

LICENSING SUB-COMMITTEE

Monday, 5th November, 2012 at 10.30 a.m.

Conference Room, Council House, Walsall

Present

Councillor Sears (Chairman)
Councillor Cook
Councillor Whyte

In attendance

Steven Knapper - Principal Licensing Officer, Walsall MBC
Dominic Patouchas - Legal Services, Walsall MBC
Paul Wilde - Democratic Services, Walsall MBC

For the applicants

Mr Patrick Burke - Solicitor
Ms Karan Kaur - Applicant
Mr Gabba Singh }
Mrs Najinder Singh } Parents of the Applicant

For West Midlands Police

Police Sergeant Hale - Darlaston Neighbourhood Team

Police Sergeant Jamie Checkland - Walsall Borough Licensing Team
WPC Angela Roome - Walsall Borough Licensing Team

Objectors

Councillor James - Ward Councillor for Darlaston South Ward
Ms Julie Beesley - May Broome, Hairdressers, 210 Darlaston Road, Wednesbury
Mr Jaz Afzal - Butlers Balti, Darlaston Road, Wednesbury

Appointment of Chairman

Resolved

That Councillor Sears be appointed Chairman of the Licensing Sub-Committee for this meeting only.

Councillor Sears in the Chair

Welcome

The Chairman extended a welcome to all persons present at the Licensing Sub-Committee which had been established under the Licensing Act, 2003.

Apologies

There were no apologies submitted for non-attendance.

Declarations of Interest

There were no declarations of interest.

Licensing Hearing

Application for a Premises Licence under Section 17 of the Licensing Act, 2003 – Beer Bank, 3 Walsall Road, Darlaston WS10 9JP

The report of the Interim Regulatory Manager was submitted:-

(see annexed)

Councillor Sears explained the purpose of the meeting and requested the Principal Licensing Officer to explain the application.

The Principal Licensing Officer (Mr Knapper) enlarged upon the report and informed the meeting that the application for a premises licence in respect of Beer Bank, 3 Walsall Road, Darlaston could be granted as requested, granted with additional modified conditions or the application could be rejected. He continued that the application had been received on 10th September, 2012 and sought to supply alcohol off the premises from Monday to Sunday from 8.00 a.m. to midnight. In Section P of the application the applicant had identified the steps she intended to take in order to promote the licensing objectives. Mr Knapper reported that these proposals would become conditions on the licence if the application was granted. He added that the premises was a former night club / wine bar and that the application had been advertised in accordance with the regulations. Representations had been received from West Midlands Police and the Council's Trading Standards Unit. The representations made by Trading Standards had been negotiated and the conditions requested in Appendix 4 to the report would be included on the licence as conditions.

Mr Knapper then drew the Licensing Sub-Committee's attention to Appendix 5 of the report which contained 9 objections from premises in the area and a general petition submitted by a ward Councillor. He asked the Licensing Sub-Committee to determine the application.

Councillor Cook asked for conformation that competition was not a reason for refusal. Mr Knapper confirmed that this was correct.

The Objectors were asked to leave the meeting at this point whilst the Police provided their information. They left the room at 10.50 a.m.

Sergeant Checkland (West Midlands Police) drew the Licensing Sub-Committee's attention to police concerns regarding the application for the premises licence (Appendix 3 refers) and indicated that they were twofold. The first related to whether a licence should be granted for the premises in view of the anti-social behaviour and culture of on street drinking in the area and the second concerned the applicant and her family connections.

Sergeant Hale (West Midlands Police) referred to problems arising on the nearby disused railway line, which acted as a linear walkway, from drinkers congregating there. He agreed that existing problems could not be laid at the Beer Bank because it was not yet operational but he was concerned at the cumulative impact of having another off-licence in such close proximity to a problem area.

