

Minutes of: LICENSING HEARING SUB COMMITTEE

Date of Meeting: 19th April 2024

Present: Councillor G McGill (in the Chair)
Councillors G Marsden and M Walsh

Also in attendance: M. Bridge (Licensing Unit Manager)
M. Cunliffe (Democratic Services)
C. Riley (Legal Services)

Mr K. Malaviya (Applicant)
Miss A. Auf Der Mauer (Applicant's representative)

Public Attendance: The Hearing was held virtually and interested members of the public were provided with a link to access the hearing online via Microsoft Teams or could be telephoned into the meeting via audio only. No members of the press or public were in virtual attendance.

1 APOLOGIES FOR ABSENCE

Apologies for absence were submitted from B Thomson- Assistant Director of Operations Strategy.

2 DECLARATIONS OF INTEREST

There were no declarations of interest made.

3 APPLICATION FOR A PREMISES LICENCE TO BE GRANTED UNDER THE LICENSING ACT 2003 IN RESPECT OF HARERAM BURY, 40 HOLLY STREET, TOTTINGTON, BURY, BL8 3EZ

The Licensing Authority received an application for a Premises Licence to be granted under the Licensing Act 2003 in respect of Hareram Bury, 40 Holly Street, Tottington, Bury, BL8 3EZ.

The applicant for the licence is Hareram Bury Ltd, 40 Holly Street, Tottington, BL8 3EZ and the proposed Designated Premises Supervisor (DPS), in respect of the above premises, is Mr Kishan Vinubhai Malaviya, 449A Kingston Road, Epsom, Surrey, KT19 0DB.

The Applicant had complied with all the necessary procedural requirements laid down by the Act.

The Licensing Unit Manager presented the report and as part of the statutory process the Responsible Authorities and interested parties are entitled to make representations in relation to the grant of a licence. Where representations are made and not withdrawn Members are required to determine them

Representations must be relevant to the licensing objectives defined within the Act.

The objectives are:-

- the prevention of crime and disorder
- public safety
- prevention of public nuisance and

- protection of children from harm

The application is for the grant of a Premises Licence under Part 3 of the Licensing Act 2003 which was attached at Appendix 1 in the agenda packs.

Opening Times:

Monday to Sunday – 07:00 till 22:00

Supply of Alcohol (Off the premises only):

Monday to Sunday – 07:00 till 22:00

The conditions contained in the operating schedule submitted by the applicant were contained at Appendix 2 in the agenda packs.

One representation from two interested parties has been received. The representation related to the following issues:-

- Potential increase of traffic (issues with parking for residents).
- Primary School opposite/nearby
- There is no place for their customers to stop on the residential street
- Potential increase in noise from deliveries, car doors.
- Potential increase of anti-social behaviour/gangs
- Potential increase of litter/rubbish
- There is already a store/garage nearby (Spar) approx 250 metres away that sells alcohol.

The part redacted representations were attached at Appendix 3 in the agenda packs.

After hearing the representations made and the evidence presented, Members are obliged to determine the application with a view to promoting the licensing objectives and having regard to the Authority's Licensing Policy and National Guidance.

The Secretary of State's Guidance to the Licensing Act 2003 is provided to licensing authorities in relation to the carrying out of their functions under the 2003 Act. It also provides information to magistrates' courts hearing appeals against licensing decisions and has been made widely available for the benefit of those who run licensed premises, their legal advisers and the general public. It is a key medium for promoting best practice, ensuring consistent application of licensing powers across England and Wales and for promoting fairness, equal treatment and proportionality.

Section 4 of the 2003 Act provides that, in carrying out its functions, a licensing authority must 'have regard to' guidance issued by the Secretary of State under section 182. The Guidance is therefore binding on all licensing authorities to that extent. However, the Guidance cannot anticipate every possible scenario or set of circumstances that may arise and, as long as licensing authorities have properly understood this Guidance, they may depart from it if they have good reason to do so and can provide full reasons.

Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when

considering the lawfulness and merits of any decision taken.

In making its decision with regard to this application hearing, the steps the Sub-Committee can take are:

- To grant the application in the terms requested
- To grant the application subject to conditions
- To amend or modify existing or proposed conditions
- To refuse the application

All licensing determinations should be considered on the individual merits of the application.

The Sub-Committee's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve. Findings on any issues of fact should be on the balance of probability.

It is important that a licensing authority should give comprehensive reasons for its decisions in anticipation of any appeals. Failure to give adequate reasons could itself give rise to grounds for an appeal.

The Sub-Committee was asked to determine what steps, as set out above, are appropriate for the promotion of the licensing objectives.

The applicant's representative, Miss Auf Der Mauer addressed the sub committee and told Members that the representation concerning car parking should be disregarded and was not a factor in the decision making process. She explained that the school playground backs onto the shop after a distance but children would not have contact with anyone buying goods from the store.

Miss Auf Der Mauer had asked the owner to place notices in the shop to advise against drinking in the nearby access road and alleyway. The area would be monitored and anyone found loitering would be asked to move on.

A primary school was nearby and most of the children would be buying sweets from the shop so it would be obvious they were too young to purchase alcohol. Even so, a challenge 25 sign would be displayed and Mr Malaviya had attended a personal licensing training course. If the shop was busy after school closing time, then a suggested limit on the number of customers would be introduced to help manage overcrowding and running of the business.

