

22 August 2014

Agenda Item: 3

Licensing/ Appeals Sub Committee

Application for a Premises Licence – Licensing Act 2003

Report of: Ashley Culverwell – Head of Borough Health, Safety & Localism

Wards Affected: Brentwood North

This report is: Public

1. Executive Summary

- 1.1 This report provides information of an application for a new premises licence in respect of NTK Foodstore, 72-74 Ongar Road, Brentwood CM15 9AX
- 1.2 Members are requested to determine the application having regard to the operating schedule, the representation received, the Council's Statement of Licensing Policy and the four Licensing objectives.

2. Recommendation(s)

- 2.1 Each application must be considered on its individual merits and, therefore, no recommendations may be made. However, the available options are:
 - i) To grant the application in full on the terms and conditions contained in the operating schedule along with any applicable mandatory conditions;
 - ii) To grant the application in full, modified to such extent as considered appropriate in order to satisfy any relevant representations and to promote the licensing objectives; or
 - iii) To reject the application in whole or in part

3. Introduction and Background

- 3.1 An authorisation is required in respect of any premises where it is intended to conduct one or more of the four licensable activities, these being:
 - Sale of alcohol
 - Supply of alcohol (in respect of a club)

- Regulated entertainment
- Provision of Late Night Refreshment

3.2 An appropriate authorisation is either, a premises licence, a club premises certificate or a Temporary Event Notice.

3.3 Licence holders are required, when offering any licensable activity, to ensure that they promote the licensing objectives at all times. The operating schedule of the application contains details of the activities applied for and the control measures that the applicant will have in place in order to promote these objectives. Such measures will, where appropriate, be converted into enforceable conditions on any licence issued. Those pertaining to this particular application are reproduced in paragraph 5 of this report.

3.4 The four licensing objectives are;

- Prevention of crime and disorder
- Prevention of public nuisance
- Public safety
- Protection of children from harm

No objective carries any more weight than any other.

3.5 Any representation must be able to demonstrate that on the balance of Probability the application in its current form will fail to adequately promote one or more of the licensing objectives.

4. The Application

4.1 This application was received on 3 July 2014 from Mr Ibrahim Aslan in respect of a new store, NTK Foodstore at 72-74 Ongar Road, Brentwood CM15 9AX. A copy of the application is attached at **Appendix A**.

4.2 The premise is a retail minimarket situated in a parade of shops. The minimarket will sell a range of retail goods and services. This application seeks to add the sale of alcohol for consumption off the premises for the following hours;

08:00hrs-23:00hrs on Monday to Thursday and
08:00hrs-00:00hrs on Friday to Sunday

5. Reasons for Recommendation

5.1 The applicant has stated that they have training programmes in place and that training records will be retained.

5.2 Based on the content of the operating schedule, the conditions attached to any licence issued (in addition to the mandatory conditions) will be:

- A refusals register will be kept and available for inspection
- Staff will be trained on their roles and responsibilities
- Training records will be kept on premises and made available for inspection by any authorised officer of the Council or the Police
- Children under 14 years unaccompanied by an adult will not be permitted in the premises after 21:00hrs

5.3 Additionally, the applicant has consented to operate with the following conditions proposed by the Essex Police Licensing Officer:

- The premises shall install and maintain a CCTV system. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition.
- The CCTV system shall continually record whilst the premises is open to the public and during all times when customers remain on premises.
- All recordings shall be stored for a minimum of 31 days with date and time stamping. Recordings shall be made available immediately upon request of police or authorised officer.
- A staff member from the premises who is conversant with the operation of the CCTV system shall be available at all times when the premises are open to the public. This staff member must be able to show Police or authorised council officer recent data or footage with the absolute minimum of delay when requested.
- An Incident log shall be kept at the premises, and made available on request to an authorised officer of the council or Police, which will record the following:
 - (a) All crimes reported to the venue
 - (b) All ejections of patrons
 - (c) Any complaints received
 - (d) Any incidents of disorder
 - (e) Any faults in the CCTV
 - (f) Any visit by a relevant authority or emergency service
- Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents & businesses & leave the area quietly
- The premises will adopt a Challenge 25 Policy. Any person whom appears under the age of 25 will be asked to provide photographic ID to provide photographic ID to purchase are-restricted items. Failure to produce ID will result in refused service. Photographic ID includes:

- (a) Photo card driving licence
- (b) Passport
- (c) A Proof of Age bearing the PASS hologram

6. Consultation

6. The regulations of the Licensing Act 2003 outline the requirements for the advertising of applications. These require the applicant to advertise the application:

- (b) For a period of no less than 28 consecutive days starting on the day after the day on which the application is given to the relevant licensing authority or display a notice ... prominently at or on the premises to which the application relates where it can be conveniently read from the exterior of the premises...
- (c) By publishing a notice in a local newspaper ... on at least one occasion during the period of ten working days starting on the day after the day on which the application was given to the relevant licensing authority.

6.2 Regulations also require that the applicant give a copy of the application to each responsible authority on the same day upon which it is given to the licensing authority.

6.3 There are no other statutory requirements for advertising of any application, however, the relevant Ward Councillors are notified and details of all applications received along with the time limit for receipt of representations is posted on the Council website.

6.4 Officers from the licensing authority have made checks on the display of notices on two occasions, these being 7 July and 16 July. On both occasions the blue advertising notice was correctly on display on the front of the building.

