

NOTICE OF DETERMINATION
EXETER CITY COUNCIL (Licensing Authority)
LICENSING ACT 2003

Date of Hearing:	13/11/2015
Application:	Variation of Premises Licence
Name of Premises:	Newham Stores T/a Costcutter
Address:	12-13 South Street, Exeter, EX1 1DZ
Licensing Sub-Committee:	Cllr P Holland (Chair) Cllr N Shiel Cllr M Choules
Committee Legal Advisors:	Matthew Hall (MH) Simon Copper(SC)
Licensing Officer:	Phillippa Lane (PL)
The Applicant:	Ross Newham (RS)
Hearing Duration:	1000hrs to 1045hrs

INTRODUCTION:

The Chair introduced the members of the Sub-Committee. MH introduced the Legal Advisors and the Licensing Officer.

MH set out the hearing procedure and RS agreed it was understood.

MH set out the following:

Paragraph 10.15 of the Home Office Guidance:

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.

Paragraph 9.2 of the Council's Licensing Policy states:

Residents have a reasonable expectation that their sleep will not be unduly disturbed between the hours of Midnight and 0700hrs.

MH confirmed that the Premises is located in the Cumulative Impact Zone and therefore the burden is on the Applicant to show that the additional hours applied for will not have a negative impact on the Licensing Objectives.

PL set out the application as follows:

1. Opening times of the Premises from 0600hrs-2300hrs to 0600hrs -0200hrs 7 days a week.
2. The supply of alcohol for consumption OFF the premises between from 0600-2300hrs to 0600-0200hrs 7 days a week.

PL advised the Sub-Committee that 3 written representations had been received. None of the interested parties were present at the hearing. Cllr S Brock had sent her apologies as she was unable to attend and one of the interested parties was currently on holiday. The other interested party had not advised the Licensing Authority that they would attend following receipt of the notice of hearing. PL confirmed that no representations had been made by any of the responsible authorities.

PL explained there had been two reported incidents of Crime and Disorder at the Premises. The incidents took place when the Premises was operating under a Temporary Events Notice (TEN). The Applicant piloted the opening hours applied for in this application in July and August under the Temporary Event Notice regime. PL confirmed that there had been no complaints or issues raised from Environmental Health with the Licensing Authority during the operation of the TENs.

APPLICANT'S CASE:

RN stated he has operated convenience stores for 10 years and had taken the lease of the Premises before Christmas last year operating between 0600hrs and 2300hrs. RN stated that his customer base is widespread as the Premises caters for different people from day to day. RN emphasised that alcohol made up 10% of the shops floor total space and 15% of the total sales revenue. The Premises sold alcohol to customers taking alcohol home or onto a party. During the pilot of the opening hours under the TENs regime the level of sales remained the same for alcohol at 15% the main area of sales was soft drinks and cigarettes.

Cllr H asked whether the Applicant had liaised with local residents in respect of this application. RN stated that he was disappointed to have received the representations in response to the application given that he had operated the Premises until 2am under TENS and not received any complaints. No specific liaison regarding this application had taken place but RN confirmed he has a good relationship with the direct neighbours of the Premises. RN stated that the lack of complaints during the summer months which was the peak time for opening late hours indicated that residents had not been disturbed by the Premises.

Cllr S asked whether it was cost effective to operate the Premises with door staff. RN stated it was and that he had established which hours were most profitable to operate during the pilot. RN stated that he had applied for longer hours but was likely to open the Premises until 0100hrs on Monday to Thursday 0200hrs on Friday and Saturday and 2300hrs on a Sunday.

Cllr C asked how the Premises would deal with shoplifters and drunks in the event the Police are unavailable. RN stated that these kind of incidents can be dealt with by trained staff and he will take full responsibility to deal with these kind of incidents.

Cllr H asked for details of the incidents that took place in August. RN stated that the first incident concerned one individual threatening a member of staff. The incident related to a personal matter between the member of staff and the individual who was charged and prosecuted. Five days later the same member of staff was again

threatened and dialled 999 for the Devon and Cornwall Constabulary to assist. RN stated that the incidents were not linked to his business nor to the purchase of alcohol at the Premises. The member of staff no longer worked at the Premises and the threatening individual was fined following prosecution.

MH asked whether the Applicant expected noise levels to increase in the area during 2300hrs and 0200hrs if the Application was granted. RN stated there were already a number of people in the area at those times and did not expect noise levels to increase.

MH stated that the Home Office Guidance refers to Public Nuisance as including noise nuisance, light pollution, noxious smells and litter and asked what steps the Applicant proposed to ensure the Premises did not have an impact on Licensing Objective of Public Nuisance. RN stated that the Premises already operated under good principles to avoid incidents of Public Nuisance. The Premises had signs for customers to leave in a quiet manner, be respectful to residents and not consume alcohol on the street. RN referred to the Designated Public Places Order (DPPO) which allows the Police to move people on or confiscate alcohol from people drinking in the street.

MH referred to the Licensing Authority's Statement of Licensing Policy that stated residents had a right to sleep between the hours of 0000hrs and 0200hrs and asked RN to comment on this. RN stated the Premises did not add to the noise levels in the area and that cars frequently drove down South Street during these hours. RN reiterated that the Premises had already operated these hours under TENs which had seemingly gone unnoticed by residents and had not caused any issues.

RESPONDENTS:

Did not attend. In their absence the written representations were discussed.

