

LICENSING SUB-COMMITTEE

Meeting: Tuesday, 4th June, 2019
at 1.00 pm. (Committee Room No. 4)

Present: Councillors Callister, Hall and Seward.

Officers Present: Graham Barker (Public Protection Manager), Katherine Benson (Licensing Officer), Jane Holden (Principal Legal Officer) and Sharron Rushton (Democratic Services Officer).

Legal Representative: Paul O'Donnell (Local Authority Retained Solicitor)

1 Appointment of Chairman for 2019/2020

Nominations were requested for the appointment of Chairman of the Licensing Sub-Committee for 2019/2020.

Councillor Seward moved that Councillor Callister be appointed as Chairman for 2019/2020. This was duly seconded and it was

RESOLVED:- That Councillor Callister be appointed Chairman of the Licensing Sub-Committee for 2019/2020.

COUNCILLOR CALLISTER IN THE CHAIR

2 Minutes

The Minutes of the Licensing Sub-Committee held on 18th May, 2017 were taken as read and confirmed.

3 The Local Government Act 1972 as amended by the Local Government (Access to Information) Act 1985 and Access to Information (Variation) Order 2006

Discussion arising hereon it was

RESOLVED:- That under Section 100A(4) of the Local Government Act 1972 the public and press be excluded from the meeting for the following item of business on the grounds that it involved the likely disclosure of exempt information as defined in Paragraph 2 (Minute No. 5) of Part One of Schedule 12A of the said Act.

4 Application for a Premises Licence - Island Express, 19 Ramsden Dock Road, Barrow-in-Furness

The Licensing Officer's report set out details of an application for a Premises Licence from Island Express, 19 Ramsden Dock Road, Barrow-in-Furness. Valid objections had been received from residents living in close proximity of the premises, which therefore required consideration and determination by the Sub-Committee in accordance with the scheme of delegation.

The supply of alcohol, provision of regulated entertainment, and sale of late night refreshment were licensable activities under Section 1 Licensing Act 2003. Authorisation from the Council, in its role as the Licensing Authority, was required in order to carry on any of these activities at premises within the Borough.

The Act provided several forms of authorisation for different scenarios. Persons or organisations wishing to carry on activities at premises on a regular basis, or at larger one-off events, required a premises licence to authorise those activities. Members' clubs, satisfying a number of statutory criteria, may alternatively hold a club premises certificate.

Under Section 17(1) an application for a premises licence must be made to the relevant Licensing Authority subject to Subsection 54 and 55 (form of application and fees to accompany an application). The Council was the Licensing authority for the Borough of Barrow-in-Furness.

The application must be accompanied by:-

- a) An operating schedule;
- b) A plan of the premises to which the application related; and
- c) By a form of consent (where the application included the sale of alcohol) given by the person whom the applicant had designated as premises supervisor.

Under the scheme of delegation adopted by the Council, the Licensing Sub-Committee was responsible for the exercise of many of the functions of the Licensing Authority, including determination of premises licence applications where representations had been received.

On 3rd April, 2019, under Section 17(1) of the Act, an application was made to the Licensing Authority by Island Express, 19 Ramsden Dock Road, Barrow-in-Furness for a premises licence. The application sought authorisation for the following:-

Supply of Alcohol (off the Monday to Sunday 11am - 11pm premises)

Opening Hours of the Premises Monday to Sunday 11am - 11pm

In accordance with Section 17(5) the Applicant had advertised the application within the prescribed period in the prescribed form and manner. A notice had been displayed on the premises for a 28 day period and the notice had been published in the local newspaper.

Additionally notice of application had been given by the Applicant through service of a copy of the application to the specified responsible authorities:-

- Licensing Authority;
- The Local Planning Authority;
- Environmental Protection Team;
- Chief Officer of Police;
- Health and Safety Officer;
- Divisional Officer, Cumbria Fire and Rescue;
- Trading Standards;
- Public Health;

Tuesday, 4th June, 2019

- Safeguarding and Review, Child Protection; and
- Home Office Immigration Enforcement.

Failure to comply with these requirements would render an application invalid.

A copy of the full application including the operating schedule, plan of premises and form of consent was attached to the report for information.

The Licensing Department provided pre-application advice to the Applicant on 2nd January, 2019, where assistance was given in completing the application form and advice given about what to include.

On 29th April, 2019, the Council received a representation from Planning, who were a responsible authority. The representation was appended to the report.

There had been no other representations from Responsible Authorities.

Relevant objections to the granting of the licence had been received from residents living in close proximity of the premises.

The objections received raised concerns over the Applicant's ability to promote the licensing objectives which were:-

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

An objector attended the meeting and addressed the Sub-Committee.

Copies of the representations received from residents were attached as appendices to the report for information.

