

Public Document Pack

Date of meeting Monday, 15th October, 2012
Time 10.08 am
Venue Committee Room 2. Civic Offices, Merrial Street,
Newcastle-under-Lyme, Staffs ST5 2AG
Contact Julia Cleary 01782 742227

Licensing Sub-Committee

AGENDA

PART 1- OPEN AGENDA

- | | | |
|---|---|-----------------|
| 1 | Human Rights Guidance Notes | (Pages 1 - 2) |
| 2 | Natural Justice Guidance Notes | (Pages 3 - 4) |
| 3 | Procedure to be followed by the Sub-Committee | (Pages 5 - 6) |
| 4 | Agenda Biraks | (Pages 7 - 8) |
| 5 | Representations from Residents and a Ward Councillor | (Pages 9 - 14) |
| 6 | Steps proposed by the applicant to promote the licensing objectives | (Pages 15 - 18) |

Members: Councillors Mrs Bates, Eastwood and Hambleton

'Members of the Council: If you identify any personal training / development requirements from the items included in this agenda or through issues raised during the meeting, please bring them to the attention of the Committee Clerk at the close of the meeting'

Officers will be in attendance prior to the meeting for informal discussions on agenda items.

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GUIDANCE NOTES

HUMAN RIGHTS ACT 1998

In considering allegations against Members you should have regard to the provisions of the Human Rights Act 1998 which embody the rules of natural justice.

Rights and Freedoms to be considered when determining matters

ARTICLE 6: RIGHT TO A FAIR TRIAL

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly, but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
 - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
 - (b) to have adequate time and facilities for the preparation of his defence;
 - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means, to pay for legal assistance, to be given it free when the interests of justice so require;
 - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

ARTICLE 8: RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 10: FREEDOM OF EXPRESSION

1. Everyone has the right to freedom of expression. These rights shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

ARTICLE 14: PROHIBITION OF DISCRIMINATION

The enjoyment of the rights and freedoms set fourth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

NB This is not a substantive right, but comes into play if other rights are likely to have been infringed. The prohibition is wide, but not exhaustive

ARTICLE 1: OF THE FIRST PROTOCOL PROTECTION OF PROPERTY

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

NB Possessions, in this context, includes the right to apply for a licence, the right to hold and retain a licence and the goodwill of a business.

NOTE In this context it is also particularly important for members to observe the rule against bias.

GUIDANCE NOTES

NATURAL JUSTICE AND FAIRNESS

These are the principles used in the determination of just or fair processes and stem from the common law legal system.

According to Roman law, certain basic legal principles were so obvious that they should be applied universally without the need to be enacted into the law.

The rules of natural justice are now regularly applied by courts in both common law and civil law jurisdictions.

Natural justice operates on the principles that man is basically good, that a person of good intent should not be harmed and one should treat others as they would like to be treated.

Natural justice includes the notion of procedural fairness and may incorporate the following guidelines:-

- A person accused of a crime, or at risk of some form of loss, should be given adequate notice about the proceedings (including any charges);
- A person making a decision should declare any personal interest they may have in the proceedings;
- A person who makes a decision should be unbiased and act in good faith. He therefore cannot be one of the parties in the case, or have an interest in the outcome. This is expressed in the Latin maxim, *nemo iudex in causa sua*: “no man is permitted to be judge in his own cause”;
- Proceedings should be conducted so they are fair to all the parties – expressed in the Latin maxim, *audi alteram* : “let the other side be heard”;
- Each party to a proceeding is entitled to ask questions and contradict the evidence of the opposing party;
- A decision-maker should take into account relevant considerations and extenuating circumstances, and ignore irrelevant considerations;
- Justice should be seen to be done. If the community is satisfied that justice has been done they will continue to place their faith in the courts.

Where a person’s legal rights are concerned, the principles of natural justice are bolstered by Article 6 of the European Convention on Human Rights which is now incorporated into domestic law.

THE RULE AGAINST BIAS

It is elementary to the rules of natural justice that the deciding body is to be free from bias.

The rule is that the body must be and be seen to be impartial, independent and disinterested.

