

Meeting	Licensing/Gambling Hearing
Date	18 October 2021, adjourned to 26 October 2021
Present	On 18 October 2021 : Councillors Melly, Hook and Looker On 26 October 2021 : Councillors Melly, Galvin and Looker

24. Chair

Resolved: That Cllr Melly be elected to act as Chair of the hearing.

25. Introductions

The Chair introduced the Panel Members, the two Legal Advisers present and the Democratic Services officer, and invited the other parties - the Licensing Manager, the Applicant's Solicitor, the Representor and their respective witnesses - to introduce themselves.

26. Declarations of Interest

Members were invited to declare at this point in the meeting any personal interests not included on the Register of Interests, and any prejudicial or disclosable pecuniary interests, that they might have in the business on the agenda.

At the hearing on 18 October, Cllr Hook declared a prejudicial interest in Agenda Item 5 (The Determination of a Section 35(3)(a) Application by Co-operative Group Food Ltd for Variation of a Premises Licence in respect of Co-op, 102 - 104 Hull Road), on the grounds that she knew the Representor, who had been her election agent. Cllr Hook then withdrew from the meeting.

At the hearing on 26 October (the adjourned hearing), no interests were declared.

27. Exclusion of Press and Public

Resolved: That the press and public be excluded from the meeting during the sub-committee's deliberations and decision-making at the end of the hearing, on the grounds that the public interest in excluding the public outweighs the public interest in that part of the meeting taking place in public, under Regulation 14 of the Licensing Act 2003 (Hearings) Regulations 2005.

28. The Determination of a Section 35(3)(a) n Application by Co-operative Group Food Ltd for Variation of a Premises Licence in respect of Co-op, 102 - 104 Hull Road, York, YO10 3LQ (CYC-11715)

At the hearing on 18 October, Cllr Hook having withdrawn due to the interest that she had declared, it was

Resolved: (i) That the 20 working day time limit for hearing the section 35(3)(a) Application by Co-operative Group Food Ltd for Variation of a Premises Licence in respect of Co-op, 102-104 Hull Road, York, YO10 3LQ (currently Friday, 22 October) be extended to Friday 29 October, in accordance with Regulation 11 of the Licensing Act 2003 (Hearings) Regulations 2005.

Reason: Because it is considered necessary and in the public interest to extend the deadline to convene a quorate panel and hold an effective hearing. Whilst not necessary under the Regulations, the Council will communicate further with all parties regarding their availability.

Resolved (ii) That the determination of the section 35(3)(a) Application by Co-operative Group Food Ltd for Variation of a Premises Licence in respect of Co-op, 102-104 Hull Road, York, YO10 3LQ be adjourned to 10 am on Tuesday, 26 October 2021.

Reason: In order to adjourn the hearing to a specified date.

The hearing resumed on 26 October 2021, with Cllr Galvin taking the place of Cllr Hook.

Members considered an application by Co-operative Group Food Ltd. for variation of a premises licence in respect of Co-op, 102-104 Hull Road, York YO10 3LQ.

In considering the application and the representations made, the Sub-Committee concluded that the following licensing objectives were relevant to the hearing:

1. The Prevention of Crime and Disorder
2. Public Safety
3. The Prevention of Public Nuisance
4. The Protection of Children from Harm

In coming to their decision, the Sub-Committee took into consideration all the evidence and submissions that were presented, and determined their relevance to the issues raised and the above licensing objectives, including:

1. The application form.
2. The papers before it.
3. The Licensing Manager's report, and her comments at the Hearing.

The Licensing Manager outlined the report and the annexes, confirming that the premises were not in the Cumulative Impact Assessment (CIA) area and that the Applicant had carried out the consultation process correctly. She referred to the representations at Annex 4, noting that there had been no representations from responsible authorities, and drew attention to the additional papers provided by the Applicant and published in the agenda supplement. Finally, she advised the Sub Committee of the options open to them in determining the application.

In response to a question from the Chair, the Licensing Manager confirmed that the licensed area was the shop itself and did not extend to the external area.