Following the representations being received the Reporting Officer contacted the applicant on 16th April, 2019 and recommended that they put forward some further information about their application and what measures they proposed to put in place to promote the 4 Licensing objectives. Some further information had been put forward by the Applicant and was attached as an appendix to the report.

The Reporting Officer had acted as the mediator between the Applicant and Objectors to try and agree on terms that would satisfy all parties concerned.

The Licensing Officer informed the Sub-Committee that they must ensure that all Licensing decisions had a direct relationship to the promotion of one or more of the Licensing objectives. Every application should be considered on its merits, and there must not be a blanket policy to the extent that it was applied so rigidly that an exercise of discretion in each individual case was precluded. Applications must be considered with regard to the principles of fair process and the Human Rights Act.

The Applicant had set out in the operating schedule of the application what measures would be put in place to promote each of the Licensing objectives.

Tuesday, 4th June, 2019

The applicant, along with the Personal Licence Holder attended the meeting and addressed the Sub-Committee. Members questions were answered accordingly.

Where it was felt the measures proposed by the Applicant could be improve, the Reporting Officer had amended the conditions accordingly, to ensure it could be managed by the Applicant, proportionate to the type of premises in promoting the Licensing objectives and enforceable.

The provisions of Chapter 10 of the statutory guidance highlighted that only precise, appropriate and proportionate conditions, which promoted one or more of the Licensing objectives, should be attached to the licence or certificate. The Sub-Committee should only impose such conditions as were necessary to promote the Licensing objectives arising out of the consideration of the representations received, and should avoid straying into undisputed areas. Conditions duplicating other statutory provisions were not considered to be appropriate.

All parties with the exception of Councillors, Paul O'Donnell (Legal Representative), Jane Holden (Principal Legal Officer) and Sharron Rushton (Democratic Services Officer) withdrew and were readmitted to the meeting following the Sub-Committee's deliberations.

RESOLVED:- That the Premises Licence for Island Express be granted subject to:-

- (i) Conditions which are consistent with the Operating Schedule, modified to such extent as the Licensing Authority considers necessary for the promotion of the licensing objectives;
- (ii) Any applicable mandatory conditions

5 Application for a Personal Licence - Licensing Act 2003

The Licensing Officer submitted a report concerning an application for a Personal Licence made under Section 117 of the Licensing Act 2003. She submitted information which had been drawn to her attention concerning the applicant.

The Licensing Officer informed the Sub-Committee that the Disclosure Certificate had a relevant offence as listed under Schedule 4 of the Act and that the Police Authority had issued an Objection Notice concerning the application.

A copy of the application together with a copy of the Disclosure Certificate and the Notice of Objection had been appended to the report.

The Applicant attended the meeting, addressed the Sub-Committee and answered Members' questions. Sergeant Seath, a representative from the Police Authority had also addressed the Sub-Committee and answered Member's questions.

All parties with the exception of Councillors, Paul O'Donnell (Legal Representative), Jane Holden (Principal Legal Officer) and Sharron Rushton (Democratic Services Officer) withdrew and were readmitted to the meeting following the Sub-Committee's deliberations.

RESOLVED:- That the Sub-Committee refused the application for a Personal Licence.

The meeting closed at 2.32 pm.

Licensing Sub-Committee**RECORD OF DECISION**

Date Of Meeting: 4th June, 2019

Agenda Item: 8 – Application for a Premises Licence

Findings of any relevant facts:

- On 3rd April, 2019 the Licensing Authority had received an application for a Premises Licence made under s.17(1) Licensing Act 2003 (the Act) from Island Express, 19 Ramsden Dock Road, Barrow
- The application sought authorisation for:
 - Supply of Alcohol (off the premises): Mon-Sun 11am-11pm
 - Opening Hours of the Premises: Mon-Sun 11am-11pm
- Barrow Borough Council was the licensing authority
- The Licensing Sub Committee was responsible for the exercise of many of the functions of the licensing authority, including determining of premises licence applications where representation had been received
- In accordance with s 17(5) the applicant had advertised the application within the prescribed period in the prescribed form and manner
- A notice had been displayed on the premises for a 28 day period
- A notice had been published in the local newspaper
- Notice of application had been given to the specified responsible authorities

- The supply of alcohol, provision of regulated entertainment and sale of late night refreshments were licensable activities under s.1 Licensing Act 2003
- Authorisation from the Council, in its role as the Licensing Authority, was required in order to carry on any of these activities at premises within the Borough

- The Act provided several forms of authorisation for different scenarios
- Persons or organisations wishing to carry on activities at premises on a regular basis, or at larger one-off events, would require a premises licence to authorise those activities
- Members clubs, satisfying a number of statutory criteria, may alternatively hold a club premises certificate

