

Licensing Sub Committee D - 12 February 2015

Minutes of the meeting of the Licensing Sub Committee D held at Committee Room 1, Town Hall, Upper Street, N1 2UD on 12 February 2015 at 6.30 pm.

Present: **Councillors:** Alex Diner (Chair), Angela Picknell (Vice-Chair) and Raphael Andrews.

Also Present: **Councillors:** Paul Convery

Councillor Alex Diner in the Chair

36 INTRODUCTIONS AND PROCEDURE (Item A1)

Councillor Alex Diner welcomed everyone to the meeting and officers and members introduced themselves. The procedure for the conduct of the meeting was outlined and those present were informed that the procedure was detailed in the papers.

37 APOLOGIES FOR ABSENCE (Item A2)

None.

38 DECLARATIONS OF SUBSTITUTE MEMBERS (Item A3)

Councillor Raphael Andrews substituted for Councillor Erdogan.

39 DECLARATIONS OF INTEREST (Item A4)

None.

40 ORDER OF BUSINESS (Item A5)

The order of business was as the agenda.

41 MINUTES OF PREVIOUS MEETING (Item A6)

RESOLVED

That the minutes of the meeting held on the 18 December 2014 be confirmed as an accurate record of proceedings and the Chair be authorised to sign them.

42 TESCO, 323-325 CALEDONIAN ROAD, N1 1DR - APPLICATION FOR NEW PREMISES LICENCE (Item B1)

The licensing officer reported that additional information from the applicant had been circulated following publication of the agenda which included additional proposed conditions and a plan of the premises. These would be interleaved with the agenda papers.

Steve Harrington, licensing police, was concerned that there had been late communication from the applicant to discuss the application. There had been agreement with conditions but not with the licensing hours. The police were requesting refusal of the application based on cumulative impact as they would expect increasing footfall. If the application was granted they asked that conditions be applied to the licence together with a revised CCTV condition.

In response to questions he considered that Tesco, as a well known company, would bring in greater footfall. It was reported that the previous shop had been closed for about two

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years. There had been 252 reported crimes in the year but it was not known if these had taken place during the day or the evening.

The licensing authority reported that the initial application had not contained much information. There were a high number of licensed premises already in the area. The previous occupant was a small family run business and it was expected that there would be a much greater increase in sales of alcohol and therefore a greater access to alcohol with the grant of this application. It was the view of the licensing authority that there would be a cumulative impact on the licensing objectives.

In response to questions, the licensing authority reported that extra conditions could not prevent the additional impact from people buying alcohol and causing problems on the street. There would still be problems with street drinkers and loiterers even with well managed premises and despite the proposed condition that only 15% of the floor space would be used for the display of alcohol.

Councillor Paul Convery and a local business spoke against the application. He stated that the three ward councillors had put in a representation. Councillor Convery stated that the police had provided a clear and unambiguous reason for refusal and it was stated in the home office guidance at paragraph 9.12 that the authority should accept these representations unless it would not be appropriate to do so. He asked members to consider licensing policy 1 and informed them that this was an area at risk of anti-social behaviour which was alcohol fuelled and unpredictable in nature and in his view, the granting of the licence would accelerate this. There was a rebuttable presumption as detailed in licensing policy 2. The premises had been closed for two and half years and the area was declared a saturation zone after this time. The previous occupant was a speciality store which would not have the large numbers of customers that an international supermarket would have. He also stated that No 325 Caledonian Road had planning consent for A2 use and was not to be used on Sundays. The local business referred to anti-social behaviour caused by drunk people in the area.

In response to questions it was reported that only the day before the meeting there was an incident of crime and disorder in the area. There were incidents relating to street drinking. The impact of higher sales would significantly increase the amount of alcohol bought which would lead to more problems in the area. This had been substantially evidenced and had led to the introduction of the cumulative impact policy.

