

LICENSING HEARING PANEL (LICENSING 2003 ACT) SUB COMMITTEE 6 October
12.05 - 1.10 pm

Present: Councillors Blackburn-Horgan, McPherson and Swift

Officers

Senior Technical Officer, presenting as the Licensing Officer: Luke Catchpole

Legal Advisor: Kyle Rogers

Committee Manager: Claire Tunnicliffe

Present for the Applicant

Mr Munshi Nasiruzzaman, MQ Solicitors

Shop supervisor and personal licence holder, Mr. Avinash Nath

Other Persons Present

Police Sergeant Sutcliffe

Police Constable Metcalfe

Market Ward Councillor, Councillor Bick

FOR THE INFORMATION OF THE COUNCIL

25/16/Lic Sub Appointment of a Chair

Councillor McPherson was appointed as Chair for the meeting.

25/17/Lic Sub Declarations of Interest

No declarations of interest were made.

25/18/Lic Sub Meeting Procedure

All parties noted the procedure.

25/19/Lic Sub Consideration of an Application for a Premises Licence to be Granted for Burleigh Phone and Vape Shop, 34 Burleigh Street, Cambridge, CB1 1DG

The Licensing Officer presented their report and no questions were asked of the Officer.

Representation from the Applicant

The Applicant's Legal Advisor then gave their report highlighting the following areas:

- i. Safeguarding Children from Harm

- Acknowledge the concern regarding the proposed early morning sales of alcohol. Proposed to change the sale of alcohol from 8am to 10am or a time deemed appropriate by the licensing authority.
- ii. Crime and Disorder
 - Alcohol will be stored behind the counter or within the Cashier's line of sight.
 - During non-licensable hours, all alcohol would be concealed behind a screen.
- iii. Public Safety
 - The presence of SIA-licensed security personnel during all hours when licensable activities were taking place.
 - The entrance to the shop would be centralised.
- iv. Fairness and Consistency
 - Note that Tesco Express holds a similar licence close this application; licensing should not be a privilege reserved for large businesses but accessible to all responsible operators.

The following points were then raised:

- v. Alcohol would not be sold online.
- vi. A minimum of three staff present during the licensable hours.
- vii. Alcohol securely stored, monitored and covered when on sale (photos of the internal layout of the premises submitted).
- viii. The shop layout will maintain clear and unobstructed access for emergency exits and safe customer movement
- ix. No alcohol-related litter or waste will be tolerated outside the premises with clear signage promoting responsible behaviour.
- x. Concerns raised had been addressed.
- xi. The application supported all four licensing objectives.
- xii. Alcohol would be sold from 10am to 6pm if the licence was permitted; the shop would be open from 8am.

Representation from Cambridgeshire Constabulary.

- i. Referred to Section 4.5 and 4.10 of the City Council's Cumulative Impact Assessment:
- ii. In the opinion of Cambridge Constabulary, the applicant had sufficiently demonstrated how they would not add to the Cumulative Impact Area even with the additional conditions offered during the consultation period.
- iii. The premise was located on Burleigh Street, a busy pedestrianised thoroughfare traveling to Petersfield Ward and the city centre.
- iv. St Matthews School was located approximately 130 metres from the application site. Around 0.1 miles away the main entrance to Anglia Ruskin University. Further along was Jimmy's Cambridge (formerly

Jimmy's Night Shelter) and several student halls of residence situated on various nearby streets.

