

SOUTH DERBYSHIRE DISTRICT COUNCIL
LICENSING AND APPEALS SUB-COMMITTEE

APPLICATION FOR A PREMISES LICENCE

UPO'S FISH BAR, 42 HIGH STREET, WOODVILLE, SWADLINCOTE,
DERBYSHIRE, DE11 7EA

TUESDAY, 16TH JUNE 2015

Opened: 1.37pm
Closed: 4.50pm

In attendance:

SUB-COMMITTEE

Councillor John Harrison (Chairman)
Councillor Robert Wheeler
Councillor Kevin Richards

LEGAL ADVISOR TO THE SUB-COMMITTEE

Ardip Kaur – Legal & Democratic Services Manager

CLERK TO THE SUB-COMMITTEE

Angela Edwards – Senior Legal Officer

COUNCIL'S LICENSING REPRESENTATIVE

Emma McHugh – Senior Licensing Officer
Lisa Kinsey – Licensing Officer (Observer)

APPLICANT

Makhan Singh Ranu
Walaiti Rathore (Solicitor)
Mr Singh (Business Associate)
Mr Purewal (Business Associate)

DERBYSHIRE CONSTABULARY

Constable 2673 Kelvin Hannah
Constable 14023 Priya Dhillon

DERBYSHIRE TRADING STANDARDS

Ian Milward

BACKGROUND

1. The Chairman introduced himself and other members of the Sub-Committee introduced themselves. The Chairman introduced the Legal Advisor and explained her role was to advise the Sub-Committee on the legal aspects and procedure of the matter. The Chairman also introduced the Clerk to the Sub-Committee.
2. The Chairman then outlined the procedure to be followed during the hearing, in accordance with the Council's Licensing Hearings Procedure.

3. This was a hearing to determine the application for a Premises Licence under the Licensing Act 2003 for UPO's Fish Bar, 42 High Street, Woodville, Swadlincote, Derbyshire, DE11 7EA.
4. Documentation being relied upon by the Council's Licensing Representative had been exchanged at least 5 days before the hearing. Copies had been provided to the Applicant, his representative, the representing Responsible Authorities and all Members of the Sub-Committee.
5. The Applicant, Mr Ranu, attended the hearing in person and was represented by Mr Walaiti Rathore of Fraser Brown Solicitors.
6. Both the Applicant and Derbyshire Constabulary had submitted documentation prior to the hearing.
7. The Chairman invited Emma McHugh, the Council's Licensing Representative, to present the facts of the matter. The Chairman informed those present that Ms McHugh's role was to present the facts of the application on behalf of the Licensing Authority. Emma McHugh outlined the application.
8. The Sub-Committee had opportunity to ask questions of the Council's Licensing Representative and invited Derbyshire Constabulary, Derbyshire Trading Standards, the Applicant and his representative to put questions to her as well. No questions were asked.
9. At the invitation of the Chairman, PC Hannah made representations to the Sub-Committee.

PC Hannah informed the Sub-Committee he had submitted a bundle of documents for consideration. For clarification purposes, he advised that the guidance included in the bundle was, unfortunately, out of date and should not be referred to. Ardip Kaur advised that the Sub-Committee had been provided with an up to date version.

PC Hannah referred the Sub-Committee to a short report from PC 168 Basra which raised concerns that the proposed application would result in an increase in anti-social behaviour and associated crime in the area, thereby giving cause for concern for public nuisance, public safety, protection of children from harm and crime and disorder; he said this would undermine all the licensing objectives. He said there were several off licenses in the locality and there was no need for a further one.

PC Hannah then referred the Sub-Committee to an analysis report identifying the anti-social behaviour and crime patterns within a 1000 metre and a 2 mile radius of the premises over a 2 year period. He explained the statistics in detail to the Sub-Committee, together with a temporal analysis, and gave various examples of incidents.