There are two broad categories of bias:

- (a) Actual Bias: when the decision-maker has an economic interest in the outcome of the case (also known as a material or pecuniary interest) subject to the De Minimum doctrine;
- (b) Reasonable Apprehension: unbiased appearance is an essential part of procedural fairness. The test is whether, having regard to the circumstances, a well informed person (“reasonably informed bystander”) would consider that the interest might have an influence on the exercise of the decision-maker’s duties.

PROCEDURE TO BE FOLLOWED BY THE LICENSING SUB-COMMITTEE

NOTE:

All hearings will normally be held in public. However, the Licensing Sub-Committee may exclude the public from all or part of a hearing where it considers that the public interest in so doing outweighs the public interest in the hearing or that part of the hearing taking place in public. A party or that party's representatives may be treated as a member of the public and therefore excluded from the meeting for all or part of the hearing, and all parties have the right to be represented and to call witnesses.

The Clerk to the Committee will have the right to ask questions on behalf of the Committee of any party to the proceedings.

PROCEDURE:

1. The Chair of the Sub-Committee will open the meeting and introduce the members of the committee and call upon the parties to identify themselves and their representatives and to identify any witnesses they intend to call.
2. The Chair of the Sub-Committee will call upon the Clerk to the Committee to explain to the parties the procedures which will be followed at the hearing. Unless the Chair directs otherwise, each party will normally have a maximum period of one hour in which to give further information and call any witnesses in support of their case. In every case, all parties will have an equal maximum period.
3. The Chair of the Sub-Committee will then normally call upon the interested party or the responsible authority which has made a relevant representation against the grant of an application to provide evidence in support of their representation.
4. The applicant will then have an opportunity to question that person
5. Members of the Sub-Committee will then have the opportunity to question that party or responsible authority.
6. Any person who has made relevant representations will then call any witness in support.
7. The applicant will then have an opportunity to question that witness.
8. Members of the Sub-Committee will then have the opportunity to question that person.
9. Stages 6 to 8 will then be repeated for each person making relevant representations.
10. The applicant will then have the opportunity to give evidence in response to the application and in response to the relevant representations which have been made.
11. The interested party or responsible authority will then have an opportunity to question the applicant.

12. Members of the Sub-Committee will then have the opportunity to question the applicant.
13. Stages 10 to 12 will be repeated for any witnesses on behalf of the holder of the applicant.
14. The interested party or responsible authority will have the right to address the sub committee.
15. The applicant will have the right to address the Sub-Committee in summing up his case.
16. All parties will then leave the room while the Sub-Committee consider their decision.
17. The Sub-Committee will normally make their determination at the conclusion of the hearing, but when this is not possible, will make its determination within the period of five working days beginning with the day on which the hearing was held.

Application to Vary a Premise Licence, BIRAKS, 45 London Road, Chesterton, ST5 7EL

Submitted by: Democratic Services Manager

Portfolio: Safer Communities

Ward(s) affected: Chesterton

Purpose of the Report

An application for a variation to a premise licence has been received for Biraks, 45 London Road, Chesterton, ST5 7EL. Representations have been received from Residents in the vicinity of the premise and a Ward Councillor.

Recommendations

The Sub-Committee must take such of the following steps as it considers appropriate for the promotion of the licensing objectives:

- (a) To grant the application as requested.
- (b) To reject or amend the application.

1. Details of Application

Applicants: Jarnail Singh Sanghera and Kuldip Singh Sanghera

Premises: Biraks, 45 London Road, Chesterton, Newcastle under Lyme, Staffs, ST5 7EL

Application for: Variation to Premise Licence

Details of Requested Variation:

SUPPLY OF ALCOHOL (on and off the premises) – Current	SUPPLY OF ALCOHOL (on and off the premises) – Requested
Monday to Saturday: 08.00 to 23.00 Sunday: 10.00 to 22.30	Monday to Sunday: 06.00 to 21.00
OPENING HOURS OF THE PREMISE – Current	OPENING HOURS OF THE PREMISE – Requested
Monday to Saturday: 08.00 to 23.00 Sunday: 19.00 to 22.30	Monday to Sunday: 06.00 to 21.00

2. Consultation

There have been representations from residents living near the premise and a Ward Councillor.

