

**LICENSING SUBCOMMITTEE
(2003 ACT)**21 April 2008
11am – ????pm**Present:** Councillors C Rosenstiel, McPherson and Slatter**Also Present :** Councillor Bradnack (Ward Councillor representing residents)**08/lic/13 Declarations of Interest by Subcommittee**

Cllr C Rosenstiel as a customer of the newsagents at 92 Norfolk Street

Cllr Slatter as a volunteer at Jimmy's Nightshelter

08/lic/14 Procedure to be followed

The procedure for hearings of the subcommittee set out on the agenda was noted.

08/lic/15 Application for a new premises licence: Laxshan Day 1, 20 Norfolk Street**Present for this application:****For the Applicant:** Nirmala Jegathiswaran (Applicant); Shanmuganathan Jegathiswaran; Richard Baker (Lockett & Co, Consultants to the Applicant); Roy Light (Advocate, St Johns Chambers)**Attending for the Police:** Sergeant Cross; PC Sinclair; Simon Walsh (Counsel)**Interested Parties:** Joanna Dean; Jane O'Neill; Jacqueline Pettit (Residents)

The Chair informed the meeting that, due to representations from the police who had been given new information by the applicant, the meeting was adjourned until 11am so that the new information could be evaluated and residents informed.

When the meeting reconvened, the applicant submitted an additional list of conditions as set out below:

Conditions

1. No self-service of alcohol
2. Alcohol sales 8am to 8pm each day
3. No sherry to be sold
4. No beer, lager or cider more than 5.5 alcohol by volume to be sold
5. No discount for multiple purchases of alcohol to be made
6. No credit sales of alcohol
7. Alcohol only to be sold by staff members whose training has been approved in writing by the police: (To apply to all staff recruited from 21 April 2008).

The hearing: The Licensing Officer then introduced the report and said that Lockett & Co were acting as consultants to the applicant, not as solicitors.

She referred to section 3.1 of the report which detailed appropriate conditions that the committee could consider in relation to addressing the licensing objectives. Twenty four representations had been received from the vicinity, 20 opposing and 3 in support. In addition a petition in support and one in opposition had been received.

She highlighted 4 factors about which the committee could ask for further guidance from herself or the solicitor:

1. The applicant had no personal licence as yet.
2. Additional representations had been received after the deadline (4 which were one day late and one other). There had been an email in support and one more page of signatures to the petition. Lockett and Co had also submitted further information on behalf of their client. This consisted of a premises manual and copies of the brochure in colour.
3. PC Thomas and Sergeant Cross from the police had submitted additional statements.
4. The discussions in the adjournment that morning had led to new additional conditions which made material changes to the application. She advised members to clarify whether there were any changes to the opening hours of the premises as well as to the hours when alcohol would be on sale. The Licensing Officer stated that she had no objections to the conditions being introduced.

Mr Light, advocate for the applicant, spoke to the application. He referred to the previous application in January 2008 which had been refused. The applicants had since taken advice from Lockett and Co. acting as consultants on best practice and this had led to a modified application including the tabled conditions which had led the police to feel able to withdraw their objections which he expected the police to comment on later.

Mr Light said this was a well established food store and noted that the local community were pleased to have the store even if they objected to the plans to sell alcohol. He referred to a letter from a resident in Gwydir Street who had written about the unfairness of refusing this licence given that there were other outlets with licenses very close by. He mentioned the letters of concern about what happens at night. The Man in the Moon pub is nearby and there had been fights outside it in the past.

To address these concerns the applicants had changed the hours at which the sale of alcohol would end to 8pm rather than 11pm. The hours when alcohol would start to be sold had also changed from 6.30am to 8am to deal with the police concerns about the nearness of Jimmy's nightshelter and the opportunities for those leaving the Shelter to buy alcohol early in the morning. He confirmed that the general opening hours of the shop would be 8am-8pm.

Mr Light said that the Designated Premises Supervisor (DPS) had passed the training but was still awaiting the outcome of police checks. A training regime for all staff was in place. The new Condition 7 related to this and should address concerns about the risk of selling alcohol to street drinkers. The list at the bottom of page 8 of the agenda also detailed the provision of CCTV and of a 24 hour recorder with a 31 day library of footage. He highlighted the notice about asking for ID of those who looked less than 21 years of age and one which detailed which ID cards would be accepted. On page 36 the plan of where the alcohol would be located on the shelves had been changed. The security flap would be

replaced by a secure screen and the 2 shelf locations for the sale of beer to the right of the security flap would be removed. All alcohol sales would be over the counter; there would be no self service. Condition 1 related to this.