4. The representations made by the Applicant's solicitor, Mr Arnot, on behalf of the Applicant (the Co-op).

Mr Arnot stated that the Co-op had operated at the premises for 15 years; prior to that the premises had been

operated by Somerfield. Alcohol sales represented less than 20% of overall sales at the store. As an operator with more than 170 years' retail experience, the Co-op understood its responsibilities. Each region had a risk manager (in this case Sean King), who liaised with the local community and ensured that all policies and procedures were applied in-store. The Co-op was very risk-averse and getting things right was very important to them. The staff induction process set out the additional papers gave a flavour of this. The process included allocating a 'Buddy' to each new member of staff to provide support and answer questions, and a 'lockdown' procedure whereby staff were not allowed to sell alcohol until released from lockdown by the store manager. Lockdown could be re-applied at any time the staff member failed to meet the required standards.

Regarding the points raised in the written representations, Mr Arnot stated that there were 40 internal and external CCTV cameras on the premises and 29 members of staff, of whom 5 were personal licence holders. The Co-op was the first national retailer to adopt Challenge 25, and operated age-prompt tills in all its stores; these reminded the cashier of the process whenever an alcohol sale was made. He went on to outline the Co-op's involvement in and support for local communities via the Community Pioneer role, whereby the local membership decided which organisations to support.

Mr Arnot then set out the reasons for the application, stating that the extension of hours for the supply of alcohol was to allow the shop to open later, to accommodate internet shopping and because it was what customers wanted. The addition of late night refreshment was required because there was a Costa coffee machine on the premises. The change to the conditions was to modernise them, in line with the conditions that would be sought for a new licence. He pointed out that no objections had been received from responsible authorities or local residents. He noted that by law it was for the objectors to convince the Panel that there was evidence that the Licensing Objectives would not be upheld, and that the TCG Manchester Bars case (in the additional papers) had ruled that a variation hearing was not a

review of the licence as a whole and should only look at the parts to be changed.

Mr Arnot noted that the store manager had had a constructive meeting with the Representor but this had not resulted in withdrawal of the representations. He said that the Home Office guidance quoted in the Representor's letter was incomplete, as the guidance went on to clarify that the connection between late night refreshments and alcohol-fuelled crime and disorder related to premises such as fast food takeaways. Addressing further points in the letter, he re-iterated that there were 40 CCTV cameras in the store, adding that these did not cover the car park but that people didn't currently congregate there and the extended hours would not alter this. He repeated that the store operated a proof of age scheme and added that the Co-op had a comprehensive complaints procedure called Care Line and took complaints very seriously. The Applicant would be happy to display signage as suggested in the letter. There were bins at the store and tidying up was part of the daily process, but under the Section 182 guidance the Applicant could only be held responsible for what they could control. There had been no complaints about litter to date, and there was no reason for this to change.

In response to questions from Panel Members:

- Mr Verschoor, the store manager, said he had been in post for 7 months and had not had any issues with anti-social behaviour.
- Mr Verschoor confirmed that the Costa machine was the only hot drinks dispenser on the premises and that it was operated by the customer, who then paid at the till or the self-service till.
- Mr Arnot explained that:
 - section 15 on the application form (opening hours) had been left blank as standard Co-op policy, because opening hours were a matter for the Planning process and not prescribed by Licensing;
 - all tills were time-locked, to prevent sales of alcohol or hot drinks outside the licensed hours;
 - no request had been made to vary the hours of Late Night Refreshment (section 12), the

application requests the inclusion of Late Night Refreshment as this was not currently included in the licence.

5. The representations made by Andrew Mortimer and Pippa Hepworth, on behalf of Hull Road Lib Dem Focus Team (the Representor).

Mr Mortimer stated that several local residents had told members of the Focus Team that they were against the application. The key issue was the location of the premises in the middle of a residential area with houses on all sides, as shown on the map at page 41 of the agenda papers. He said that the areas the Representor was most concerned about were the prevention of crime and disorder and public nuisance, and that the Home Office guidance linked the sale of late night refreshments to crime and disorder. What the Applicant proposed to do and what the licence allowed them to do were two separate things, and there was a risk of disorder from customers buying alcohol between the hours of 11pm and 12 midnight. He suggested that most people buying alcohol at that time of night would already have had a drink and there was also potential for noise and disturbance at a time when local residents were trying to sleep. He submitted that the conditions did not go far enough and that there should be CCTV coverage of all external areas where people could congregate, in accordance with paragraph 7.12 of York's licensing policy. There was a large sheltered area which could encourage people to hang around. The application had removed a condition in the current licence (regarding the position of the CCTV cameras) that could have dealt with this.