PC Hannah explained his concerns to the Sub-Committee about the proposed delivery service. He said there were insufficient safeguards contained in the proposed conditions to prevent a person under 18 from buying and/or receiving alcohol.

PC Hannah informed the Sub-Committee of his experiences of street drinking in Derby, stating it was a very big problem and something they wanted to safeguard against. He said they had no objections to someone buying alcohol with a substantial meal but wanted to avoid people visiting the premises only to buy alcohol.

PC Hannah said they had made efforts to work with the Applicant but, unfortunately, a resolution had not been possible.

PC Hannah asked the Sub-Committee, firstly, to reject the application based on the contents of his submission and written report or, secondly, if the Sub-Committee was minded to grant the application, to do so only upon the imposition of stringent conditions.

10. The Sub-Committee had the opportunity to ask questions of PC Hannah and invited the Licensing Representative, Derbyshire Trading Standards, the Applicant and his representative to put questions to him as well.

PCs Hannah and Dhillon confirmed, following a number of questions by the Chairman, that examples of the principal crimes referred to in the analysis were violence, assaults and damage to vehicles; that the trends for both crimes and anti-social behaviour were fairly constant; and that nuisance could amount to almost anything, such as children throwing stones or individuals being aggressive or intimidating or drunken behaviour.

PC Hannah confirmed, following a question by Councillor Richards, that there were no age categories provided in the statistics.

PC Hannah confirmed, following a question by Councillor Wheeler, that he could not say with any certainty whether the anti-social behaviour referred to in the report from PC 168 Basra was linked to any off licences within the area.

PC Hannah answered questions from all members of the Panel about the enforceability of the proposed conditions.

11. The Chairman invited Derbyshire Trading Standards to submit their representations.

Mr Milward advised the Sub-Committee that Derbyshire Trading Standards' only role was to consider the protection of children from harm licensing objective. He expressed concerns about the delivery element of the proposed application and said that if the application was granted, it was important that controls were in place to ensure that any person ordering alcohol and any person receiving alcohol by way of a delivery was over 18.

12. The Sub-Committee asked questions of Derbyshire Trading Standards and invited the Licensing Representative, Derbyshire Constabulary, the Applicant and his representative to put questions to them as well.

Mr Milward confirmed, following a question by the Chairman regarding the conditions, that they supported Challenge 25 but said that the delivery element of the proposed application required stringent conditions.

13. The Chairman invited the Applicant to make representations to the Sub-Committee. Mr Walaiti Rathore of Fraser Brown Solicitors made representations to the Sub-Committee on behalf of the Applicant.

Mr Rathore informed the Sub-Committee that the application should be granted subject to the proposed conditions on the Operating Schedule. He said there was no legal or evidential basis for refusing the application. He said a decision to grant the application was robust, right in law, in line with the Sub-Committee's duties and would stand up to scrutiny.

Mr Rathore informed the Sub-Committee that the application had arisen as a result of customer demand; there is an off licence next door to the premises and customers had been asking to buy alcohol with their food, rather than going next door. He said this would provide customers with more choice and flexibility.

Mr Rathore explained that customers would be served from a high counter rendering it impossible for them to pick up alcohol in the premises and, with regard to deliveries, payment would be made on delivery following confirmation by ID that the person was over 18.

Mr Rathore said that in reality only a minimal number of conditions were necessary for the application but they had made extensive efforts to work with Derbyshire Constabulary to no avail. He said that some of the conditions proposed by Derbyshire Constabulary were unjustified, disproportionate, a duplication of other legislation and would be an unnecessary burden on the business. He expressed disappointment at their lack of willingness to negotiate.

Mr Rathore referred to a previous application made by his client to the Authority for an off licence, which was approved subject to conditions agreed by Derbyshire Constabulary. He said those conditions are proposed with this application, together with additional conditions that are approved and currently used in Nottingham for similar premises which offer a delivery service. Mr Rathore said that the Nottinghamshire and Derbyshire Constabularies both use the same Legal Department and, consequently, the Sub-Committee had no reason to believe that, if Derbyshire Constabulary had sought legal advice on the proposed conditions, they would not be acceptable.