Mr Light said that street drinkers tended to prefer high strength beers, lagers and ciders. So condition 4 which stated "No beer, lager or cider more than 5.5% alcohol by volume to be sold" had been included. Sherry was also thought to be popular with street drinkers and that would not be sold as detailed in condition 3.

Referring to the other conditions, Mr Light said that condition 5 meant that there would be no offers of two for the price of one etc. and condition 7 ensured that the training of staff would be adequate for an area of the city with street drinkers.

He hoped that the concerns of local residents and the police had been addressed by the new set of conditions.

Councillors raised the following with the applicant:

Cllr Rosenstiel clarified that condition 6 meant that no one would be sold alcohol without paying for it; it did not mean payment by credit card was not acceptable.

Cllr Slatter acknowledged the care taken in the training of staff and dealing with proof of age. She asked how staff would be enabled to deal with sales passed to third parties.

Mr Baker from Lockett and Co said that the premises manual dealt with 4 issues that could be commonly encountered by staff. (The manual was passed to the councillors to look at as Mr Baker talked). Section 6 was replicated in a small booklet which staff could carry easily with them at all times for reference. Following training, all staff had to pass a test to be allowed to sell alcohol and this test would be repeated every 6 months along with refresher training. There was also a Trading Statement which translated the licensing laws into a series of statements. The DPS and the staff were all required to sign a copy of this and it would be kept on their individual file. The file would also contain an authorisation sheet saying that the member of staff was full trained. If the list of conditions submitted to the committee were agreed, then these would be added to section 5 of the manual.

Cllr McPherson referred to items 6 and 7 in the booklet referred to:

Item 6: I will not sell alcohol to anyone I believe to be purchasing alcohol for someone under the age of 18

Item 7: I will not sell alcohol to anyone who is or appears to be drunk.

He affirmed the importance he placed on both of those and that he hoped the training would enable staff to be able to meet these rules without too much difficulty arising with customers.

Mr Walsh spoke as the barrister for Cambridgeshire Constabulary. He said he had been instructed vigorously to oppose the original application. He highlighted that this was a residential area with considerable problems of street drinking. So the police were concerned both about the early morning and late evening hours originally applied for. They had been surprised by the approach by the applicants that morning and the police had had more concerns than had initially been presented. So working together the police and the applicant had produced the seven tabled conditions. The police really did not want another outlet selling alcohol in the area but Mr Walsh had advised them of the limits to the extent of their powers of objection under the Licensing Act. The original conditions plus the seven new ones would address the police concerns. He reminded the committee that selling

alcohol to someone who was buying it for under 18 year olds and selling to someone already drunk were both already against the law.

The committee put the following to the police:

Cllr McPherson referred to page 40 of the agenda where the police statement included the following: "At the moment parents and children already have to run the gauntlet of street drinkers and underage drinkers in the afternoon on the way home. The proximity of Jimmy's homeless shelter and the availability of alcohol from 06:30 will increase the likelihood of this also happening in the morning". He asked the police if the two conditions would address this concern.

Mr Walsh responded by saying that if all the premises in the area had the same hours, then restricting the hours of one would not lead to less alcohol being sold.

Sergeant Cross said that there was an opportunity to have input to proper training of staff. However, he could not predict what would happen but acknowledged that the conditions allowed more opportunity for enforcement.

Cllr Slatter referred to a letter in the agenda papers and asked whether the kind of training being proposed in these premises might lead others to adopt similar standards.

Mr Walsh said that his advice always was to have a small number of easily identified conditions which could be enforced.

Sergeant Cross said he would like these conditions to apply across the ward but recognised that conditions could not be applied retrospectively. There were also issues for the police in resourcing enforcement. There were different standards of evidence applied when compared to the magistrates courts.

Residents raised the following:

Mrs Pettit: She made a plea that the petition in opposition not be compared to the one in favour as the former contained signatures from all over the city whereas the one in opposition was from local residents. She said she was a regular customer of the shop and valued it. However, in relation to the training proposed, she said that each time she went into the shop there was a different person serving and some of them were very young. She expressed concern about whether they would be able to deal with difficult customers. She emphasised the fact that there were 6 premises serving alcohol in the street and that it took her only 2 minutes to pass them all.