Sergeant Hale referred to the application for a premises licence for Gabba's Bar in Forge Road, Darlaston in 2011 when the police had objected to the granting of the licence because the applicant, Harjeet Singh Baghi, had been involved in a Her Majesty's Revenue and Customs operation which led to the seizure of over £70,000 worth of illegal alcohol. Harjeet Singh Baghi was the brother of Karan Kaur. Sergeant Hale continued that Sarbjit Singh, a cousin of Harjeet Singh Baghi had been installed as the designated premises supervisor at Gabba's Bar. When the application for Gabba's Bar had been granted it was stipulated that Harjeet Singh Baghi, Gurmuch Singh and Najinder Kaur should have no involvement in the operation of the premises because of their connection with the seizure of illegal alcohol.

The Licensing Enforcement Team had visited Gabba's Bar and Sarbjit Singh was not on the premises. In November 2011 the DPS for Gabba's Bar had been changed from Sarbjit Singh to Gurdawar Singh (also known as Gabba).

Referring to the seizure of £70,000 worth of illegal alcohol, Sergeant Hale reported that Mr Baghi had been at the premises at the time. In March, 2012 Her Majesty's Revenue and Customs had made a second seizure of 30 trays of illegal alcohol at premises trading as Rushall Drinks which was also owned and run by the family.

Sergeant Checkland indicated that West Midlands Police was concerned that Karan Kaur had no experience of running a licenced premise although the family had a history of owning and running licenced premises in Brierley Hill, Pelsall and Walsall.

Referring to the seizure of alcohol in November, Mr Burke (Solicitor for the applicant) asked if any arrests had been made and whether the Police had been able to trace the illegal alcohol back to Mr Baghi. Sergeant Checkland replied that no arrests had been made and there was no evidence to show that the alcohol belonged to Mr Baghi.

WPC Roome stated that the van impounded by Her Majesty's Revenue and Customs during the raid had been released after Harjeet Singh Baghi had paid the required sum.

Councillor Cook asked for clarification of the West Midlands Police's concerns. Dominic Patouchas (Legal Services) replied that the police concerns were that the premises might be the source of nuisance and that they could be used for the sale of illegal alcohol.

Mr Burke reported that prior to Christmas 2011 the family had rented part of the unit to store their stock. The illegal alcohol seized was not their property. Mr Baghi had paid for the van to be returned to them from HMRC because he needed it to run the business. He added that Mr Baghi had in fact been fined for being in possession of 4 cases of Stella Artois on which duty had not been paid, which had been obtained from the Sunshine Cash and Carry. That company had since reimbursed Mr Baghi.

Karan Kaur reported that she was in the van at the time of the raid. She stated that all the alcohol in the unit belonged to Sunshine Cash and Carry and she was not aware that Sunshine Cash and Carry had not paid the duty on it. She indicated that her family had used the part of the unit they had rented for the storage of carbonated and soft drinks only. She added that on a separate occasion the family had gone to the unit to collect a broken fork lift truck to repair it and had had to break in because the locks had been changed without their knowledge. She added that her family had co-operated with Her Majesty's Revenue and Customs at all times. Najinder Kaur informed the meeting that she was the mother of 6 children and did not have a criminal record.

Sergeant Checkland reported that Street Pride arranged litter picks to collect empty alcohol cans and bottles from the walkway and surrounding areas on Mondays, Wednesdays and Fridays. They would also attend on other days to tidy up if the public made a request for broken glass and cans to be removed.

Sergeant Hale indicated that this showed that extra demands were being placed on other agencies beside the police because of the drinking culture in the area.

Mr Burke stated that as a result of the number of objections received from neighbouring residents and businesses the following additional conditions were proposed:-

- 2 staff on duty after 6 p.m.;
- Panic button / burglar alarm fitted;
- CCTV to be provided in accordance with police specification;
- Responsible drinking campaign.

He added that the applicant had also suggested a reduction in the licensing hours to 10.00 a.m. to 10.00 p.m. Monday to Sunday.

Sergeant Checkland asked if the applicant would consider reducing the sales area for alcohol as the plans submitted with the application seemed to show that the whole of the floor space was given over to alcohol. Mr Burke replied that the plan was produced that way to enable the applicant to rearrange shelf space without having to reapply for a liquor licence.