Mr Rathore expressed his view that all the representations presented were irrelevant or pure speculation as they were not specific to the premises. He said that the Council did not have a Saturation Policy and accordingly representations regarding need are irrelevant and cannot be considered.

Mr Rathore informed the Sub-Committee that the Applicant was an experienced and responsible operator with decades of experience and an unblemished record.

Mr Rathore advised the Sub-Committee of various case law and requested that the Sub-Committee granted the application subject to the revised conditions.

14. The Sub-Committee asked questions of the Applicant's representative and invited the Licensing Representative and Derbyshire Trading Standards to put questions to him as well.

Mr Rathore confirmed, for the avoidance of doubt, exactly which conditions he referred to, following a question by the Chairman.

15. The Chairman invited the Licensing Representative, Derbyshire Constabulary, Derbyshire Trading Standards and the Applicant's representative to sum up their representations.
16. The Sub-Committee retired from the Council Chamber to deliberate.
17. In making its decision, the Sub-Committee had regard to South Derbyshire District Council's Licensing Policy, the Guidance issued under Section 182 of the Licensing Act 2003 and the Human Rights Act 1998, as well as the evidence presented in writing and given orally at the hearing.
18. The Sub-Committee also had regard to the four 'Licensing Objectives' namely:
 - Prevention of crime and disorder
 - Public safety
 - Prevention of public nuisance
 - Protection of children from harm
19. The Sub-Committee considered in detail the representations of the Council's Licensing Representative, Derbyshire Constabulary, Derbyshire Trading Standards and the Applicant's representative.

DECISION

The Sub-Committee granted the application for a Premises Licence as follows:

- **Supply by Retail of Alcohol for consumption off the premises only**
Monday to Sunday: 9:00 hours to 22:30 hours
- **Hours Premises Open to the Public:**
Monday to Sunday: 0:00 hours to 24:00 hours

The grant of the application for a Premises Licence is subject to the following conditions, in addition to the mandatory conditions contained within the Licensing Act 2003, and the conditions contained within the operating schedule of the original application form:

1. A written 'Challenge 25' age verification policy will be operated at the premises with regards to the sale of alcohol. This policy shall be adopted for any delivery vehicles, when in use for the supply of alcohol to effect the onward transportation of a food delivery.
2. Clear signage in relation to the 'Challenge 25' age verification policy operated at the premises will be clearly displayed.
3. There shall be sufficient signage in relation to the age verification policy in all areas where alcohol is displayed for sale and at the point of sale.

4. Any person who appears to be under 25 years of age will be required to provide a suitable proof of age before any alcohol is sold to them. A method of establishing any telephone sales will form part of the age verification policy as stated in condition 1.
5. The proof of age will be established with the production by the customer of either a:
 - Photo driving licence
 - Current passport
 - Ministry of Defence identity card
 - Government approved 'PASS' identity card
6. Where an order is received over the telephone, the customer will be informed that the alcohol will only be delivered to a person aged 18 or over and that the 'Challenge 25' policy will be used.
7. Where orders are placed online, the customer will be required to confirm that they are aged 18 or over and that they understand that the alcohol will only be delivered to a person aged 18 or over and that the Challenge 25 policy will be used.
8. All telephone/online orders shall be paid for at the point of delivery once it has been established a person is aged 18 or over and the 'Challenge 25' policy has been applied.
9. A system of recording sales refused shall be operated at all times. This shall include sales refused at the point of order and at the point of delivery.
10. A bound and sequentially paginated refusals log book shall be kept in all delivery vehicles. At least weekly the Designated Premises Supervisor or a nominated person will:
 - examine the record and compare it against the normal operating pattern for the premises
 - indicate any action required following that examination
 - sign off/endorse the record to indicate the above points have been carried out
11. The refusal register shall be a log book with sequentially numbered pages. Due to the offering of deliveries, one refusal book will be located at all times in the premises; others will be located in any vehicle used to deliver alcohol.
12. All refusals in relation to the sale of alcohol will be entered in log books or registers kept for this purpose.
13. These log books/registers shall be kept on the premises for a period of not less than 12 months and shall be produced upon request of a Police Officer or other authorised person as defined in the Licensing Act 2003.

