

DURHAM COUNTY COUNCIL

At a **Special meeting** of the **Statutory Licensing Sub-Committee** held in the **Council Chamber, County Hall, Durham** on **Monday 22 May 2023** at **1.30 pm**

Present:

Councillor L Brown (Chair)

Members of the Sub-Committee:

Councillors R Adcock-Forster, C Hunt, E Peeke and A Watson

Also Present:

Helen Johnson – Licensing Team Leader

Catherine Hazell – Council's Solicitor

Applicant:

Jatinder Singh Grewal (Applicant)

Matthew Foster, Mincoffs Solicitors (Applicant's Representative)

Other Persons:

Councillor Susan Walker – City of Durham Parish Council

1 Apologies for Absence

No apologies were received.

2 Substitute Members

No substitute members were present.

3 Declarations of Interest

There were no declarations of interest.

4 Application for the grant of a Premises Licence, Bunty's Chip Stop, 18a North Road, Durham, DH1 4SH

Prior to the presentation of the report, the Council's Solicitor explained that although five Sub-Committee members were present to hear the application, only three of those members would make the decision.

The additional members were present to hear the application in order that, in the event that a member had to retire due to unforeseen consequences, the additional member could 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 the report of the Corporate Director of Neighbourhoods and Climate Change which requested the Sub-Committee to consider and determine an application for the grant of a premises licence for Bunty's Chip Stop of 18a North Road, Durham, DH1 4SH (for copy of report see file of minutes).

In presenting the report, the Licensing Team Leader explained that the application, which was received on 3 April 2023 had been subject to a 28 day consultation period which ended on 1 May 2023. During the consultation period, one representation was received in opposition to the application, from the City of Durham Parish Council. No comments on the application were received from the Responsible Authorities.

The Licensing Team Leader commented on the issue relating to the address of the premises, pointing out that information received from the Planning department referred to the address as number 17a North Road, however, the Applicant's representative had provided information from the Land Registry which indicated that the address of the premises was number 18a. Having sought clarification, the Licensing Authority was confident that the premises address was 18a.

The Licensing Team Leader then outlined the various options for the Sub-Committee, noting that as there was no requirement to have a Designated Premises Supervisor, option (d) was not available.

On questioning the Licensing Team Leader, the Applicant's representative pointed out that the plan at page 11 of the report was incorrect as it highlighted the Tesco shop as being the application location and the correct plan, ie the title plan, confirmed the premises was located at 18a. The Licensing Team Leader commented that the discrepancy regarding the address may explain the letter from the Planning department at page 47 of the papers which referred to a 'lack of planning history available'. The Applicant's representative informed the Sub-Committee that the Applicant had instructed a planning consultant whose view was that the planning application was made for the correct premises location, however, under the incorrect address. The planning consultant further advised the Applicant to deal with the licensing matter before the planning matter.

In response to a question from the Council's Solicitor as to whether any complaints had been received with regard to the temporary event notices granted, the Licensing Team Leader confirmed there had been no complaints.

The Chair then invited Councillor Susan Walker to make representations on behalf of the City of Durham Parish Council. Councillor Walker stated the main reason for the objection to the application was the objective of the prevention of public nuisance.

She highlighted the Parish Council's concern regarding the lack of clarity on the address and she stated that the adjoining Tesco on North Road was operating as number 17 North Road and she questioned how the public could hold licensable premises to account when addresses were incorrect.

The Sub-Committee heard that the Parish Council's Planning and Licensing Committee considered that the licensing objective of the prevention of public nuisance could not be upheld as the Applicant sought to operate outside of the framework hours and that should be allowed only in exceptional circumstances.

Councillor Walker highlighted that public nuisances such as litter and noise were irritants for residents of North Road, which was becoming an increasingly residential area and as many of the residents were students, they may be less likely to complain. The view of the City of Durham Parish Council was that students, who are often transient, deserved to be protected from public nuisance in the same way as all other residents.

Councillor Walker noted that other licensed premises in the vicinity operated outside of the framework hours and she emphasised the importance of maintaining the framework hours as the proposed hours conflicted with the resident-led 'Shh ... 11pm to 7am' campaign. Councillor Walker also drew attention to the fact that the Applicant's successful Chip Stop business in Newcastle closed at 8.15pm, therefore the Parish Council was unclear as to why longer operating hours were requested.

Referring to the litter condition in the operating schedule, the view of the Parish Council was that it was ambiguous as it suggested that only litter dropped by the Applicant's customers would be picked-up. Therefore the City of Durham Parish Council requested that the condition be amended to state that all litter outside of the premises would be picked-up.

Councillor Walker concluded by stating that it was due to the potential for late night noise and increased litter that the City of Durham Parish Council respectfully requested the Sub-Committee to refuse the request to operate outside of the framework hours and she confirmed that the Parish Council would be happy for the licence to be granted, within the framework hours.

The Licensing Team Leader informed the Sub-Committee that the Licensing department's premises licence for Tesco referred to the premises location as 18 North Road. The Licensing Team Leader undertook to follow-up the issue with the Planning department and she added that copies of her correspondence with the Planning department would be shared with the Chair of the Sub-Committee, for information.

