

ALCOHOL & ENTERTAINMENT LICENSING SUB COMMITTEE –

27 MAY 2010

ITEM 3

**APPLICATION FOR A PREMISES LICENCE THE COURTYARD DELI 37 LONG
ACRE BINGHAM**

REPORT OF THE SENIOR LICENSING OFFICER

THE APPLICATION

Applicant

Shaun Kerry

Premises

The Courtyard Deli 37 Long Acre Bingham Nottingham

History

The premise to which this application relates was previously the local Post Office until its closure a number of years ago, since which the premises have been empty. At the present time 'The Courtyard Deli' operates from 37 Long Acre Bingham having had a licence granted in February 2009 for the sale of alcohol on and off the premises from 8am to 8pm. A copy of the current licence is attached.

Application

This application is for the grant of a new Premises Licence under Section 17 of the Licensing Act 2003 for 37 Long Acre Bingham.

The operating schedule shows

Alcohol sales will form a small part of the total sales, which comprise mainly of food sales. A challenge 21 proof of age scheme will be in place at the premises in relation to the sale of alcohol.

Relevant licensable activities

The sale of alcohol by retail on and off the premises:

The hours for the sale of alcohol and the times the premises will be open to the public as applied for are:

Monday to Saturday	08:00 – 22:00
Sunday	10:00 – 20:00

RELEVANT REPRESENTATIONS:

The following are summaries of the representations made; the full representations are attached to the hearing papers.

Responsible authorities

No representations have been made by any of the Responsible Authorities.

Interested parties

Bart Luckhurst: Lives in the adjacent area and states that the area behind the premises forms a square and anyone uses it will cause a noise nuisance. The proposals will intrude on our privacy and peace and quiet. The hours sought are aggressive and are not needed.

Mr and Mrs Wattam: Comments are as above.

Mr and Mrs Dennis: Own the business premises next to the proposed premises, and states the plans submitted with the application are incorrect as they do not show the rear aspect of the premises and therefore the premises that will be affected by the application. Noise will be a nightmare from not only outside but via the party walls to adjoining premises.

Local Policy Considerations

1.1 The Act provides that Rushcliffe Borough Council has a duty to carry out its functions under the Act with a view to promoting the prescribed licensing objectives:

- The prevention of crime and disorder
- Public safety
- Prevention of public nuisance
- Protection of children from harm

Human Rights

The Authority will have particular regard to the following relevant provisions of the European Convention on Human Rights when determining applications.

- Article 1 of the First Protocol - that every person is entitled to the peaceful enjoyment of his or her possessions, including for example the possession of a licence.
- Article 6 - that in the determination of civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
- Article 8 - that everyone has the right to respect for his home and private life.

Consideration of the impact of licensing activities

The characteristics of an area and the impact that the premises may have upon that area are a major fundamental consideration in determining whether a licence should be granted and if so what conditions should be attached to the licence. Conditions to be attached to various authorisations will be focussed on matters that are **within the control of individual licensees** and others in possession of relevant authorisations. Accordingly these matters will centre on the premises being used for licensable activities and the vicinity of those premises. What amounts to the "vicinity" will be a

question of fact to be determined in the light of the individual circumstances of the case. Consideration will primarily be given to the direct impact of the licensed activity on members of the public living, working or engaged in normal activity in the area concerned.

This policy provides information and guidance to licence applicants, objectors and interested parties on the general approach that the Authority will take in terms of licensing. Each application will be considered individually on its own merits, and the Authority in adopting this licensing policy is indicating that wider considerations will be taken into account in making an appropriate determination, where relevant objections have been made.

POLICY 5 (Section 6)

When preparing or considering applications, applicants, interested parties, relevant bodies and the Licensing Authority should, where appropriate, take into account the following matters in assessing both the potential for the licensing objectives to be undermined and the necessity for, and proportionality of, any conditions which may be imposed on any resulting licence, certificate or permission: -

- (a) The nature of the area within which the premises are situated
- (b) The precise nature, type and frequency of the proposed activities
- (c) Any measures proposed by the applicant as outlined in the operating schedule to mitigate or prevent any adverse impact upon the licensing objectives (including the proposed hours of operation)
- (d) The nature (principally in terms of the age and orderliness) and number of any customers likely to attend the licensed premises
- (e) Means of access to and exit from the premises
- (f) Transport provision in the area and the likely means of public or private transport that will be used by customers either arriving or leaving the premises
- (g) The potential cumulative impact
- (h) Other means and resources available to mitigate any impact.
- (i) Such other matters as may be relevant to the application.