14. Full training is to be provided by the Designated Premises Supervisor or a nominated person to all staff on commencement of employment relating to all age restricted products sold and any system or procedures they are expected to follow in the course of dealing with these goods. This training shall include the procedures for any deliveries of alcohol.
15. Refresher training will be provided at regular intervals (at least every six months). Written records detailing all training shall be kept on the premises for a period of not less than 12 months and shall be produced upon request of a Police Officer or other authorised person as defined in the Licensing Act 2003.
16. Only alcohol that has been appropriated to an existing contract or order may be stored on any vehicle that is used for onward delivery.
17. A list of designated delivery vehicles should be retained on site. This list shall contain the vehicle registration number, driver and passenger details and all areas covered.
18. A CCTV system shall be installed and maintained at all times.
19. The CCTV recording system must be operating at all times when the premises are open for licensable activities.
20. All CCTV recordings must be retained for a period of no less than 28 days. These images must be available for viewing at a reasonable time upon request of a Police Officer or other authorised person as defined in the Licensing Act 2003.
21. The Premises Licence Holder, Designated Premises Supervisor or other nominated person must be able to retrieve and copy relevant recordings/images at the time of asking or within 48 hours if so required.
22. The CCTV recording unit is to be kept secure, to be opened only by the Premises Licence Holder, Designated Premises Supervisor or other nominated person.
23. Installed CCTV cameras are to be positioned both internally and externally so as to ensure that all parts of the premises to which the public has access are sufficiently covered.
24. All cameras installed will be of a standard that will offer an optimum image quality in low light.
25. All digital recordings are to be made in real time (time lapse is not to be used).

REASON FOR THE DECISION

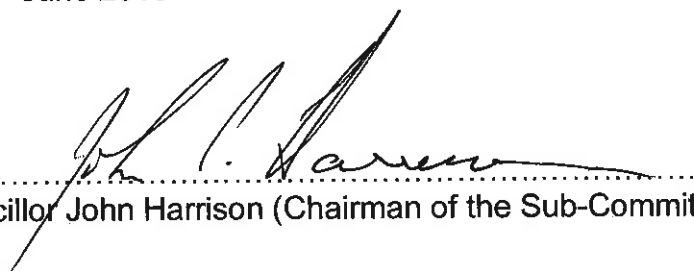
Having taken into account the four Licensing Objectives, the guidance issued under Section 182 of the Licensing Act 2003, the Council's Licensing Policy and the Human Rights Act 1998, the Sub-Committee sought to balance the interests of the Applicant and the representations made by the Derbyshire Constabulary and Derbyshire Trading Standards.

The Sub-Committee felt that it was reasonable and proportionate to grant the Premises Licence, subject to the conditions specified, which are imposed to specifically address the concerns raised.

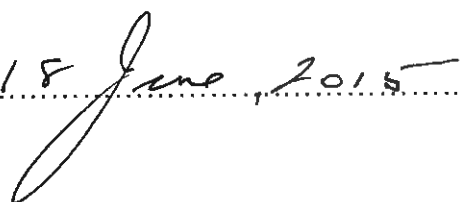
All parties may appeal to the Magistrates' Court against this Decision. Guidance on this process is attached to the Decision Notice.

Date of Decision: 16th June 2015

Signed:


Councillor John Harrison (Chairman of the Sub-Committee)

Dated:

 2015