Ms Hepworth confirmed that a positive meeting had taken place with the store manager. Mr Verschoor had demonstrated the Challenge 25 process, and the Representor agreed that this covered the requirements in respect of proof of age.

On the matter of public nuisance, Mr Mortimer said that under the licensing policy the Applicant should focus on the effects of activities on people living and working in the area, but the Co-op had spoken only about their complaints procedure, not about any proactive action they

were taking. Ms Hepworth said that they had asked Sean King about the procedure and were told that customers could complain by using receipts or approaching the store manager. She was unsure how a resident would be able to complain about noise occurring outside the premises. Mr Mortimer said he had looked on the Co-op's website and found that the online process required information from a receipt and could not be used by a non-customer. He said they had not understood the procedure, and that a clear and accessible complaints procedure was needed.

Mr Mortimer went on to state that signage at the premises should comply with paragraph 7.12 of the licensing policy, with prominent notices asking customers to leave quietly, and there should also be a requirement for the Applicant to clean up outside the premises. He submitted that these requirements were not unreasonable and would address some of the concerns raised.

[At this point, Mr Arnot read out the Co-op's Care Line procedure and indicated the various ways in which it could be used to make a complaint; he also referred to the training received by staff on dealing with complaints.]

In response to questions from Panel Members, Mr Mortimer stated that:

- He had no evidence about the behaviour of customers between 11pm and 12 midnight, but he thought they were likely to be calling in on their way home from the pub.
- The residents he had spoken to did not like the idea of the extended opening hours because no other local premises were open this late.
- Nobody knew who the late customers would be, but the concern was that once the application was approved the Co-op could do anything they liked within the terms of the licence.
- His suggestion was to make the complaints procedure clear and understandable so that residents knew what behaviour was allowed and what the limits were.
- The complaints information on the website was entirely customer-based, requiring details of receipts, and was not easy to find. It was not designed for these circumstances.

- He had no evidence that local residents who wished to complain had been unable to do so.

Both parties were then given the opportunity to sum up.

Mr Mortimer summed up for the Representor, stating that they were not against the application in principle, but wanted improved conditions that better represented the local community and addressed the points in the licensing policy. Once the application was approved it would give the Applicant the ability to go beyond their current plans, so it was important for the conditions to cover the full scope of the approval.

Mr Arnot summed up for the Applicant, stating that he did not agree with the Representor that approval meant there was no going back, as the Applicant could be prosecuted or the licence reviewed in the event of a breach. It was also wrong to suggest that people buying alcohol between 11pm and 12 midnight were usually drunk. This was a convenience store and the change would cater for everyday customers, such as people on shift work. He reiterated that it was for the objector to prove that the application would not meet the licensing objectives and that the Thwaites case required the decision to be based on fact and not on hypothesis. The sale of alcohol up to 11pm was causing no problems and the Applicant only asked for one more hour. He had never heard anyone complain about the Care Line process. Anyone could simply walk into the shop and speak to a member of staff. He saw no reason not to approve the variation.

In response to point of clarification raised by the Chair:

- Mr Arnot stated that music could not be played as a licensable activity; only as background music.
- Mr Verschoor confirmed that Co-op radio was played in the store and this would be turned down or off if requested.

In respect of the proposed licence, the Sub-Committee had to determine whether the licence application demonstrated that the premises would not undermine the licensing objectives. Having regard to the above evidence and representations received, the Sub-Committee considered the steps which were available to them to take

under Section 35(4) of the Licensing Act 2003 as it considered necessary for the promotion of the Licensing Objectives:

Option 1: Modify the conditions of the licence. This option was **approved**.

Option 2: Reject the whole or part of the application. This option was **rejected**.