Jeremy Bark, solicitor and Greg Bartley, Tesco licensing manager, spoke in support of the application. He reported that this was a substantial variation rather than a new application. He indicated on the floor plan the 15% of the floor space that would be used for alcohol space. Hours and conditions were consistent with the previous licence so would not add an additional impact. There was an existing licence which was in existence prior to the cumulative impact policy and would have been included in statistics collected. Two licences had since been revoked in the area. The proposed conditions were more restrictive. He reported that the responsible authorities were speculating on what may happen in the future. This would be a convenience store with a range of red and white wines and a smaller range of spirits. The previous occupier had a full wall of alcohol, often with an abv of higher than 8%. There would be a comprehensive training policy, which covered a whole range of best practice policies, including Challenge 25. There was no evidence that anti-social behaviour was due to the two existing stores in the area. Tesco was a key participant in the Community Alcohol Partnership. They did not tolerate anti-social behaviour and carried out regular risk assessments. They had obtained advice from a planning consultant who had stated that they did not need planning consent. They did not sell single units of alcohol. The previous licence would be surrendered if granted and if it was not granted he considered that the landlord would market the premises as a convenience store with the

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current valid licence. The hours proposed for the sale of alcohol were the same as the opening hours, although it was accepted that if the Sub-Committee were minded to grant a licence, a revision in hours were a matter for the Sub-Committee.

In response to questions it was noted that, although the cumulative policy had not been addressed in the original application, discussions had been held with the responsible authorities and it was considered that the policy had now been addressed. All parties were aware that this was a cumulative impact area. Tesco operated in other cumulative impact areas and understood the problems and had been granted new applications in these areas. Conditions were all agreed and the applicant was content with the revised CCTV police condition. Alcohol took 7.5% of the total floor space for the two properties. It was noted that in their stores, the sale of alcohol was usually 7-9% of the total sales. Food sales were approximately 35% less without a premises licence. The majority of alcohol sales took place between the hours of 11am and 7pm. Tesco could operate responsibly without causing problems. The alcohol sold was carefully selected and would not be attractive to children or street drinkers. The hours requested were those already on the existing licence so additional hours were not being sought.

In summary, the police stated that there were already 23 licensed premises in a 250m radius. These premises had been closed for two years. Two revocations had been appealed and one of these had been overturned but with reduced hours. Measures were required to reduce the impact and he was still opposed to the grant of the licence.

Councillor Convery stated that no amount of conditions could achieve compliance. He considered that this was not a variation and should be rejected. The planning consent hours for No 325 did not allow operation on a Sunday. He did not consider that the nature of the saturation zone had been understood and the applicant had not rebutted the presumption.

Jeremy Bark stated that there was a licence in existence and was already included in the cumulative impact statistics. This licence had more extensive conditions which should address all the issues and hours could be further restricted by the Sub-Committee.

RESOLVED

That the new premises licence in respect of Tesco Express, 323-325 Caledonian Road, N1 1DR be refused.

REASONS FOR DECISION

The Sub-Committee listened to all the evidence and submissions and read all the material. The Sub-Committee reached the decision having given consideration to the Licensing Act 2003, as amended, and its regulations, the national guidance and the Council's Licensing Policy.

The Sub-Committee took into consideration Licensing Policy 2. The premises fall under the Kings Cross cumulative impact area. Licensing policy 2 creates a rebuttable presumption that applications for new premises licences that are likely to add to the existing cumulative impact will normally be refused, unless an applicant can demonstrate why the operation of the premises involved will not add to the cumulative impact or otherwise impact adversely on the promotion of the licensing objectives.

The Sub-Committee noted that the responsible authorities, namely the Police and the Licensing Authority both opposed the granting of the application.

The Sub-Committee heard evidence from the Licensing Authority, the Police Authority, Councillor Convery on behalf of residents, and one local resident/business owner. It also heard representations from the applicant's solicitor.

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The Sub Committee heard evidence that the nature of the enlarged premises, namely a Tesco convenience store would attract a much larger footfall than the small family run shop that used to hold the licence at 323 Caledonian Road.

No. 323 Caledonian Road possessed a licence which allowed for the sale of alcohol off the premises. There was no premises licence for 325 Caledonian Road.