REASON: To ensure that all relevant matters are taken into consideration during the application process

NATIONAL GUIDANCE

10.4 Under the former licensing regimes, the courts have made it clear that it is particularly important that conditions which are imprecise or difficult for a licence holder to observe should be avoided.

10.11 The licensing authority may not impose any conditions unless its discretion has been engaged following receipt of relevant representations and it has been satisfied at a hearing of the necessity to impose conditions. **It may only impose conditions that are necessary to promote one or more of the four licensing objectives. Such conditions must also be expressed in unequivocal and unambiguous terms to avoid legal dispute.**

10.12 It is perfectly possible that in certain cases, because the test is one of necessity, where there are other legislative provisions which are relevant and

must be observed by the applicant, no additional conditions at all are needed to promote the licensing objectives.

10.13 The Act requires that licensing conditions should be tailored to the size, style, characteristics and activities taking place at the premises concerned. This rules out standardized conditions which ignore these individual aspects. It is important that conditions are **proportionate** and properly recognize significant differences between venues.'

13.40 With regard to licensing hours, the statement of policy should generally emphasize the consideration which will be given to the individual merits of an application. The Government strongly recommends that statements of policy should recognize that, in some circumstances, flexible licensing hours for the sale of alcohol can help to ensure that the concentrations of customers leaving premises simultaneously are avoided. This can help reduce friction at late night fast food outlets, taxi ranks and other sources of transport which lead to disorder and disturbance. (See Rushcliffe Policy 4.3 and 4.4)

13.23 There can be confusion about the difference between "need" and the "cumulative impact" of premises on the licensing objectives, for example on crime and disorder. "Need" concerns the commercial demand for another pub or restaurant or hotel. This is **not a matter** for a licensing authority in discharging its licensing functions or for its statement of licensing policy. "**Need**" is a matter for planning committees and for the market. (Note Rushcliffe does not have a cumulative impact policy)

13.64 The statement of licensing policy (see Rushcliffe Policy statement 5.11) should indicate that planning, building control and licensing regimes will be properly separated to avoid duplication and inefficiency. Applications for premises licences for permanent commercial premises should normally be from businesses with planning consent for the property concerned. However, applications for licences may be made before any relevant planning permission has been sought or granted by the planning authority.

Observations

The committee is obliged to determine this application with a view to promoting the licensing objectives in the overall interests of the local community, and must give appropriate weight to:

- the representations presented by all the parties;
- the guidance;
- the statement of licensing policy;
- the steps that are necessary to promote the licensing objectives.

Of course the Committee must also have regard to all of the representations made and the evidence it hears.

The Committee must take such of the following steps as it considers necessary for the promotion of the, licensing objectives:

- (a) Grant the application as submitted
- (b) Modify the conditions of the licence, by altering or omitting or adding to them.
- (c) Reject the whole or part of the application.

The Committee is asked to note that it may not modify the conditions or reject the whole or part of the application merely because it considers it desirable to do so. It must actually be necessary in order to promote the licensing objectives.

Section 35(5)(a) the Licensing Act 2003 “relevant representations” means representations which, are about the likely effect of the grant of the application on the promotion of the licensing objectives.

Other matters

As a result of the original representations being made, the applicant offered to amend the licence application to limit the terminal hour to 2000 (8pm) from that applied for 2200 (10pm).

In addition the applicant offered the following condition to be placed on the licence: ‘The outside area will not be used for the sale of alcohol after 5pm.’

The above matters were communicated to the interested parties by letter but both Mr Luckhurst and Mr and Mrs Wattam have rejected them.

Standard Checklist for Reports

Meeting: Alcohol & Entertainment Licensing Sub Committee

Report Title: Application for a premises licence The Courtyard Deli 37 Long Acre Bingham

Author: Senior Licensing Officer

The following issues are relevant to this report and have been properly considered in its preparation and in the recommendations made. Appropriate consultation has been made and advice sought on these issues as required. (See notes on the intranet)

Financial	<input type="checkbox"/>	Human Rights	X
Legal	<input type="checkbox"/>	Equal Opportunities	X
Policy	<input type="checkbox"/>	Crime and Disorder	X
Risk Management	<input type="checkbox"/>	Environment/EMAS	<input type="checkbox"/>

(Mark all appropriate boxes)

Has the relevant Deputy Chief Executive signed off the report No

Has this report been considered by SMT No

Comments:

This report makes no recommendations

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Name of Officer Completing Form: D Collings Senior Licensing Officer

This form must be completed and sent to the relevant Member Support Officer together with the Report by the agreed deadline. It will also be appropriate to complete this form when producing reports for certain officer meetings, e.g. Management Team

Notes for completion of this form can be found on the intranet