Presenting the Applicant's submission, Matthew Foster of Mincoffs Solicitors highlighted the Applicant's 30 years' experience as an operator of a successful hot-food takeaway in Newcastle trading under Bunty's Chip Stop. He clarified that the request for the extended hours for the Durham premises was due to the nature of the footfall in Durham and he confirmed that the premises in Durham had operated under temporary event notices, without any issues or complaints. He added that the Applicant had passed the personal licence course which was not necessary for the premises in question, and that he had undertaken the course in order to update his skills and knowledge, which was evidence of the Applicant's high level of commitment to his business.

The Applicant's representative clarified that the premises was located at 18a North Road and highlighted that the premises plan at page 33 of the paperwork showed that service was from the counter and there were no seats inside the premises, therefore there would be no reason for customers to loiter within the premises. The Applicant anticipated that late-night customers would be passing custom, on their way home from work or having been to neighbouring venues.

The Applicant's representative reiterated that the premises had traded with no issues to date and there had been no representations from the Police or Environmental Health. He added that the expected impact of the business would be to enhance the existing night-time economy, as other business in the area operated similar hours to those requested by the Applicant. He highlighted that there was no evidence of any adverse impact from those premises, or, from the Applicant's premises. The Applicant intended to pick up all litter, not just litter from his customers, as he took pride in his business and sought to ensure the location was attractive. The Applicant's representative also referred to other conditions of the application including the incident log, training in conflict management and the risk assessment for the use of a door supervisor. It was also noted that a robust CCTV system was installed.

In respect of the planning issue, the Applicant's representative explained that the Applicant had only recently become aware of the issue with regard to the address and no enforcement action had been taken against the premises. The advice from the planning consultant was to address the planning situation, after the issue of the premises hours had been determined.

The Applicant's representative highlighted policy guidance with regard to the framework hours, stating that framework hours were a guide to applicants and were not a bar to applying outside of the framework hours. He referred to the Statement of Licensing Policy which stated that there should be evidential based representations and he highlighted that no residents had objected to the application.

The Applicant's representative pointed out that the decision in the Thwaites case, which proceeded without proper evidence to limit the hours of a premises, was later quashed. He also referred to Section 182 guidance, which stated that the Police and Environmental Health should be the main sources of advice with regard to public nuisance. He confirmed that neither authority had objected to the application.

In response to a question from the Sub-Committee, the Applicant's representative confirmed that the risk assessment would be carried out as soon as possible, following the determination of the planning permission issue.

The Applicant's representative confirmed that if the seat which had been situated outside of the premises prior to the construction of the new bus station was to be reinstated on reopening of the new bus station, the Applicant would request any customers using the seat to move-on.

In response to a request for clarification from the Council's Solicitor as to length of time the Applicant had been trading under the temporary event notice, the Applicant's representative confirmed that this was 3 days.

With regard to measures to mitigate noise, the Applicant's representative confirmed that no complaints had been received to date and no music would be played in the premises. He confirmed that the Applicant would consider implementing a noise management plan, if required.

The Sub-Committee asked a question with regard to the flow of the venting system and the Applicant's representative confirmed that the venting system flowed onto Neville Street, which had been the case for the previous premises.

In response to a question from the Sub-Committee as to why the application was requested for indoors and outdoors refreshment when there were no seats inside the premises, the Licensing Team Leader clarified that as food was supplied from a counter inside the premises, this was classed as indoor sales.

The Applicant's representative replied to a question from the Sub-Committee relating to bin-storage, confirming the bins were located at the rear of the premises and were emptied on a daily basis.

The parties were then invited to sum-up.

Councillor Walker had no further comments to make.

The Applicant's representative referred to paragraphs 9.11 and 9.12 of the Section 182 guidance and reiterated that the City of Durham Parish Council had presented no evidence to support their concerns.

He stated that framework hours were there to encourage the Sub-Committee to scrutinise applications and concluded by highlighting the Applicant's robust operating schedule and application conditions.

At approximately 2.20 pm, the Sub-Committee (Councillors Brown, Hunt and Peeke) retired in private to determine the application. After re-convening at approximately 2.55pm, the Chair delivered the decision. In reaching their decision the Sub-Committee considered the report of the Licensing Team Leader and the oral and written representations made by the parties, including the bundle of additional information supplied by the Applicant. The Sub-Committee also took into account the Council's Statement of Licensing policy and Section 182 guidance issued by the Secretary of State.

The Sub-Committee

RESOLVED:

That the application for the Premises Licence be granted subject to modified conditions to that of the operating schedule and the mandatory conditions under the Licensing Act 2003. Two amendments were made to the operating schedule conditions as follows, for the promotion of the Prevention of Public Nuisance objective:

Condition 4. The premises will place its own bins outside of the premises after 23:00 for collection of litter and fast food packaging. These bins should be brought back into the premises at closing time each night and emptied into the main premises waste bins. The main premises bins, at the back of the premises, should be returned to the bin store area after emptying and should not be left in the street.

Condition 5: At the cessation of any trading period ending after 23:00, the premises will operate a litter pick within the vicinity of the premises for any litter.

The Premises Licence was granted for the following:

Licensable Activities	Days and Hours
Late night refreshments (indoors and outdoors)	Monday to Saturday 23:00 hrs to 03:00 hrs Sunday from 23:00 hrs to 00:00 hrs Sundays preceding bank holidays to 03:00 hrs
Opening Hours	Monday to Saturday 11:00 hrs to 03:00 hrs Sunday from 11:00 hrs to 00:00 hrs Sundays preceding bank holidays to 03:00 hrs