As this formed the end of the police information the Objectors were re-admitted to the meeting at 11.10 a.m.

The Objectors were invited to make their representations and Councillor James (Ward Councillor for the Darlaston South Ward) explained that he wanted to put the application in a local context. Referring to the petition submitted, he indicated that it related to the licensing objectives. With reference to anti-social behaviour, he advised that Street Pride were concerned about the cans, bottles and broken glass found on the linear walkway off Crescent Road caused by on street drinking.

Councillor James felt that the proposed hours for the sale of alcohol (8.00 a.m. to midnight) were excessive and should be reduced. He was also unsure as to who the applicant was. He referred to the existing problems with anti-social behaviour in the area and commented that if this application was granted then it would only fuel the situation. He continued that the site was close to a busy junction with consequential risk for children and young people using the area. He added that his main concern was that local businesses were not happy with the application.

Councillor James referred to the fact that young people using the area and customers that shopped in the area were being harassed by on-street drinkers and broken glass from smashed bottles was also a hazard. He reminded the meeting that Walsall Road was a busy route and pedestrians could be at risk from parked cars and slow moving vehicles. Street lighting in the area was also substandard. He expressed concern that anti-social behaviour, protecting children from harm and the increased cost of clearing up broken glass and discarded drinks cans needed to be addressed. He asked the Licensing Sub-Committee to refuse the application.

Julie Beesley (Trading as May Broome – Hairdressers) stated that elderly ladies visiting her salon were made to feel nervous because alcoholics hung around the shop and car park. Her staff had been abused and she had to clear bottles and cans from the shop entrance on a daily basis.

Jaz Afzal (Trading as Butler's Balti) informed the meeting that trade was already difficult in Darlaston as a result of the recession. Having inebriated people hanging around put people off collecting meals from his establishment. There were regularly between 20 and 30 youths hanging around the car park at night harassing his customers. He felt that a further off-licence in Darlaston would only make matters worse.

Mr Burke had no questions for the Objectors.

Members had no questions for the Objectors.

Mr Burke was invited to present the case on behalf of the applicant, Karan Kaur, and stated that the family ran off-licences and a public house in the borough of Walsall. They also had an off-licence in Brierley Hill. None of these premises had ever been the subject of a review and appeared to be well managed. Ms Kaur had experience of selling alcohol and controlling premises through her work in the family business. He continued that the current issues of street drinking could not be put down to the Beer Bank as it was not yet trading. With regard to the individual letters of objection received, Mr Burke stated that they were either irrelevant or speculation and little weight should be given to them. He reminded the Licensing Sub-Committee of the additional conditions offered by his client and stated that the nearby Asda store was open 24 hours a day. Asda were offering 3 cases of beer for £20, a price the Beer Bank would be unable to compete with.

He drew the Licensing Sub-Committee's attention to the case of Kates versus Wirral where it was stated that light touch bureaucracy should be attached to premises licences. He reminded the meeting that the decision should be based on hard evidence and not speculation. He added that the family had no convictions and that Ms Kaur's mother, father and brother all had personal licences.

WPC Roome asked what percentage of the Beer Bank's sales would be made up by alcohol. Ms Kaur replied that it was hoped to provide a 50:50 split between food and alcohol sales.

WPC Roome indicated that the name Beer Bank suggested that alcohol would be the main item sold.

Sergeant Checkland confirmed that the police were concerned that alcohol would form the larger part of sales.

Mr Burke confirmed Ms Kaur's earlier comments that the alcohol / groceries split would be 50:50. However once the premises had opened the balance could be adjusted as a result of the practical experience gained. He added that it was pointless to speculate at this stage as little could be learned until the premises began trading.

WPC Roome stated that Mr Burke's assertion that the family's premises had never been subject to review was incorrect as the Licensing Team had served a Section 19 Notice on the premises on 18th March, 2012.

