

DURHAM COUNTY COUNCIL

At a Meeting of **Statutory Licensing Sub-Committee** held in Council Chamber, County Hall, Durham on **Monday 26 September 2022 at 1.30 pm**

Present:

Councillor J Blakey (Chair)

Members of the Committee:

Councillors R Adcock-Forster, D Brown and L Brown

Also Present:

Asda Convenience and Petrol Store

Helen Johnson – Licensing Team Leader

Catherine Hazell – Solicitor, DCC

Richard Taylor – Applicant’s Solicitor

Debra Brassell - Asda

Chaplains

Helen Johnson – Licensing Team Leader

Stephen Buston – Solicitor, DCC

Temporary Inspector Caroline Dickenson – Durham Constabulary

John Hayes – Principal Public Protection Officer

James McDonald – Applicant

Gillian Moir – Applicant’s Solicitor

1 Apologies for Absence

There were no apologies for absence.

2 Substitute Members

There were no substitute Members.

3 Declarations of Interest

There were no declarations of interest.

4 Application for the Grant of a Premises Licence - Asda Convenience and Petrol Store, 31 Yoden Way, Peterlee, County Durham

The Committee considered a report of the Licensing Team Leader regarding an application for the grant of a Premises Licence in respect of Asda Convenience and Petrol store, Peterlee (for copy see file of Minutes).

A copy of the application and supporting documentation had been circulated to all parties.

Helen Johnson, the Licensing Team Leader advised that Councillor Diane Howarth, other person had advised that she was unable to attend but wished for the Sub-Committee to take into account her written representations which were included at Appendix 4.

Following a question from Councillor Liz Brown, the Licensing Team Leader confirmed that there was no Cumulative Impact Policy.

Councillor Brown also noted the reference to a broken barrier in the Councillor's representations and asked if it had been repaired.

Richard Taylor, the Applicant's Solicitor confirmed that it had been mended but had been broken a second time, and was awaiting further repair.

Richard Taylor was invited to address the Sub-Committee. Asda was a well-known operator with many stores across the UK. He had represented the company since the introduction of the Licensing Act 2003 and in that time had not had to deal with any breaches of licensing conditions. This was testament to Asda's licensing procedures.

COVID had changed shopping habits with a move towards on-line or little and often shopping. Asda was trialling the sale of alcohol at five of its petrol stations. If a customer wanted a bottle of wine for example they would not need to make the trip to the Superstore for it.

In terms of promoting the licensing objectives the premises had CCTV, all staff were properly trained and refresher training was provided annually. All spirits would be kept behind the counter, and no single cans or miniatures would be offered for sale. The counter was screened and staff had access to a panic button. Other measures included Challenge 25 and till prompts. The premises would be manned by more than one person at all times.

Turning to the representations of Councillor Howarth, Richard Taylor stated that there had been no representations from Responsible Authorities, including the Police. The reference to other retailers selling alcohol was not

relevant. He accepted that the premises was in an area of deprivation but this did not mean that it should have poorer facilities because of this status. Investment was needed in these areas.

The Store Operations Manager had 30 years experience.

Councillor David Brown asked why Asda was trialling the sale of alcohol at some of its petrol stations. Richard Taylor replied that unlike many operators it had not previously sought to licence petrol stations and this was a trial of five from the overall number of stations it had. If it was a success this may be rolled out to others.

Councillor Blakey asked if an impact upon the supermarket sales was expected as a result. Mr Taylor suspected that it would make very little difference. This premises catered for convenience customers.

Councillor Liz Brown asked about the CCTV coverage, and was informed that being a petrol station, the equipment at the premises was of high specification already and included ANPR.

The Licensing Team Leader noted that Councillor Howarth had made reference to anti-social behaviour and problems with youths, and asked if there were measures in place should it become an issue at the store. Richard Taylor confirmed that two security officers were in-store until midnight every night.

In summing up Richard Taylor referred the Sub-Committee to the Thwaites case and the need to provide 'real' evidence. This was a good company with millions of customers. Asda had never been prosecuted for a breach of the licensing conditions, and had a good package of measures in place to promote the licensing objectives. The application was within the Framework Hours and only one objection had been received from a Councillor with local concerns; there had been no objections from Responsible Authorities or local residents.

Deprivation was not a reason to refuse an application, and he urged the Sub-Committee to grant the Premises Licence as applied for.

At 1.55pm Councillors Jan Blakey, Robert Adcock-Forster and David Brown resolved to retire in private to consider the application. After re-convening at 2.00pm the Chair delivered the Sub-Committee's decision. In reaching their decision the Sub-Committee considered the report of the Licensing Team Leader, the written representations of Councillor Howarth and the verbal representations of the Applicant's Solicitor. The Sub-Committee 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 application for a Premises Licence be granted as requested subject to the conditions that were consistent with the operating schedule and the mandatory conditions under the Licensing Act 2003.

5 Application for the variation of a Premises Licence - Chaplains, 17-21 Front Street, Consett

The Committee considered a report of the Licensing Team Leader regarding an application to vary the Premises Licence in respect of Chaplain's, 17-21 Front Street, Consett (for copy see file of Minutes).