RN referred to the e-mailed written representation dated 14th October 2015 and stated that the Premises acts responsibly, operates a challenge 21 policy and will not serve alcohol to any person considered to be intoxicated. The issue of anti-social behaviour of intoxicated people in the street were not linked to his Premises and the Premises would not add to this problem. RN stated that the Devon and Cornwall Constabulary had not raised representations objecting to this Application. Therefore the suggestion that local stores had been asked to reduce the hours for the sale of alcohol by the Police was not accurate in this case.

In response to the letter from local residents dated 30th September 2015, RN stated that taxis do not permit customers to drink alcohol inside the vehicles. The anti-social behaviour related to the consumption of alcohol was not linked to the Premises and reiterated the fact that the Premises had operated under TENs without incident.

In response to the letter from Cllr B, RN referred to the Sub-Committee report which stated that no complaints had been recorded relating to Public Safety or Public Nuisance. RN had received positive feedback from a Street Pastor for being open to provide people with soft drinks.

Cllr C asked whether the Applicant would operate the EBAC radio system to stay in contact with other premises open late at night. RN said that this was not currently in operation but that the security staff would have radios which links to other door staff. RN stated that he was looking at joining the EBAC system.

CLOSING SUBMISSIONS:

MH invited further comments. No further comments were made.

MH advised the Sub-Committee committee that in addition to the policy and guidance set out at the start of the hearing, it must have regard to the Guidance issued under section 182 of the Licensing Act 2003 and in particular the following relating to Public Nuisance:

Paragraph 2.15: that for the purposes of the Licensing Act 2003 public nuisance is given a broad common law meaning and may include a reduction of the living and working amenity and environment of persons living and working in the area of the licensed premises. .

Paragraph 2.20: Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right.

MH also advised the Sub-Committee of its own policy and in particular the following:

Paragraph 9.4: in all cases, the granting of a licence will depend on the impact of an activity, particularly on local residents or late night businesses. Consideration will be given to relevant matters including, but not limited to, the level of noise and vibration, litter, people coming and going, queuing and any potential for criminal activity or disorder.

MH advised that all applications must be determined on their own merits and referred to paragraph 10.1 of the Council's Statement of Licensing Policy which states:

When considering whether any licensed activity should be permitted after its discretion has been engaged e.g. following representations, the Licensing Authority will assess the likelihood of that activity causing unacceptable adverse impact, particularly on local residents and businesses, by considering the following factors amongst other relevant matters:

- *The type of use;*
- *the proposed hours of operation;*
- *the means of access and egress to the premises by patrons;*
- *the measures that are proposed to avoid nuisance being caused to residents and businesses in particular from outside smoking, drinking and eating in terms of noise, obstruction of the highway and anti-social behaviour.*

THE SUB-COMMITTEE'S DECISION:

In determining this application, the Sub-Committee considered all the relevant evidence and information presented to it both written and oral, and took account of all the matters it is bound to take account of, in particular the following:

- Licensing Act 2003
- Statutory Guidance
- Exeter City Council Statement of Licensing Policy
- Human Rights Act 1998
- Any equality and diversity considerations

The Sub-Committee determined in accordance with its powers under section 35 of the Licensing Act 2003 to grant the Application as applied for.

REASONS FOR THE SUB-COMMITTEE'S DECISION:

The Sub-Committee had regard to the fact that the Applicant had already operated the Premises under Temporary Events Notices for the hours applied for which had received no complaints relating to Public Nuisance.

The Sub-Committee had regard to the operating schedule and the offer of an additional condition on the Licence for an SIA qualified door supervisor to be present between 2300hrs and 0200hrs and the fact that there were no representations made by the Devon and Cornwall Constabulary in relation to the Licensing Objective of Crime and Disorder.

The Sub-Committee determined that there was insufficient evidence to show that granting the Application would have a negative impact on the promotion of the Licensing Objectives. The Applicant demonstrated to the satisfaction of the Sub-Committee that the Premises would not add to the Cumulative Impact experienced in the area.

The Sub-Committee was mindful that should a problem with the Premises arise, any person may apply to the Licensing Authority for the Premises licence to be reviewed in connection with any of the Licensing Objectives. The Chair of the Sub-Committee reminded all of those present of this provision when delivering the decision.

RIGHT OF REVIEW:

Should there be problems associated with the premises in the future then local residents can apply to the Licensing Authority for the premises licence to be reviewed. The same power is also exercisable by the Police and the Council's Environmental Health Department. In addition there are powers for the Council's Environmental Health Department to take action in relation to noise nuisance under the Environmental Protection Act 1990.

RIGHT OF APPEAL:

All parties are reminded of their right to appeal against this decision to the Magistrates Court by virtue of Schedule 5, Section 181, paragraph 2 of the Licensing Act 2003. Any appeal must be made within the period of 21 days beginning with the date on which you are notified of the decision appealed against.

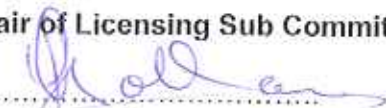
Any Appeal is commenced by a notice addressed to:

**The Clerk to the Justices, North and East Devon Magistrates Court Office,
Southernhay Gardens, Exeter, EX1 1UH Telephone 01392 415300**

Parties are advised to contact the court office to check the form of notice required and the fee payable.

The Chair of Licensing Sub Committee

Date


26/11/2015