

LICENSING ACT 2003 SUB COMMITTEE

Thursday, 11th May, 2023
10.30 am





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AGENDA SUPPLEMENT

7) *Determination of a Premises Licence Application*

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To determine a Premises Licence application under the Licensing Act 2003 relating to Padiham Service Station, Burnley Road, Padiham.

Hearing Padiham Service Station 11th May 10.30am

Representation on behalf of Environmental Health

Background Documents

To assist the licensing sub- committee I have included below policies, guidance and case law that I have made reference to in relation to my representation. I have provided a summary and highlighted parts of the text I consider is relevant in this case;

Burnley Borough Council Statement of Licensing Policy 2022-2027

<https://burnley.gov.uk/wp-content/uploads/2022/09/Statement-of-Licensing-Policy-2022-2027-effective-011022.pdf>

5.6 Licensing Hours

5.6.1 Applicants are strongly encouraged only to apply for hours that they realistically intend to operate, as later hours are typically more likely to attract representations. Once granted a licence remains in force forever, unless surrendered, varied or reviewed, so Responsible Authorities should give careful consideration to licensed hours at the application stage.

5.6.2 Where its discretion is engaged at a hearing, the licensing authority will give consideration to the appropriateness of hours applied for, or hours permitted by the existing licence, having regard to any planning restrictions in relation to operating hours, the location of premises and their likely effect on the promotion of the four licensing objectives. It is recognised that in some circumstances flexible licensing hours for the sale of alcohol can help to ensure that concentrations of customers leaving premises simultaneously are avoided. At a hearing the licensing authority will consider restricting hours to ensure the promotion of the licensing objectives. Any new closing time will take account of the closing times of other premises in the vicinity so that staggered dispersal of customers is achieved.

5.6.3 The Licensing Authority considers that later hours will typically be more sensitive and higher risk in causing noise from regulated entertainment, anti-social behaviour from patrons in the vicinity of the premises, and crime and disorder from inebriated patrons. This will include late night food vendors. It therefore follows that additional measures may be required, including noise mitigation controls and an increasing number of SIA registered door supervisors may need to be employed the later the premises remains open, and these requirements may be considered as licence conditions.

5.6.4 It may also be appropriate, where later hours are requested for alcohol, to have a last entry condition as a condition of the Premises Licence to prevent vulnerable or intoxicated customers moving to the last venue open.

Revised guidance issued under section 182 of the Licensing Act 2003 (December 2022)

Hours of trading

10.13 The Government acknowledges that different licensing strategies may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions about the hours during which premises can conduct licensable activities as part of the implementation of its licensing policy statement. Licensing authorities are best placed to make decisions about appropriate opening hours in their areas based on their local knowledge and in consultation with responsible authorities. However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application.

10.14 Where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the

licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested.

10.15 Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours.

[Revised guidance issued under section 182 of the Licensing Act 2003 \(December 2022\) \(accessible\)](#)

Reference; A practical approach to making representations to a licensing authority - Published 9 May 2019

<https://www.gov.uk/government/publications/alcohol-licensing-making-representations/a-practical-approach-to-making-representations-to-a-licensing-authority>

‘Each new application, or variation of an existing licence or club premises certificate, must assess the likely effects that granting the application will have on the promotion of the licensing objectives. This is a *‘prospective consideration’^[footnote 1], which aims to prevent adverse consequences from operating the premises. You should make the consideration based on the likely impact on the licensing objectives. This test should also apply if you’re reviewing an existing licence or club premises certificate.

Not every application will need a response from every RA. Instead, RAs should identify the types of applications that could cause problems and undermine the promotion of the licensing objectives and apply this information accordingly. In each case, you should consider the relevance to and likely effects on the licensing objectives of the particular premises in the particular location, being used in the particular way. You must consider each application on its own merit.

2. Effective representations and relevant evidence

All RAs can be involved in the application, and they will probably approach it from their specific point of view. For example, the police are likely to focus on crime and disorder. But all RAs can object on the grounds of any of the 4 licensing objectives, and public health teams should consider this when reviewing this information.

The following guide is a practical approach to evidence and representations to help all parties participate effectively in the process.

2.1 Premises

Where known, set out the proposed or actual operation of the premises. The ‘operation’ of a premises is wider than the licensable activities. For example, licensable activities operating in a restaurant differ to those operating from a small off-licence or late-night club.’