Helen Johnson the Licensing Team Leader presented the report which included a copy of the application and supporting information. Additional information had been provided by the Police and had been circulated to all parties.

Following a request for clarification from Stephen Buston, Solicitor the Licensing Team Leader confirmed that the application included both on-sales and off-sales.

Following a further question from the Solicitor regarding the opening hours of other licensed premises in the locality, the Licensing Team Leader confirmed that she was aware that Bar One was open until 3.30am.

At this point Temporary Inspector Caroline Dickenson requested that the Police representations be heard in private in accordance with Regulation 14(b) of the Licensing Hearing Regulations.

The Sub-Committee considered the request and determined that the Police representations should be heard in private. Members considered that the public interest in doing so outweighed the public interest in the hearing taking place in public.

After hearing the Police representations, all parties returned and the hearing continued in public.

John Hayes, Environmental Health was invited to address the Sub-Committee and referred Members to his representations included at Appendix 4 of the report.

Stephen Buston asked if there had been any complaints received by Environmental Health. John Hayes confirmed that a complaint of noise had

been received from a local resident in January but this could not be substantiated as Mr McDonald had said that the premises was closed.

Stephen Buston also asked what difference the extra hour would make in terms of noise nuisance.

John Hayes explained that as an employee of the former Derwentside District Council he had witnessed noise nuisance at this hour, and had received complaints from residents. It was important to emphasise that the licensing objective was about prevention and the likelihood of nuisance. In his professional opinion the extra hour would increase the likelihood of nuisance occurring.

The Officer was asked if there were residential properties in the vicinity and was advised that there were flats across from the premises and residential streets to the rear.

Gillian Moir, the Applicant's Solicitor asked if there had been any complaints when the premises had a closing hour of 4.00am. She also asked if Environmental Health had received complaints in respect of other bars in Consett.

John Hayes confirmed that he had not had any other complaints in respect of Chaplains and had not looked at other premises in Consett in respect of this hearing.

Gillian Moir was invited to address the Sub-Committee and stated that the premises was currently licensed from 10.00am to 2.00am with a closing hour of 2.30am. The reason for the application was mainly financial. On 27 August 2022, a Bank Holiday, there had been less than ten people on the premises at midnight. The extra hour was requested so they would not lose customers to other later opening premises. There were other premises in the locality who were operating outside the Framework Hours.

Since the summary review Mr McDonald had taken steps to put policies and procedures in place with the assistance of Licensing Consultant Tim Robson. She had this information with her should the Sub-Committee wish to inspect, together with door logs showing that there were three door supervisors on duty every Friday and Saturday night.

The DPS was now employed on a part time basis because of the reduced customer numbers and worked Friday or Saturday night at another premises in the town from midnight.

Mr McDonald now held a Personal Licence and would apply to become DPS. He would be in full control of the premises and it would be his responsibility to ensure all policies and procedures were adhered to.

As regards the concerns of Environmental Health, Gillian Moir explained that Front Street consisted of largely commercial premises and there were other later opening premises which she would have expected to have been the subject of complaints if there were issues of noise.

Gillian Moir concluded that she had contacted Temporary Inspector Dickenson at the end of August to offer a meeting with Mr McDonald but this was not taken up. Temporary Inspector Dickenson clarified that any mediation would take place in the 28 day consultation period following the submission of the application which was on 20 July 2022.

Upon questioning the Applicant, Temporary Inspector Dickenson made reference to an incident that had occurred at the premises and asked why Mr MacDonald had not provided a statement to the Police. Mr McDonald replied that he had not witnessed the incident but had co-operated in any way he could.

Temporary Inspector Dickenson also referred to a visit on 8 August 2022 when it was noted that only two door staff had been present and that customers were found to be drinking outside. Mr McDonald replied that he had misunderstood the rules around COVID and thought that off-sales were permitted until the end of September. However he added that customers were in a cordoned-off area. Signs were now erected preventing alcohol from being taken outside.

Councillor David Brown asked how many later opening premises Chaplains was competing with and whether the application was based on a community or financial need.

Mr McDonald replied that there were three other premises open later and that the application was based on both; there must be a need from the community - customers who used to visit Chaplains when it was open later were now going elsewhere. As had been said previously there were only ten people in the premises on a Bank Holiday weekend which was not financially viable.

All parties were invited to sum up.

Temporary Inspector Dickenson stated that the Police were concerned that if the variation was granted then the risk of crime and disorder would increase. The Licensing objectives had not been promoted and conditions had not been adhered to.

John Hayes clarified that the complaint received in January was related to the previous licence. He was concerned that the licensing objective 'prevention of public nuisance' would not be upheld.

At 3.35pm Councillors David Brown, Jan Blakey and Robert Adcock-Forster resolved to retire to deliberate the application in private. After re-convening at 3.50pm the Chair delivered the Sub-Committee's decision.

In reaching their decision the Sub-Committee had considered the report of the Licensing Team Leader, additional information from the Police, and the verbal and written representations of all parties. 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 application be refused.