3. **Policy Considerations**

a) Licensing Objectives

The Licensing Act 2003 requires the Council to carry out its various licensing functions so as to promote the following four licensing objectives:-

- (i) the prevention of crime and disorder
- (ii) public safety
- (iii) the prevention of public nuisance
- (iv) the protection of children from harm

(b) Policy Statement

The Licensing Act 2003 required the Council to publish a "Statement of Licensing Policy" that set out the policies the Council will generally apply to promote the licensing objectives when making decisions on applications made under the Act.

The Council made a number of policy decisions in its Statement of Licensing Policy. The following policy decisions are relevant to this application:-

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance
- the protection of children from harm

(c) Statutory Guidance

- (i) National guidance which promotes best practice ensuring consistent application of licensing powers and promotes fairness and equal treatment and proportionality came into force on 28 June 2007.

Copies of the Council's Statement of Licensing Policy and the Government's Statutory Guidance will be available at the Sub-Committee meeting.

4. **Comments**

In making their decision on the application, the Sub-Committee are also obliged to have regard to Statutory Guidance and the Council's own Statement of Licensing Policy. The Sub-Committee must also have regard to all the representations made and the evidence they hear. However, the Sub-Committee must disregard any objections that do not relate to the promotion of the four licensing objectives.

The Sub-Committee must take such of the following steps as they consider appropriate for the promotion of the licensing objectives as set out in paragraph above:-

- (a) Grant the application as requested
- (b) to reject or amend the application

The Sub-Committee are asked to note that they may not reject the application merely because they consider it desirable to do so. It must actually be appropriate in order to promote the licensing objectives.

Agenda Item 5

BUHO Unit of NEWCASTLE U L T M E DIRECTORATE - RESOURCES		
20 SEP 2012		
PASSED TO	CONFER WITH	CIRC TO



18th September 2012

Dear Sirs

We wish to object to the application of 'Biraks' to open the off licence from 6am to 9pm every day.

Chesteria has enough places to obtain alcohol already - Biraks sell it - Bangin Booze, Marie & Daves are all within walking distance. There are also 3 pubs and 1 club.

I would guess the people applying for the licence do not actually live in Chesteria.

It is surely not necessary to be able to buy alcohol at 6am of a morning. This would only increase all day drinking and in turn lead to anti social behavior.

Would you please exercise your authority for the majority of people in Chesteria and refuse this application.

RECEIVED	
23 SEP 2012	
DATE RECEIVED	DATE OF
FILE NO.	FILE REF.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

23. 9. 12.

Dear Sir,

I would like to object to the hours being proposed at Binaks Store in CHESTERTON: To sell ~~at~~ alcohol between the hours of 6am - 9pm.

Please Oblige.

[REDACTED]



[REDACTED]

NEWCASTLE UNDER-LYME RESOURCES DIRECTORATE	
DATE RECEIVED	
25 SEP 2012	
REPLY NEEDED YES NO	DATE OF REPLY
DEALT WITH BY	FILE REF:

TO WHOM IT MAY CONCERN

I the undersigned would like to lodge my opposition to the application by Birak's General Store on London Road Chesterton, to extend the hours that they are allowed to sell alcohol. To sell alcohol in a residential area from 6am to 9pm, 7 days a week is totally unacceptable. There is already anti social behaviour in the area without adding to it. Also, the store is used by children from 7.30am on their way to school and selling alcohol at this time should not be allowed.

Yours faithfully

[REDACTED]

Cleary, Julia

From: [REDACTED]
Sent: 25 September 2012 14:30
To: Cleary, Julia; hilda; Boden, Eddie (Cllr)
Subject: Obection to extended hours for a shop selling Alcohol.

Dear Councillors,

I have been made aware of an application by Biraks in Chesterton wishing to sell alcohol from 6am to 9 pm.

This is an affront to the good people of Chesterton, we have enough anti-social behaviour already.

Trying to fuel even more is ridiculous and stupid.

I strongly oppose the granting of such an extension of licensed hours.