The responsible authorities did ask the Sub-Committee to consider attaching conditions to the licence and in particular the trading hours, but both the Licensing Authority and the Police were of the firm opinion that the addition of further conditions would not adequately address the increase in the number of customers that would be passing through the new enlarged premises and that irrespective of any additional conditions, the granting of the new licence would add to the cumulative impact and adversely impact on the licensing objectives.

In accordance with Licensing Policy 7, the Sub-Committee noted the cumulative impact that the proliferation of late night venues and retailers in the borough is having on the promotion of the licensing objectives.

The Sub-Committee concluded that the granting of the application would add to the availability of alcohol in an area where there was already a large number of licensed premises with associated anti-social and criminal behaviour and therefore have a cumulative impact on the licensing objectives. In accordance with licensing policy 2, the Sub-Committee was satisfied that the grant of the application would undermine the licensing objectives. The applicant failed to rebut the presumption that the application if granted, would add to the cumulative impact area. It failed to provide satisfactory evidence of expected customer and sales figures. The applicant did not show any exceptional circumstances as to why the Sub-Committee should grant the application and failed to demonstrate that the presumption could be rebutted in this case.

The proposed new premises (323 and 325 Caledonian Road) substantially increased the size of the premises.

Under the circumstances, the Sub-Committee considered adding further conditions but decided against doing so. It concluded that it was appropriate and proportionate given the evidence before it, to refuse the application.

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ED'S EASY DINER, N1 CENTRE, 23 PARKFIELD STREET, N1 0PS - APPLICATION FOR NEW PREMISES LICENCE (Item B2)

The licensing officer reported that no response had been received from local residents.

The applicant reported that this was a concept for an American diner, food led restaurant. Alcohol sales were likely to be 2% of the total sales. Conditions had been agreed with the police and the noise team as a result of discussions to address concerns. This was not an off licence and hours were within framework hours detailed in the licensing policy. The premises were not likely to add to crime and disorder or public nuisance. There were over 30 restaurants in this chain with an unblemished record.

In response to questions, it was noted that the start time of 09:00 am was usual for the other restaurants and alcohol would have to be served with food. There was to be no vertical drinking and was a fully laid out restaurant with tables and chairs. The application for alcohol was to ensure consistency across all of the restaurants in the chain although it was not considered that alcohol was usually served for breakfast.

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In summary, the applicant reported that the company had an unblemished record. The restaurants operated nationwide. The style was an American Diner restaurant and proposed conditions addressed concerns.

RESOLVED

a) That the application for a new premises licence in respect of Ed's Easy Diner, N1 Centre, 23 Parkfield Street, N1 OPS be granted to allow the sale of alcohol, on and off supplies, Mondays to Sundays from 09:00 to 23:00.

b) Conditions as outlined in appendix 3 as detailed on page 70 of the agenda shall be applied to the licence.

REASONS FOR DECISION

The Sub-Committee listened to all the evidence and submissions and read all the material. The Sub-Committee reached the decision having given consideration to the Licensing Act 2003, as amended, and its regulations, the national guidance and the Council's Licensing Policy.

The Sub-Committee took into consideration Licensing Policy 2. The premises fall under the Angel and Upper Street cumulative impact area. Licensing policy 2 creates a rebuttable presumption that applications for new premises licences that were likely to add to the existing cumulative impact would normally be refused, unless an applicant can demonstrate why the operation of the premises involved would not add to the cumulative impact or otherwise impact adversely on the promotion of the licensing objectives.

The Sub-Committee noted that this was a food led restaurant, with no vertical drinking and with limited off sales. The alcohol that would be sold was with meals and consisted of Alco shakes which were limited to a 25 ml shot of alcohol per 650 ml of milkshake. The hours requested were within the licensing policy framework hours.

The Sub-Committee concluded that there were exceptional grounds for granting the application and that the applicant had rebutted the presumption that the granting of the application would increase the cumulative impact and impact negatively on the licensing objectives.

The meeting ended at 8.35 pm

CHAIR