- v. Individuals staying at Jimmy's Cambridge, some of whom were alcohol-dependent, typically left the city centre between 3pm and 7pm. The current lack of nearby licensed premises acted as a natural barrier. Introducing one along their route would increase accessibility to alcohol, heightening the risk of harm and encouraging loitering around the premises.
- vi. Licensed premises within the city centre were frequently a focal point for members of the street life community, many of whom may be dependent on drugs and/or alcohol. This often resulted in associated anti-social behaviour.
- vii. Burleigh Street and the immediate area had historically experienced significant issues with anti-social behaviour, which was one of the key reasons for the introduction of the Cumulative Impact Area designation.
- viii. Tesco Express referenced by the applicant were yet to utilise the approved alcohol licence.
- ix. The applicant sought pre-application advice and had been appropriately signposted to the City Council's Licensing Policy. They were advised to undertake comprehensive research into conditions and operating hours of recently granted licences within the Cumulative Impact Area.
- x. Acknowledged the changed start time of selling alcohol from 8:00am to 10:00am; the earlier start time had been a concern on the impact that it could have on the school children when walking to school.
- xi. Would like to have seen the applicant offer a condition which would restrict the ABV (Alcohol by Volume) value of beer, larger and cider to under 5.5ABV; expect for premium or craft products as outlined in the pre-application advice.
- xii. If approved, this application would likely have a negative impact on an area already sensitive to alcohol-related crime, disorder, and anti-social behaviour. It was therefore recommended the Committee refused the application.

Representation from Market Ward Councillor, Councillor Bick.

- i. Had similar concerns raised by the Police.
- ii. While the conditions under discussion had the potential to improve the application, the Sub-Committee should refuse it due to the impact this would have on the surrounding area and community.
- iii. Parts of the application appeared to be written using a generic pro forma, more suited to a location elsewhere, rather than addressing the specific considerations required within Cambridge's Cumulative Impact Area.

- iv. The application suggested that the business was intended to serve as a local community store. However, the primary sales appeared to focus on items such as vapes and phone covers, which did not align with the typical expectations of a community-focused convenience store.
- v. Believed that the location was the exact location that the Cumulative Impact area protected.
- vi. The area was known to be populated during the evenings by street life individuals. The area was also prone to street begging.
- vii. The proximity to St Matthews Primary School and Jimmy's Cambridge further heightened the risk of alcohol-related harm to this location.
- viii. The applicant had not acknowledged any specific risks associated with the location, despite it being within a Cumulative Impact Area or demonstrate how such risks would be effectively mitigated.
- ix. Was unsure of the submission of the plan of the store by the application, as this did not really provide any detail, perhaps to show the point of sale and storage of alcohol.
- x. Difficult to arrive a sequence of hours for the selling of alcohol which would mitigate the risk to the community.

Questions

In response to questions the Applicant said the following:

- i. Children did come into the premises but was with their parent(s) as there were no goods advertised specifically for children.
- ii. Had not experienced any anti-social behaviour inside the shop. There were three members of staff on duty at any one time and the operation of a CCTV system.
- iii. Most income generated was from the repairs of phones and laptops, selling of phone and laptop accessories and vapes
- iv. Was not yet selling general items such as bread, milk, fruit, and vegetables (general household convenience items) but this could be considered if there was a demand.
- v. Was not aware of any official visits from Trading Standards in recent months.
- vi. There would be no advertising promoting the sale of alcohol at the front of the shop but would be inside at the back of the shop, at a certain height.
- vii. Had not fully understood the ABV points raised.
- viii. Stocked would be moved around to allow space behind the counter for the sale of alcohol if the licence was permitted.
- ix. The current income would support the SIA-licensed security personnel during licensable hours.

- x. Waitrose was a two-to-three-minute walk from the shop which sold alcohol.
- xi. Had originally applied to sell alcohol from 8am as this is when the shop opened. This was a new process and had gained a better understanding.
- xii. All alcohol would be displayed behind the counter.
- xiii. The applicant would be the personal licence holder. Had held a personal licence for seven years and managed four stores in total (including one in St. Neots and two in Royston town centre, all selling alcohol).
- xiv. The SIA licenced security would be there to provide security only and not cover any other duties while in the shop.
- xv. Would agree to only sell low alcohol strength beers, ciders and lagers (less than 5.5 ABV).

In response to questions the Police responded:

- i. Had not yet received a response from Tesco's Express as to why their alcohol licence was not being used.
- ii. Could not assess the impact of the Tesco's premise licence on the area as they were not selling it.
- iii. Trading Standards had carried out several operations in the city but not aware that this shop had been on their list. It would be difficult to confirm.

Summing up.

The Officer reminded Members they were to determine the application on its individual merits having reference to the statutory licensing objectives and Cambridge City Council's Statement of Licensing Policy and the Cumulative Impact Assessment.