Yours Faithfully

[REDACTED]
[REDACTED]

Telephone [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Cleary, Julia

From: hilda [REDACTED]
Sent: 25 September 2012 15:36
To: Cleary, Julia
Subject: Biraks
Importance: High

Hi Julia

I am objecting to the changes in licensing hours for Biraks on London Road, Chesterton. We already have issues with youths and girls hanging around outside Biraks causing problems for residents and to want to be able to sell alcohol from 6am in the morning is totally inappropriate for a residential area as well. Councillor Simpson and myself have discussed this with our local Police Officers and made them aware of the application and they said that they would be making objections. Although Biraks are not breaking the law we have issues with underage drinking because adults are purchasing alcohol from Biraks for them. We are also confused about the new hours they are applying for as they do not open at the moment the hours they already have permission for.

Councillor Hilda Johnson

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Agenda Item 6

P Describe any additional steps you intend to take to promote the four licensing objectives as a result of the proposed variation:

a) General – all four licensing objectives (b,c,d,e) (please read guidance note 9)

The following new steps have been identified by risk assessment in relation to the four licensing objectives except as listed below.

We have considered the terms of your local licensing policy in preparing this application.

b) The prevention of crime and disorder

CCTV will be installed and be fully operational and recording 24 hours every day.

Where the recording is on a removable medium (ie videotape, compact disc flash card etc) a written record will be kept every time images are recorded by CCTV and will include details of the recording medium used, the time and date recording commenced and finished.. This will identify the person responsible for the recording and will be signed by him or her. A secure storage system to store those recording mediums will be provided.

All images will be kept for a period of 28 days and will be produced to the police trading standards or local authority officers in relation to the investigation of crime and/or upon request or within 24 hours of such request

Notices will be displayed throughout the premises stating that CCTV is in operation

The CCTV system clock will be correctly set and maintained and take into account GMT and BST

There will be a member of staff available at all times who is fully trained and capable of operating the CCTV system and downloading footage required by the police, local authority officers or trading standards officers.

Daily checks to be made to check the operation of the CCTV system and confirm it is working correctly and such checks to be recorded in a register which is to be endorsed by the person conducting the check and to contain the name of the person conducting the check.

The CCTV system can be periodically inspected by a Police Licensing Officer to ensure that the system continues to function to their approval and access must be granted to the PLO upon request to facilitate such an inspection.

The CCTV system will be fully maintained in accordance with the manufacturers/ installers instructions and a record kept of the maintenance undertaken.

CCTV will be installed and operative to the approval of the Police Licensing officer and cover all public areas inside and also any area where smokers will be allowed to congregate and immediately outside the entrance / exit to the premises. The CCTV unit will be positioned in a secure part of the licensed premises and not within any private area of the location. Access to the system will be allowed immediately to the police trading standards or local authority officers investigating crime and or disorder issues, upon request.

To be an active member of any pub watch initiative.

No home or work deliveries of alcohol will be allowed.

Persons who appear drunk or under the influence of drugs will not be admitted at any time.

c) Public safety

All exit doors will be easily openable

Means of escape will be maintained unobstructed and clearly identifiable with emergency lighting and illuminated exit signs.

All recommendations of the Staffordshire Fire and Rescue Service will be promptly acted upon.

All gas and electrical appliances on the premises will have current safety certificates

The premises are well ventilated by the use of intake and extractor fans

A log will be maintained of all incidents/accidents which may occur on the premises.

An adequate and appropriate supply of first aid equipment will be available on the premises

d) The prevention of public nuisance

Regular checks by staff of the immediate outside area and to encourage patrons to use litter bins to dispose of rubbish

Notices will be displayed at all exits asking patrons to leave quietly

Display notice informing patrons the premises may be in an alcohol free zone

e) The protection of children from harm

The premises will adopt a locally recognised Challenge 25 scheme to tackle underage sales. All staff will be fully trained in its use before being allowed to sell alcohol. This training to be refreshed every 2 calendar months and a written record kept. The premises licence holder should ensure that a record is kept of all staff training and is fully updated at all times

A refusals book will be maintained and the DPS will check the book every two weeks ensuring it is up to date and complete and will sign the book each time.

All persons authorised to sell alcohol will complete an underage sales training programme which includes a written test to verify his or her competency. This record will be available to the Police or authorised officers of Newcastle Borough Council

A written record (which shall be immediately available for inspection by Police officers or authorised officers authorised by Newcastle Borough Council shall be kept at the premises of all

persons who are authorised to sell alcohol.

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