and 04.00hrs Monday to Sunday. On 23 December, following mediation with the Environmental Health department, the application was amended and on 18 January 2022, the Applicant agreed a further amendment to the application to request the provision of late night refreshment from 23.00hrs to 03.00hrs Monday to Saturday and Sundays of a bank holiday weekend and 23.00hrs to 01.30hrs on Sundays. Durham Constabulary subsequently withdrew their representation, however, the representation from Durham City Parish Council remained. The Licensing Team Leader concluded by outlining the options for the Sub-Committee.

The Chair invited questions from the parties.

The Applicant's Agent asked the Licensing Team Leader whether other premises in the vicinity had a 03.00hrs or later closing time. The Licensing Team Leader informed the Sub-Committee that within the city centre there were several pubs, hotels and restaurants licensed to 02.00hrs. Premises licensed for the provision of late night refreshment were generally licensed to 02.30hrs / 03.00hrs and that Subway at 10 North Road was licensed until 03.00hrs and a near-by fish and chip shop was licensed to 03.00hrs Monday to Saturday and to midnight on Sundays.

Councillor Brown, addressing the Sub-Committee on behalf of Durham City Parish Council, explained the Parish Council acknowledged the amendment to the application, however, they had agreed to maintain their objection on the grounds that the granting of the application would fail to uphold the licensing objective of the prevention of a public nuisance. The Parish Council had reached their decision having considered the Licensing Act 2003, Section 182 Guidance and Durham County Council's Statement of Licensing Policy.

Councillor Brown then outlined the written representation of the Parish Council dated 20 December 2021, stating the view that the licensable activities requested by the Applicant were outside the County Council's Statement of Licensing Policy framework hours. Councillor Brown expressed the Parish Council's view that the granting of the application would cause a severe disturbance to local residents and the application should be amended to comply with the policy, whereupon this would satisfy the Parish Council's objection.

The Chair then invited questions from the parties.

The Applicant's Agent remarked that the final three paragraphs of the first page of the letter dated 20 December appeared to be quoted from a document. He asked Councillor Brown if she could confirm where the information was taken from. Councillor Brown replied that the source of the information was not known to her.

The Applicant's Agent then asked Councillor Brown whether the Parish Council had taken residents' views into account when reaching their decision to object to the application. Councillor Brown clarified that the Parish Council's representation was not based upon the views held by residents, the views expressed were those of the members of Durham City Parish Council.

The Licensing Team Leader referred to page 46 of Durham County Council's Statement of Licensing Policy and stated from the policy 'the Council expects that, where applications to provide licensable activities outside these framework hours are made, applicants will volunteer particularly robust conditions in their operating schedules in respect of all the licensing objectives'. The Licensing Team Leader was of the opinion that the application before the Sub-Committee did include a robust operating schedule. In response to a question from the Licensing Team Leader as to whether the Parish Council had considered the proposed conditions within the operating schedule, Councillor Brown confirmed that the conditions had been considered, however, the Parish Council decided to continue their objection as, in their view, the application did not adhere to the licensing framework's operating hours.

The Applicant's Agent then addressed the Sub-Committee on behalf of the Applicant.

The Applicant's Agent highlighted that the application as amended on 23 December had addressed the Environmental Health concerns and the further amendment had led to the withdrawal of the representation by Durham Constabulary. He commented that the Parish Council's representation was formed on their views and was not based upon the views expressed by residents. The Agent pointed out that the Parish Council expressed concern at the proximity of the premises to residents and businesses, however, the residents who were likely to be most affected were those occupying the living accommodation above the premises and they had made no representations. He also remarked that the residents were currently living above Subway which was licensed to 03.00hrs and a nightclub, a Wetherspoons pub and two takeaways licensed to 03.00hrs were also within the immediate vicinity.

The Applicant's Agent referred the Sub-Committee to conditions set out in the operating schedule, highlighting that these included the provision of staff training, including conflict management training for front of house staff and the proposed condition that last orders must be taken thirty minutes before the terminal hour. He explained that the Applicant intended to monitor the situation, and, if necessary he would employ door supervisors to address crime and disorder issues. He also intended to manage customers outside of the premises and provide a litter bin. In addition, he had committed to work with the police, in order to prevent public nuisance.

The Council's Solicitor asked the Applicant's Agent why the 03.00hrs closing time was particularly important for the business. The Applicant's Agent responded that, as the premises was in close proximity to a nightclub, the business would wish to benefit from that clientele.

The Council's Solicitor then referred to the proposed condition that last orders shall be taken thirty minutes before the terminal hour at the latest and asked whether the Applicant envisaged any difficulties managing customers' expectations. The Applicant's Agent explained that this had been a proposed condition within the original application as the Applicant acknowledged that it may not be possible to fulfil orders taken less than thirty minutes before the terminal hour. The Agent reiterated the Applicant's intention to monitor the situation, that staff would be provided with conflict management training and consideration would be given to engaging door supervisors if necessary.

All parties were given the opportunity to sum-up.

The Applicant's Agent requested the Sub-Committee to recognise the robust

operating conditions contained within the application, adding that the hours requested were the norm in the vicinity. He referred to the Thwaites case which established that, 'only conditions should be attached to a licence with a view to promoting the licensing objectives and that 'real evidence' must be presented to support the reason for imposing these conditions'. The Agent respectfully suggested that the Parish Council had submitted no 'real evidence' to support their view that the application was not consistent with policy. The Agent pointed out that the application had been amended following mediation with Environmental Health and following further amendment, Durham Constabulary withdrew their representation.

Referring to the letter from the Parish Council dated 20 December 2021, the Agent was of the opinion that the information contained in the final three paragraphs on the first page was not taken from current policy or statutory guidance.

Councillors Blakey, McLean and Wilson **Resolved** to retire to deliberate the application in private with all parties being notified of the decision later in the day.

In reaching their decision the Sub-Committee considered the report of the Licensing Team Leader and the representations made by Durham City Parish Council and the Applicant. Members also took into account Durham County Council's Statement of Licensing Policy and Section 182 Guidance issued by the Secretary of State.

Resolved:

That the application be granted subject to:

- a) the conditions that are consistent with the operating schedule accompanying the application and the mandatory conditions set out in the Licensing Act 2003;
- b) the following activities and times:

Licensable Activity	Days & Hours
Late Night Refreshment (indoors)	Monday to Saturday: 23.00 – 03.00 hrs Sunday 23.00 – 01.30 hrs Sundays (Bank Holiday) 23.00 – 03.00 hrs
Open to the public	Monday to Saturday: 11.00 – 03.00 hrs

	Sunday	11.00 – 01.30 hrs
	Sundays (Bank Holiday)	11.00 – 03.00 hrs