Members should take such steps that they consider were necessary for the promotion of the licensing objectives. The subcommittee may resolve:

- a. To grant the variation as applied for.
- b. To modify the conditions of the licence.
- c. To reject the whole or part of the application.

Members must give reasons for their decision.

The Decision

That the application be refused.

Our reasons for reaching the decision are as follows:

1. We have before us an application pursuant to section 17 of the Licensing Act 2003 for a Premises Licence in respect of Burleigh Phone & Vape Shop, owned and operated by Nath and Sons UK Ltd.
2. We have carefully considered the case before us on its individual merits, including the information provided within the licensing officer's report and exhibits, the additional witness testimony from the Police and the rebuttal evidence received by the applicant. We have also heard from the applicant, their representative, the Police and the other persons (ward councillors) who submitted representations.
3. We have reminded ourselves that the cumulative impact assessment ("CIA") creates a presumption that applications for granting or varying premises licences within the CIA area will be refused if relevant representations are received, due to the likely negative cumulative effect on the promotion of the licensing objectives caused by a concentration of licensed premises. It is the Licensing Authority's duty to promote the licensing objectives and decisions must be made on a case-by-case basis considering whether the proposed operation on the premises would add to the cumulative impact or not. We reflect on our policy, at paragraph 4.5 (CCC's Cumulative Impact Assessment), which states that granting further licensed or variations [in the CIA area] would be inconsistent with the authority's duty to promote the licensing objectives.
4. Notwithstanding those considerations, we also firmly remind ourselves that this application must be considered on its individual merits and we retain discretion to divert from policy where there is good reason to do so. We are not fettered by policy but must follow it save where such good reason exists (or in this case, where there is clear evidence that the granting of a licence will not only promote the licensing objectives, but not add to the cumulative impact of the area).
5. The Applicant holds the burden to satisfy us through their operating schedule and evidence that the operation of the premises would not add to the cumulative impact and would not undermine the licensing objectives.
6. We further note that our focus is on the impact of the licensing objectives rather than need or commercial demand for the premises. We are not fettered by previous decisions of this sub-committee, as all our decisions are focused on the individual facts before us and we emphasise that is the case in this present application. Therefore, reference to any other

premises is not in our mind a relevant consideration, as each application will reflect its own individual premises and as such what amounts to a suitable condition for one premises may not be for another; each must be tailored and based on the individual case and specific facts.

7. It is our decision, for the reasons which will be expanded upon below, to refuse to grant this premises licence.
8. We were particularly concerned that the Applicant, in their submissions to this sub-committee, failed at any point – whether in opening, questioning or summing up, to comment on or address the CIA and the specific relevant cumulative impact concerns that impact the area in which their premises is located. We note limited engagement with the CIA in the written application. The onus is on them to satisfy us that the grant of a licence will not add to the cumulative impact, and they have failed to do so, or to even demonstrate an understanding of the true nature and impact of the underlying issues affecting the area.
9. We felt that the conditions proposed, in the most part, were particularly standardised and reflective of what we would expect to see from any well-run premises whether inside or outside of a CIA area. However, we do acknowledge that some conditions proposed were exceptional to those standard conditions. This included an offer to amend the licensable hours to whatever hours the sub-committee deemed necessary, to employ an SIA security operative for the premises during licensable hours, to not conduct any online alcohol sales and to ensure that all alcohol will be behind the shop counter.
10. We note that Environmental Health did not raise any representation but did agree a set of proposed conditions should this licence be granted. These were standard conditions which we do find would have alleviated some of the more generalised issues around potential public nuisance arising from a licensed premises; but again, fails to provide any real or substantive alleviation of the cumulative impact.
11. We note that there has been no representation made by Trading Standards, and when questioned the Applicant confirmed that following recent inspections and checks no enforcement action has taken place; demonstrating that there is no evidence the premises is not compliant with trading standards.