Resolved: That Option 1 be accepted and the conditions of the licence be modified in accordance with the application, namely by:

- a) An extension of the hours for the supply of alcohol from 07:00 to 00:00
- b) The addition of Late Night Refreshment from 23:00 to 00:00; and
- c) The removal of the conditions at Annex 2 of the current licence and their replacement with those stated below:

1. The premises shall maintain a CCTV system which gives coverage of all entry and exit points.
2. The system shall continually record whilst the premises are open and conducting licensable activities.
3. All recordings shall be stored for a minimum period of 28 days and shall be capable of being easily downloaded.
4. Recordings shall be made available upon the receipt of a request by an authorised Officer of the Police or the Local Authority.
5. There shall be "CCTV in Operation" signs prominently displayed at the premises.
6. An incident log (whether kept in a written or electronic form) shall be retained at the premises and made available to an authorised Officer of the Police or the Local Authority.

7. The Premises Licence Holder shall operate a proof of age scheme, such as a Challenge 25, whereby the only forms of acceptable identification shall be either a photographic driving licence, a valid passport, military identification or any other recognised form of photographic identification incorporating the PASS logo, or any other form of identification from time to time approved by the secretary of the state.

8. The premises shall be fitted with a burglar alarm system.

9. The premises shall be fitted with a panic button system for staff to utilise in the case of an emergency.

10. The Premises Licence Holder shall ensure that the appropriate fire safety, and health and safety regulations are applied at the premises.

11. A complaints procedure shall be maintained by the Premises Licence Holder, details of which shall be made available in store and upon request.

12. All staff will receive comprehensive training in relation to age restricted products and in particular the sale of alcohol.

13. No member of staff will be permitted to sell age restricted products until such time as they have successfully completed the aforementioned training.

14. An age till prompt system shall be utilised at the premises in respect of alcohol.

15. A refusals register (whether kept in written or electronic form) shall be maintained at the premises and shall be made available for inspection upon request by an authorised Officer of the Police or the Local Authority.

All conditions offered in the operating schedule shall be included in the licence, unless contradictory to

the above conditions. The licence is also subject to the mandatory conditions applicable to licensed premises.

- Reasons:
- (i) The Sub-Committee must promote the licensing objectives and must have regard to the Guidance issued under section 182 of the Licensing Act 2003 and the Council's own Statement of Licensing Policy.
 - (ii) The Sub-Committee noted that there were no representations from the Police or any of the other Responsible Authorities. It was further noted that no Responsible Authorities had requested any changes to the conditions as submitted by the Applicant.
 - (iii) The Sub-Committee noted the concerns raised by the Hull Road Lib Dem Focus Team, the Representor, who attended the hearing and submitted written representations. The Sub-Committee considered in particular the concerns raised as to the potential impact of the modifications to the premises licence with regard to Licensing Objectives from users of the premises. It was noted that their representations relating to a 'proof of age' scheme were withdrawn. The Sub-Committee gave weight to the acceptance by the Representor that their concerns were theoretical, and that they had presented no evidence of issues or complaints.
 - (iv) In relation to the proposed extension to the hours for sale of alcohol, the Sub-Committee noted the Council's Licensing Policy and Secretary of State Guidance, which advised that supermarkets should normally be allowed to sell alcohol during their trading hours.
 - (v) The Sub-Committee noted the Applicant's evidence that the premises would be a convenience store with ancillary alcohol sales which would equate to only about 20% of the store's turnover. They also noted that the Applicant had a comprehensive training programme for staff and systems and policies were in place to control the sale of alcohol. The Sub-committee gave weight to the evidence put

forward at the hearing by the Applicant as to the nature of the business, how it functions, its national complaints procedure, and its operating schedule.

(vi) Having taken into account all the evidence before them the Sub-Committee determined that they were not persuaded by the Representor that the premises licence would not meet the licensing objectives if varied, they considered that additional conditions were not necessary or reasonable, and were satisfied that the proposed operating schedule including the proposed modified conditions, would be sufficiently robust to allay the fears of local residents and to prevent crime and disorder and public safety and public nuisance. The Sub-Committee were satisfied that granting the application to modify the premises licence would not have an adverse effect on any one or combination of the licensing objectives.

(vii) The Sub-Committee therefore agreed to grant the application to modify the premises licence to allow sales of alcohol for consumption off the premises until midnight each night, to add late night refreshment until midnight each night, and replace the conditions an Annex 2 of the premises licence with those set out in Section 16 of the Application.

Cllr R Melly, Chair

[The meeting started at 10:00 am on 18 October and was adjourned at 10:07 am; it resumed at 10.03 am on 26 October and finished at 11.17 am].