6.5 Two valid representations have been received from, Mr Chimanbhai Patel, a local resident, and Ward Councillor James Sapwell which are attached at **Appendix B**.

6.6 The concerns relating to the licensing objectives are based on the prevention of crime and disorder and the protection of children from harm.

6.7 Mr Patel, expresses a strong concern that, in particular, the late night opening of any new shop would encourage juveniles to gather and loiter around and potentially increase the crime rate within the local area. Mr Patel also states that there are two establishments already holding a licence to sell alcohol, one of which is directly opposite Worrow's Newsagents (67 Ongar Road) as well as Sainsbury's which is open until

late. When visiting Mr Patel to advise of the application process on 4 August 2014, he was unavailable and his son, Mr Paresh Patel reiterated his father's concerns. Mr Paresh Patel was, until last month, the premises licence holder and designated premises supervisor of Worrow's Newsagents, 67 Ongar Road.

- 6.8 A representation was also received from local ward Councillor, James Sapwell, who was concerned that 08:00hrs was not a suitable time to start the sale of alcohol with the premises being on a transitory route for children on their way to school. However, having seen the applicant's operating schedule together with the additional conditions attached by the police, supporting a Challenge 25 policy, Councillor Sapwell is satisfied that the licensing objections are being satisfactorily promoted and he has withdrawn his representation.
- 6.9 There have been no representations received from any of the Responsible Authorities. However, the Police observations and agreed conditions are attached as **Appendix C**.

7. Statement of Licensing Policy

- 7.1 There are no specific issues arising from this application in relation to the Councils' Statement of Licensing Policy.
- 7.2 The following extracts from the Councils' Statement of Licensing Policy are brought to the general attention of Members:

(1.4) Nothing in this Statement of Policy should be regarded or interpreted as an indication that any requirement of law may be overridden; each application will be considered and treated on its own merits.

(7.1) When considering applications, the Licensing Authority will have regard to:-

- (a) The Licensing Act 2003, as amended and the licensing objectives.*
- (b) Government guidance issued under Section 182 of the Licensing Act 2003, as amended.*
- (c) Any supporting regulations.*
- (d) This Statement of Licensing Policy.*

(9.1) Licensing is about the appropriate control of licensed premises, qualifying clubs, temporary events and the people who manage them or hold personal licences within the terms of the 2003 Act. Where relevant representations are made, the Licensing Authority will seek to make objective judgments as to whether conditions may need to be attached to various authorisations in order to secure achievement of the licensing objectives. Any conditions arising from the operating schedule or as a result of representations will primarily focus on the direct impact of the

activities taking place at licensed premises on those attending the premises and members of the public living, working or otherwise engaged in normal activity in the area concerned. These conditions will cover matters that are within the control of individual licensees and others with relevant responsibilities.

(9.2) The Licensing Authority acknowledges that the licensing function cannot be used for the general control of nuisance or the anti-social behaviour of individuals once they are beyond the direct control of the licensee of any premises concerned. However, other mechanisms may be utilised, where appropriate, to tackle unruly or unlawful behaviour of consumers when beyond the control of the individual, club or business holding the licence, certificate or authorisation concerned. These include:

(a) Planning controls.

(b) Positive measures to create a safe and clean town environment in partnership with local businesses, transport operators and other services within the Local Authority.

(c) The provision of CCTV surveillance in town centres, ample taxi ranks, street cleaning and litter patrols.

(d) Powers of Local Authorities to restrict consumption of intoxicating liquor in designated public places other than Premises licensed for 'on' sales.

(e) Police enforcement of the general law concerning disorder and anti-social behaviour, including the issuing of fixed penalty notices.

(f) The prosecution of any personal licence holder or member of staff at such premises who is selling alcohol to people who are drunk.

(g) The confiscation of alcohol from children and adults in designated areas.

(h) The power of the Police, other responsible authorities or a local resident or business to seek a review of the licence or certificate in question.

(i) Action under the Violent Crime Reduction Act 2006.

(11.1) There can be confusion about the difference between "need" and the "cumulative impact" of premises on the licensing objectives. "Need" concerns the commercial demand for another pub or restaurant or hotel. This is not a matter for a licensing authority in discharging its licensing functions or for its Statement of Licensing Policy.

*(16.6) The Licensing Authority considers the effective and responsible management of the premises, instruction, training and supervision of staff and the adoption of best practice to be amongst the most essential control measures for the achievement of all the licensing objectives. **For this reason, these elements should be specifically considered and addressed within an applicant's operating schedule.***

8. Relevant Sections of the Secretary of State's Guidance

8.1 The following extract of the section 182 guidance as published by the Secretary of State are brought to the attention of Members.

(10.13) Shops Stores and Supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours.

9. Legal Considerations

- 9.1 Conditions may be attached to the grant of any licence, the hours or activities may be amended as appropriate, or in some cases the application may be refused. However, any action taken must be appropriate and relevant to promotion of the licensing objectives having considered the full details of the application and representations including testimony from any interested party present at the hearing.
- 9.2 The justification behind any decision to grant or refuse a licence application or the attachment of conditions, or variation of terms applied for must be recorded and given to the applicant and any person that has made representation.
- 9.3 There is a right of appeal to Magistrates Court by any person or party aggrieved by any decision made by the Sub-Committee.

Appendices to this report

- Appendix A - Application Form
- Appendix B - Representations
- Appendix C - Police Agreed Conditions

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