A large waste bin had been purchased for outside the store and litter picks would be conducted to keep the area clean and tidy. Deliveries would not generate any more noise issues than cars or deliveries to other homes in the area so the noise impact would be minimal.

It was unlikely that there would be gangs and anti-social behaviour issues as there were no current concerns or issues in the local community. There were also no problems around the Spar store which was located close by.

Miss Auf Der Mauer advised the sub committee that the applicant was willing to reduce the supply of alcohol hours from 7.00am-10.00pm to 9.00am-9.30pm.

The Licensing Unit Manager enquired that the application form did not contain any seasonal variations such as bank holidays or Christmas Day.

Miss Auf Der Mauer confirmed that any alcohol sold would be traceable with a label stuck on each product with the price along with the name and address of the store. The Licensing Unit Manager advised that a label could be removed and the goods could be marked with a permanent marker on the product.

The Licensing Unit Manager questioned how a limit could be placed on the number children in the shop and how many staff would be working.

The applicant said 2 people could be working in the shop around school closing times and the limit could be around 5 children, although the teachers at the school could help control numbers.

The Licensing Unit Manager commented that deliveries could be made between a certain period of time and avoid early morning or school opening and closing times.

Members enquired how many days a week would the applicant be at the store given he lived some distance away and was there any other reason to travel so far. It was stated that he would be on site once or twice a week but staff would be fully trained and he managed around 4 shops in the London area which he was a DPS for.

The Licensing Unit Manager clarified if the applicant had in writing the claims that school staff would help monitor outside the shop at the busy school closing time. The applicant stated he could speak with the school next week if required.

The Sub-Committee then duly retired to consider the application.

The Members of the Panel were advised by the Legal Officer as to their duties under Section 4 of the Licensing Act 2003 to at all times consider the promotion of the Licensing Objectives, these being:

- a) the prevention of crime and disorder
- b) public safety
- c) the prevention of public nuisance
- d) the protection of children from harm

The Members were also advised of their duties in carrying out those functions in relation to:

- a) the Council's published Statement of Licensing Policy
- b) the Guidance issued by the Secretary of State as contained in section 182 of the Licensing Act 2003, which was updated in December 2022.

In addition, Members were advised to give appropriate weight to the steps that are appropriate to promote the licensing objectives together with relevant representations presented by all parties.

Delegated decision

All of the evidence was considered with care, and it was established that having understood the application and equally noting and understanding the representations and assurances made by the applicant and their representative, the Sub-Committee found there were no causes for concern so far as the promotion of the licensing objectives were concerned.

It was therefore agreed unanimously that the Sub- Committee **grant the application for a Premises Licence in the terms requested with the only amendment to the supply of**

alcohol (Off the premises only) Monday to Sunday 9.00am to 9.30pm, subject to the following conditions:-

Operating Schedule

General

All staff will be provided with training in relation to the licensing objectives that are commensurate with their duties. This will include the individual's responsibilities, age verification and licensing offences, as appropriate. Details of the training will be recorded in a personnel file or logbook and will be refreshed at regular intervals.

The prevention of crime and disorder

A CCTV system shall be maintained at the premises with cameras in the location indicated on the accompanying plan. Recordings shall be made of images from the cameras whilst a licensable activity is taking place and shall be retained for a period of at least 30 days from the date of recording.

A member of staff shall be trained on how to provide copies to police officers, where a request is received that complies with the requirements of the Data Protection Act 2003 and any other legislation covering the disclosure of recorded material.

An incident book will be maintained in a non-loose leaf format to record details of any incidents in the premises that relate to the licensing objectives, in particular any refusals of sales of alcohol.

Signage will be displayed at the exit to the premises that advises customers that they must not take open alcoholic beverages from the premises.

Public safety

All safety matters at the premises are adequately covered by statutory provisions such as The Health and Safety at Work (etc) Act 1974, The Regulatory Reform (Fire Safety) Order 2005

The prevention of public nuisance

A telephone number for the premises shall be displayed that is visible from the exterior of the building in the event that contact needs to be made with the staff to deal with any issue that might arise from the licensable activity.

Persons identified as drinking alcohol in the immediate area around the premises (whether or not they have purchased alcohol from the premises) will be requested to leave and if they refuse to do so, a report will be made to the Police.

Any person who refuses to leave the area, or is identified as causing antisocial behaviour, will be subject to a ban from the premises. A record of banned individuals shall be maintained in the premises and all staff made aware of the persons who are currently banned so that entry may be refused. This record shall be kept available for inspection while the premises are open for trading.

All alcohol sold from the premises will be marked in a way that can be used to identify that the alcohol has been purchased from the shop.

A regular inspection shall be made of the area immediately in the vicinity of the premises and any litter that can reasonably be assumed to have originated from the premises shall be collected for disposal.

Staff from the premises shall regularly monitor the exterior of then premises in an attempt to identify persons loitering in the area who may have purchased alcohol from the premises or appear to be accompanied by a person who has purchased alcohol from the premises. Where such persons are identified, they will be requested to leave the area.

The protection of children from harm

- A Challenge 25 scheme will be adopted in compliance with the age verification condition: Customers who appear be under 25 years of age will be required to prove their age when purchasing alcohol. Suitable forms of identification will be a passport, 'Pass' card or other identification recognized by the licensing authority in its statement of licensing policy.

COUNCILLOR G MCGILL
Chair

(Note: The meeting started at 1.30pm and ended at 2.40pm)