Relevant case Law

Hope and Glory Public House v City of Westminster Magistrates’ Court and Others

R (on application of Hope and Glory Public House Ltd) v City of Westminster Magistrates’ Court and Others (2011) EWCA Civ 312

This case, referred to as ‘Hope and Glory’, is essential reading for Responsible Authorities and licensing committees. It is relevant to most hearings.

The decision is important because it:

illustrates that licensed premises, and the activities that take place in those premises, exist in a dynamic environment and should not be looked at entirely in isolation

confirms that this can include the impact that licensable activities have on a range of factors such as crime, the quality of life for residents and visitors to the area, and demand for licensed premises sets out the approach that should be taken when making licensing decisions

Lord Justice Toulson said:

Licensing decisions often involve weighing a variety of competing considerations: the demand for licensed establishments, the economic benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand, the effect on law and order, the impact on the lives of those who live and work in the vicinity, and so on. Sometimes a licensing decision may involve narrower questions, such as whether noise, noxious smells or litter coming from premises amount to a public nuisance.

Although such questions are in a sense questions of fact, they are not questions of the ‘heads or tails’ variety. They involve an evaluation of what is to be regarded as reasonably acceptable in the particular location. In any case, deciding what (if any) conditions should be attached to a licence as necessary and proportionate to the promotion of the statutory licensing objectives is essentially a matter of judgment rather than a matter of pure fact.

Responsible Authorities should be encouraged by this decision to make representations so that their information can be taken into account, and appropriate measures put in place for the licensing objectives to be promoted.

The full judgment is available from the British and Irish Legal Information Institute.

East Lindsey District Council v Abu Hanif (t/a Zara’s Restaurant) 2016

In this case, the High Court upheld the Licensing Committee’s decision to revoke a premises licence where the licensee had employed an illegal worker.

The significance of the case is that it reaffirms the principle that Responsible Authorities need not wait for the licensing objectives to actually be undermined before objecting to a licence being granted.

Commenting on the way committees and courts should approach the promotion of the licensing objectives, Mr Justice Jay said:

*[T]he prevention of crime and disorder requires a prospective consideration of what is warranted in the public interest, having regard to the twin considerations of prevention and deterrence.

The full Judgement is only available from subscription services such as Westlaw or Lawtel.

MUHAMMAD SHOAIB (t/a Kiera (Delivery Service), 134 Charing Cross Road, London WC2H 0LA) V THE LONDON BOROUGH OF CAMDEN

- **Demonstrates the wide range of nuisance that may considered**

The London Borough of Camden refused to grant a premises licence to enable a 24-hour delivery operation to commence from a convenience store based on Charing Cross Road. The convenience store already had premises licences in place enabling off-sales until the early hours of the morning. Under existing licences the operator already sold a limited amount of alcohol via couriers using App

technology such as Deliveroo. The intention was to significantly expand the frequency of alcohol delivery sales and to enable sales 24 hours. Following representations from the police and licensing authority, the council determined to grant a licence but to restrict its hours in line with the council framework hours.

The decision was upheld following a one day hearing before District Judge Newton in Highbury & Islington Magistrates' Court. The Judge firstly rejected an argument that the hearing (conducted remotely) had been procedurally unfair by reason of the presence of a cat in the company of one of the councillors who sat on the sub-committee.

On the substantive appeal, the Judge was not satisfied that the operation could be conducted without causing nuisance to residents in flats above the convenience store, for example through noise during the collection process.

The Judge further accepted the council's submission that the concerns arising from the delivery operation would exacerbate the nuisance already arising, caused by customers attending the convenience store. Rejecting the submission that she should focus her analysis only on the delivery operation, the Judge noted that there was no offer to surrender the existing licences and therefore the operator could operate under the new licence and old licences in tandem.

District Judge Newton further accepted the submissions of the council in relation to the point of delivery. The operator and responsible authorities could not have any control over the independent couriers who would perform deliveries and she was satisfied that there were real risks that alcohol would be sold to minors or intoxicated persons. The Judge noted that it is not realistic to expect a courier to wait for a customer to produce ID documents or to establish that they are the same person as the one who placed the order.

There was evidence provided to the Judge that she accepted that deliveries would likely be to residential addresses where there was a risk of noise nuisance at the delivery point. The Judge accepted that, given the location of the convenience store and the way the app technology operators, deliveries would likely be the area in proximity to the convenience store which is in a cumulative impact area.

Reference : <https://www.localgovernmentlawyer.co.uk/licensing/316-licensing-features/49160-application-for-licence-for-24-hour-delivery-of-alcohol-turned-down>

Full judgment can be found here

<https://www.ftbchambers.co.uk/sites/default/files/Shoaib%20%26%20LBC.pdf>