Jane O'Neill: She raised concerns that while the street drinkers might not be drunk at 8pm, having bought their alcohol they could still become drunk while in the area. She takes children to school and nursery school and to after school clubs and they often encounter cans and smashed glass on the ground. She commented that the Man in the Moon now only served alcohol in plastic cups so as to reduce the risk of smashed glass. The street drinkers tend to gather around the shop even though it is not yet selling alcohol. So concerns about the safety of children. The residents have taken their own action and St Matthews School has installed CCTV.

She was concerned also because it was very difficult for the police to identify where alcohol had been bought. Even ASDA was accessible to those intent on buying alcohol. She said that the Norfolk News shop was good at reporting incidents of anti-social behaviour but that Laxshan Day was not. One of the notices referred to by Mr Light was actually above a window smashed by vandals and not repaired. She also wondered whether shop lifting was ever reported. A fight outside Laxshan Day had not been reported. She would be reassured if she could have faith in the shop reporting incidents.

There was lots of advertising on the windows of the shop about the plans to sell alcohol and these were easily seen by passers by. She was not less anxious because 7 new conditions had been proposed.

She referred to the closeness of the area to the Mill Road Cumulative Zone. The Licensing Officer clarified that the Zone was not yet agreed and that it would only cover Mill Road. In time, an extension to cover this area might be able to be applied for.

Cllr Bradnack spoke as Ward Cllr and said that he and residents had been put on the back foot by the late submission of changes that morning without due time to consider and to discuss with other residents not able to be present at the meeting. He felt that his position representing residents had been weakened and that the representative of the applicant had exploited a legal loophole. He asked the committee to decide whether residents needed more time to consult on the changes.

The Chair asked for advice as to whether an adjournment was advisable and the solicitor said that the only advice she could give was that members needed to decide whether they had enough information to make a decision.

Mr Light spoke in response to Cllr Bradnack and said that licensing matters were essentially non-confrontational. There was no legal loophole. Both parties came to the meeting that morning and that had concentrated both their minds on the issues to be addressed. He was aware of the residents' objections, had visited the premises and had given the applicant advice. When he spoke to the police they had added more objections than he had been aware of. He said he had attempted to tell the residents at the beginning of the meeting but they did not agree to meet with him and he was told. In his view there was no need for an adjournment as the committee had all the relevant aspects before them. If the committee thought it needed more information then an adjournment was right. But the applicant had reduced the hours of opening and had tried to persuade the committee, the residents and the police that the applicant could meet the licensing objectives.

The committee withdrew for 15 minutes to consider the situation.

On returning, the Chair said that the committee would continue with the hearing as they believed they were in full possession of all facts and could come to a decision which would be fair to all parties.

Cllr Bradnack made the following points:

1. The relationship between the applicants and Lockett and Co was not clear. Was it a contractual relationship and were the applicants bound by the advice they were given?
2. Would the conditions require continuous and rigorous enforcement?
3. The owners of the premises did not live near the shop a factor the committee might like to note. The applicants did not attend community meetings as did other proprietors.
4. The shop had been described as well-established but it had only been trading in its current form over about the past year. Before that it had been a second hand junk store and before that, McCulloch's TV shop. Now, as one of a number of outlets selling alcohol the economic realities would lead to attempts to undercut the competition and lead to it being the place of choice for the street drinkers. That would lead to the loss of confidence by the local community and a drop in patronage.

Cllr Rosenstiel asked Cllr Bradnack if he had any comments regarding the representation made by Cllr Newbold (page 86 of the agenda) concerning the availability of cheap alcohol.

Cllr Bradnack said that ASDA was a long way away. Cllr Newbold was talking about a different shop in Cherry Hinton where the conditions were different. There was a particular set of circumstances in Norfolk Street which needed to be taken into account.

The Chair asked the various parties to sum up.