12. We have considered whether a significant reduction in the hours proposed could allay the cumulative impact and all the licensing objectives to be upheld. The Applicant offered us discretion as to which hours we would permit alcohol to be sold. He acknowledged the risk to children if sold during the early hours and reflected on an amended start time of 10:00am. We heard from objectors that whilst this went some way to resolving that concern, it failed to address the underlying issue in the cumulative impact area or to negate the impact during the hours of 3:00pm – 7:00pm which are, we heard, a prime time for alcohol related crime, disorder and public nuisance. We should note that we place some limited weight on the assertion that a mobilisation of street drinkers takes place between those hours, but in the round, having considered all of the evidence, we are not satisfied that any variance of hours would uphold the licensing objectives by not adding to the cumulative impact of the area.
13. Whilst we expressed our concern about the financial viability of employing an SIA security operative for the hours submitted, we note that the Applicant confirmed that it would be commercially viable and in the absence of any evidence to the contrary we accepted that submission. We were inclined that the employment of an SIA security operative would assist to alleviate some of the concern around upholding the licensing objectives; but it would not in our view assist with the underlying cumulative impact nor is there any proportionate or enforceable condition which would alleviate the issues that arise from proxy sales. There was no proper consideration or explanation as to how the applicant would for example prevent proxy, or third-party, sales and how the applicant would seek to mitigate that concern.
14. We were content to see a proposed condition to prohibit online alcohol sales and felt that this would offer some assistance to negating the cumulative impact of the premises, but it would not reduce the cumulative impact arising from in shop sales to street drinkers and others. There was also, it is noted, no evidence presented to satisfy us that effective measures would be in place to identify and refuse known street drinkers.
15. We felt that the proposal for all alcohol to be behind the store counter was proportionate and may allay some concerns around crime and disorder in a reduced opportunity for theft; and protection of children in that it would not be as visible or easily accessible. However, once more we reiterate that it does not alleviate the underlying cumulative impact

from a further licensed premises within the CIA area and would add to that cumulative impact. There was insufficient evidence provided, notwithstanding questions asked, to satisfy us that those underlying issues were being addressed.

16. We heard and read submissions from the Police which outlined the real impact of alcohol related crime and disorder and public nuisance, including the increase in of alcohol related criminal behaviour, anti-social behaviour and nuisance related behaviour (such as public begging). We have also heard that the applicant's premises is near to a primary school, a homelessness support provision (where it appeared undisputed that a number of service users are likely vulnerable to alcohol consumption), and university accommodation. We were also told that a significant amount of alcohol related nuisance is near to a children's play area. We do not feel that the applicant properly addressed those additional factors or explained how granting the licence would not add to the cumulative impact.
17. The Applicant informed us that he had held a personal licence for seven years and managed four stores in total (including one in St. Neots and two in Royston High Street). We were concerned that despite this purported experience, and despite having already been refused a licence on a previous application (which we only note insofar as to comment on the lack of learning or development since that date, otherwise we do not consider relevant), and received pre-application advice, the applicant failed to demonstrate an understanding of different alcohol levels and importantly, the impact that high alcohol content beers, ciders and lagers can have in an area affected by issues caused by the cumulative impact of alcohol. This raised a concern as to whether there was sufficient knowledge for the Applicant to run a licensed premises within a CIA area. We heard no evidence that the Applicant had experience operating licensed activity within a CIA area and ultimately found that he had not satisfied us that he had sufficient experience or knowledge to ensure that the licensing objectives would be met or that granting a licence would not add to the cumulative impact of the area.
18. This application has failed fundamentally to recognise and address the specific risks relevant to the cumulative impact in the area and has failed to propose conditions that properly mitigate that cumulative impact. The burden rests on the applicant to satisfy us, on balance, from their operating schedule and evidence, that the granting of their licence will not add to the cumulative impact of the area. For the reasons outlined

above, and evidenced within the papers and oral submissions, we are not satisfied on balance that granting this licence will uphold the licensing objectives and we are satisfied that it will add to the cumulative impact of the area. We note the heavy reliance by the Applicant on reference to another premises nearby, we do not consider that to be relevant as we have considered this case on its individual merits, unfettered by any previous decision.

19. We therefore refuse to grant this application.

The meeting ended at 1.10 pm

CHAIR