Councillor James asked if the applicant would give a clear commitment that the Beer Bank would contribute to the local community by preventing anti-social behaviour arising from their use of the premises. Mr Burke replied that his client was happy to be part of the community and comply with licensing requirements.

Councillor James asked for further details from the police regarding the Section 19 Notice. Sergeant Checkland reported that staff could not operate the CCTV equipment and a nine year old boy was present on the premises at 3.00 p.m. in the afternoon. Mr Burke stated that a child on the premises at 3.00 p.m. did not contravene any of the licensing rules. Sergeant Checkland advised the meeting that the boy was still present on the shop floor when officers revisited the premises at 9.00 p.m. This did contravene the regulations.

Councillor James stated that he was not convinced that the applicant had supplied all the information required in relation to the application. Dominic Patouchas (Legal Services) reminded the meeting that the police had put forward a robust case against the granting of the application.

At this point the West Midlands Police representatives asked if the Objectors could withdraw from the meeting as they had privileged information to give to the Licensing Sub-Committee. Objectors left the meeting at 11.43 a.m.

Sergeant Checkland referred to the fact that Najinder Kaur had advised the Licensing Sub-Committee that she had no criminal convictions. He asked about a conviction for drink driving in 2012. Najinder Kaur confirmed that she had been convicted of drink driving earlier in the year.

WPC Roome asked if she had reported the conviction to the Licensing Authority as she was a designated premises supervisor. Najinder Kaur replied that as she was not using her licence at present she did not think she had to declare her conviction. She added that it was a genuine mistake on her part.

WPC Roome indicated that police concerns over the application had not been removed because of omissions like this. Sergeant Hale was concerned that other misleading information might have been provided in respect of the application.

The Objectors were re-admitted to the meeting at 11.47 a.m.

Councillor Cook asked if Karan Kaur had experience of purchasing alcohol. Ms Kaur replied that she had assisted her father in the past so she would have no problems buying stock.

All parties were invited to sum up and Sergeant Checkland commented that to grant the licence would, in his opinion, increase crime and disorder in the local area.

WPC Roome indicated that the police had little confidence that the conditions offered would be adhered to.

Mr Burke reiterated the fact that the evidence against the application was largely speculative. As the premises had not yet opened none of the problems being experienced could be attributed to this application.

Councillor Sears asked if all parties were satisfied that they had had the opportunity to air their views. This was confirmed then all parties withdrew from the meeting at 11.50 a.m.

The Licensing Sub-Committee considered carefully all of the evidence submitted and the representations made during the hearing, following which it was

Resolved

That the application for a revised licence under Section 17 of the Licensing Act, 2003 be refused for the following reasons:-

Based on the evidence before it the Committee is satisfied that to grant the licence would undermine the licensing objectives namely the prevention of crime and disorder and the prevention of public nuisance.

The crime and disorder objective would be undermined by way of the applicant's close family ties with those who have been linked to Customs and Excise infringements. A fine or a financial penalty has been paid in respect of illegally imported alcohol. It has been admitted that a family member was found to be in possession of illegally imported alcohol.

Further, the crime and disorder objective would be undermined in that the evidence shows both from the Chief Constable and the local residents that there is an existing and serious problem with alcohol related anti-social behaviour in the Darlaston area caused by sales of cheap alcohol from off-licences.

The Section 182 Guidance states that there is no requirement for a responsible authority or other person to produce a recorded history of problems at premises to support the representations, and in fact this would not be possible for new premises.

The Sub-Committee is satisfied based on the evidence before it, and having considered the type of use and the number and type of customers likely to use the premises, that an off-licence at this location will exacerbate the problems already experienced at the locality. It is on this evidence that the Sub-Committee also found that the prevention of public nuisance objective would be undermined.

All parties were re-admitted to the meeting at 12.16 p.m. and advised of the Licensing Sub-Committee's decision and informed of their right of appeal to the Local Magistrates Court within 21 days of receipt of the decision letter.

Termination of Meeting

The meeting terminated at 12.20 p.m.

Chairman

Date