Mr Light spoke for the applicant and said that the conditions tabled that morning did address the licensing objectives. If there were problems with alcohol in the area at present they were not arising from these premises. So it was unfair to prejudice this business because of issues at other premises. He commended the conditions to the committee and that because of them the applicant had to act responsibly. There was an opportunity for residents to monitor whether the conditions were breached should the licence be granted. The training of staff might go beyond what was in the brochure because the police might want more. The application in January had not been well prepared. The applicants had taken account of the objections and put measures in place to address these. He urged the committee to grant the licence.

The Chair picked up on a point that had been raised by a resident in relation to young and potentially vulnerable shop assistants and whether they could deal with difficult customers.

Mr Light said that any staff had to be trained by the police and they could contact the police should there be any problems with difficult customers. He also referred to a comment by Cllr Bradnack about the relationship with Lockett and Co. Mr Light affirmed that the applicant did not have to take the advice given but they had paid a lot of money for the advice so it would be surprising if they did not heed it. They would attend community meetings if informed about where and when they were held.

Mrs Pettit said that she was disappointed that they had not been able to communicate to the community about this new application because that was in effect what it was.

Joanna Dean emphasised again that this was a residential area and that the police had said that they did not really want another licensed premises in the area. The residents wished to protect their area from becoming even worse than it was. More outlets for alcohol led to more alcohol related problems. The cut through the cemetery from Mill Road added to this. If there were a cut price war then everyone would suffer. Children going to the primary school already heard dreadful language. She urged the committee to turn down the application on behalf of the children and the neighbours and 110 petitioners.

Cllr Bradnack referred to the 4 licensing objectives and urged the committee to consider whether they could really be met by this application.

Councillors adjourned to discuss the application in the light of the concerns raised by interested parties and the submission by the applicant.

The Decision: In reaching the decision on the application, the Sub-Committee considered the material presented orally and in writing, the representations made by and on behalf of the applicant, the Responsible Authority and the interested parties, the Council's

Statement of Licensing Policy and the statutory guidance under the Licensing Act 2003. The list of the interested parties who spoke at the meeting appears in the minutes of the meeting.

In this case, the Sub-Committee had to balance the interests of the applicant with those of the wider community. It also had to take into account the existing serious problems associated with street drinking and concerns that these should not be exacerbated by the granting of a new licence. The Sub Committee decided that they were satisfied that the application, taken with the additional stringent conditions which were agreed between the applicant and the Responsible Authority before the meeting, would meet the licensing objectives for the sale of alcohol in residential areas. The Sub Committee considered that the following matters raised in representation were not relevant to their decision: suggestions that the police would have insufficient resources to enforce the conditions; suggestions that there would be a 'price war' between local shops selling alcohol and the applicant's business which would compromise enforcement; the suggestion that the introduction of a modified application at a late stage was exploitation of a legal loophole

It was therefore decided :

To grant the application, subject to the following conditions translated from the applicant's Operating Schedule, which conditions are considered to be necessary for the promotion of the licensing objectives:

1. Sale of alcohol between 08.00 and 20.00, Monday to Sunday;
2. No sherry to be sold;
3. No beer, lager or cider more than 5.5% alcohol by volume to be sold;
4. No discount for multiple purchases of alcohol;
5. No sale of alcohol on credit;
6. All alcohol shall be located behind the counter;
7. No self service of alcohol;
8. Alcohol only to be sold by staff members whose training has been approved in writing by the police : (to apply to all staff recruited from April 2008);
9. Staff shall be fully trained in alcohol sales with ongoing refresher training;
9. An audible alarm system shall be installed and maintained in working order;
10. CCTV equipment with recording facilities shall be installed at the premises and maintained in working order. Images shall be retained for 31 days and made available to the police upon reasonable request;
11. Staff shall be trained in fire safety and evacuation procedures;
12. Fire safety equipment shall be located on site, maintained in working order and staff trained in its use;

13. On occasions when the venue is open for the sale of alcohol the DPS or relevant person will actively operate a "Challenge 21" policy. This will include a voluntary agreement to only accept identity cards with a 'pass' accreditation, passports or photo ID driving licences, or any future identification card as approved by central government, a bona-fide recognised forms of identification;

14. A refusal to serve book shall be kept and information recorded as appropriate.

Details of application: -

The sale or supply of alcohol (on and off the premises):

Monday to Sunday : 08.00 to 20.00 hrs

Hours premises are open

Monday to Sunday : 08.00 to 20.00hrs

With effect from: The licence to have effect from the 21st April 2008.

Chair