- Under s.17(1) an application for a premises licence must be made to the relevant Licensing Authority subject to ss 54 and 55 (form of application and fees to accompany an application)

- The application must be accompanied by an operating schedule, a plan of the premises, consent given by the person whom the applicant had designated as premises supervisor
- S 18(3) of the Act states that where relevant representations were made, the authority must hold a hearing to consider them
- Valid representations had been received from 3 local residents
- The Licensing Authority had given notice of the hearing to the applicant and those who had made valid representations (as defined by s 18(6)) as required by Sch 2 Regulation 6 Licensing Act 2003 (Hearings) Regulations 2005
- The Council had consulted with:
 - Licensing Authority
 - Local Planning Authority
 - Environmental Protection Team
 - Chief Officer of Police
 - Health and Safety Officer
 - Divisional Officer, Cumbria Fire and Rescue
 - Trading Standards
 - Public Health
 - Safeguarding and Review, Child Protection
 - Home Office Immigration Enforcement
- A Licensing Authority must carry out its function under the act with a view to promoting the licensing objectives and its licensing statement (s.4)
- On 29th April, 2019 a representation from the Local Planning Authority was received and stated there was no objection as the alcohol license applied for stayed within the hours of operation restricted by the planning permission
- No other representations from responsible authorities had been received
- Relevant objections had been received from residents living in close proximity of the premises
- Objections received raised concerns over the applicant's ability to promote the licensing objectives:
 - Prevention of crime and disorder
 - Public Safety
 - Prevention of public nuisance, and
 - Protection of children from harm
- Representations had been received on 10th April, 2019, 11th April, 2019 and 12th April, 2019. Copies of the objections had been attached to the report
- One representative attended the meeting and addressed the committee and expressed a number of concerns:
 - Noise
 - Rubbish
 - Anti Social Behaviour
 - Traffic Congestion
 - Increased alcohol sale
 - Uncertainty of delivery recipients

- Following discussions with the Reporting Officer the applicant had put forward further information about the application and what measures they proposed to put in place to promote the four licensing objectives
- A detailed operating schedule had been attached to the report

- The applicant and representative attended the meeting and addressed the committee, clarifying all questions and queries put forward, including:
 - Alcohol would only be sold with food deliveries
 - Alcohol would not be sold over the counter
 - Relevant training would be provided to all staff by the current Personal Licence Holder and she would be accompanying drivers to all premises for the first month to ensure correct procedures were followed
 - The Manager was undertaking training to become a Personal Licence Holder
 - Records of deliveries would be kept
 - Proof of identification would be recorded and logged
 - Alcohol would not be given to anybody without the correct identification
 - Records would be kept of all delivery refusals
 - The premises had double yellow lines outside so parking was prohibited
- The Committee considered the operating schedule
- When considering applications the Licensing Authority would need to have regard to:
 - The Licensing Act and licensing objectives
 - Government Guidance issued under Section 182 of the Licensing Act 2003
 - Any supporting regulations
 - The Statement of Licensing Policy
- The Licensing Sub Committee must ensure all licensing decisions had a direct relationship to the promotion of one or more of the licensing objectives
- Every application should be considered on its own merits
- Applicants must be considered with regard to the principles of fair process and the Human Rights Act

Committee decision:

That a Premises Licence be granted to Island Express, 19 Ramsden Dock Road, Barrow in Furness, Cumbria, subject to the mandatory conditions in accordance with s.19 Licensing Act 2003 and conditions consistent with the Operating Schedule put forward by the Applicant with the exception of refusal of sale to any person in the presence of a minor (under 18).

Reasons for decision:

- a) Details provided in the operating schedule and modified conditions clearly outlined the steps the Applicant would take in promoting the licensing objectives

Measures to ensure the protection of children from harm included operating a Challenge 25 Policy and no alcohol to be sold at the premises (delivery only)
- b) No representations were made by the Police; no concerns were raised regarding the potential for an increase in crime and disorder in or around the premises
- c) The Licensing Authority was approached by the Applicant pre-application to discuss intended measures and for guidance on the application. It was the Reporting Officers' opinion that this displayed a willingness to co-operate with responsible authorities in the promotion of the licensing objectives
- d) The Applicant voluntarily offered a reduction in opening hours to meet the needs of nearby residents in satisfying their concerns regarding public nuisance
- e) It was the Members' view that the operating schedule mitigated all the objections and the concerns raised by the resident in attendance at the hearing
- f) It was the Reporting Officers' opinion that the modified conditions provided a balance between the Applicant's duty to promote the licensing objectives and the residents' rights to peace and quiet.

Reasons for not adopting other available options:

As stated in Reasons for decision.

Date:

Signed:

(Chairman)