

LICENSING SUB COMMITTEE A

A meeting of Licensing Sub Committee A was held on 6 February 2012.

PRESENT: Councillor J Walker (Chair); Councillors Taylor and Mawston.

OFFICERS: J Dixon, J Hodgson and K Metcalfe.

ALSO IN ATTENDANCE: Mr Hussein - Applicant.
PC Bryan, PC Price – Cleveland Police.
J Smith – Police Legal Representative.
S Morris – Licensing Officer, Middlesbrough Council.

**** DECLARATIONS OF MEMBERS' INTERESTS**

There were no Declarations of Interest made by Members at this point in the meeting.

LICENSING ACT 2003: APPLICATION FOR PREMISES LICENCE: 242 LINTHORPE ROAD, MIDDLESBROUGH - REF. NO. MBRO/PR0283

A report of the Assistant Director - Community Protection had been circulated outlining an application for a Premises Licence in relation to 242 Linthorpe Road, Middlesbrough, Ref No. MBRO/PR0283, as follows:-

Summary of Proposed Licensable Activities

Sale of alcohol (on sales).

Summary of Proposed Hours of Licensable Activities

Monday to Sunday 7.00am – 11.00pm.

Full details of the application and accompanying Operating Schedule were attached at Appendix 1 to the submitted report.

The Chair introduced those present and outlined the procedure to be followed at the meeting.

At the appointed time, the applicant was not in attendance. The Senior Licensing Officer advised that the applicant had contacted the Licensing Office last week, confirming receipt of the Regulation 6 Notice and enquiring as to whether his attendance at the Hearing was required. The applicant was advised that his attendance was required. The applicant had again telephoned the Council's Licensing Office and Members Office on the morning of the Hearing asking whether his attendance was required and was again advised that his attendance was required.

At 10.15am, 15 minutes after the appointed start time of the Hearing, the Chair and Members of the Committee decided to proceed in the applicant's absence, given that due Notice had been given under Regulation 6 of the Licensing Act 2003 (Hearings) Regulations 2005 and that the applicant had been advised on a number of occasions that he must attend the Hearing. Subsequently, the Committee decided to proceed in the applicant's absence under Regulation 20(2)b) of the said Regulations at 10.15am.

The Chair introduced those present and outlined the procedure to be followed at the meeting. The Senior Licensing Officer began to present the report and at 10.20am the applicant appeared. The Chair repeated introductions and the procedure to be followed. The Senior Licensing Officer restarted the presentation of the report for the benefit of the applicant, which he confirmed to be an accurate reflection of the facts.

Details of the Application

The Senior Licensing Officer presented the report in relation to an application, received on 15 December 2011, for a Premises Licence in relation to 242 Linthorpe Road, as outlined above. The applicant had advertised the application, as required by the Licensing Act 2003, in the Evening Gazette on 20 December 2011, which was confirmed as being an accurate reflection of the facts by the applicant.

It was highlighted that the premises consisted of a restaurant situated in a retail block on Linthorpe Road between the junctions of Victoria Road and Waterloo Road. There were residential premises in close proximity to the premises.

A representation was received from Cleveland Police on 9 January 2012, objecting to the application on the grounds of the prevention of crime and disorder, a copy of which was attached at Appendix 2.

Applicant in Attendance

The applicant, Mr Hussein, was in attendance at the meeting and was asked to present the case in support of his application.

The applicant stated that he intended the premises to be a restaurant and that the retail unit next-door was currently closed. He wished to obtain a Premises Licence in order to convert both retail units into a mini-market and off licence.

Questions to the Applicant from Members of the Committee

Members of the Committee were afforded the opportunity to ask questions of the applicant and the following issues were raised:-

- It was queried whether the applicant was currently operating from the premises. He replied that he was not and did not want to start any of the work required prior to the outcome of his application.
- Clarification was sought as to whether the applicant had disclosed his plans for an off-licence anywhere in his application as he had stated that the premises was a restaurant situated in a retail block. The applicant responded that he did not consider it made any difference how he intended to operate the premises but that he now wanted to obtain the licence in order to operate an off licence.

Questions to the Applicant from those Making Representations

Cleveland Police were afforded the opportunity to ask questions of the applicant and the following issues were raised:-

- The Police legal representative highlighted that the application was for a Premises Licence for a restaurant situated in a retail block which was very different from an off licence. The applicant was asked whether he accepted that with a restaurant, the primary source of trade would be food and with an off licence the primary source of trade would be alcohol. The applicant accepted this.
- In response to a query regarding the size of the premises and the size of the empty premises next-door, the applicant stated that he did not know but added that both units previously operated as one unit until a dividing wall was constructed to create two units.
- The Police legal representative highlighted that the proposals being presented by the applicant at the Hearing were different to those contained within his application and queried the reason for this. The applicant responded that his original plan had been for a restaurant but he now wanted to change the use to an off licence.

- The Police legal representative referred to the premises European Food and Drink which was currently being investigated by the UK Border Agency (UKBA) and Her Majesty's Revenue and Customs (HMRC) and queried what the applicant's role was at that premises. The applicant responded that he worked there.
- When asked whether he was the DPS of the premises, the applicant responded that he was. It was queried whether the applicant appreciated that being a DPS was a responsible role and why it had taken him such a long time to obtain a personal licence in order to become DPS at the premises. The applicant stated that he had not realised he needed a licence to sell alcohol but when he had been advised by the Police and Council Officers it had taken a while to book on to the appropriate course at Middlesbrough College.
- The applicant was asked what he understood by the term 'Designated Premises Supervisor'. He replied that he did not really understand what it meant. The Police legal representative advised the applicant that he was a Designated Premises Supervisor, however, the applicant stated that he was not.
- The Police legal representative submitted that the applicant was not a responsible person and that his actions had undermined the licensing objectives as the premises was currently being investigated for criminal activity. The applicant responded that he knew nothing about the stock coming into the premises and that such questions should be put to his employer. He added that he did not make any underage sales and could do nothing about the stock coming into the premises as it was nothing to do with him.
- The Police legal representative questioned whether the applicant considered that another premises licence would be too much responsibility for him. The applicant stated that he wanted his own business and to do something bigger.
- The applicant was asked if he knew what the four licensing objectives were and he responded that he did not. The Police legal representative stated that she was surprised that he had attended and passed the course to obtain a personal licence yet did not know what the licensing objectives were.
- The Police legal representative advised the applicant that, as DPS of the premises, he had a responsibility to implement the four licensing objectives, however, he was unaware of them. The applicant responded that he was not the DPS but was the 'licence holder'.
- In response to a query, the applicant confirmed that he was applying to become the DPS at the premises in question. When asked why he wished to be DPS of the premises, he replied that he wanted his own premises and his own business and that he would operate this premises differently to the other premises as it would be his own business, therefore, he would take responsibility for buying in stock, including alcohol. He reiterated that he believed he had no responsibility at the other premises for controlling stock that was bought in.
- The applicant stated that he intended to employ between five and eight qualified staff at the premises. When asked to clarify what he meant by 'qualified' the applicant stated that some employees would need the 'alcohol licence' and have experience in serving customers but that he would take overall responsibility.
- Reference was made to the ongoing investigation by the UK Border Agency in relation to illegal immigrants working at the applicant's other premises and it was queried whether the applicant considered this to be acceptable. The applicant stated that there was no-one illegal working there and that it would not be acceptable.

Relevant Representations

Cleveland Police

PC Bryan, PC Price and the Police legal representative were in attendance at the meeting and invited to present the representations in relation to the application.

The Police legal representative advised that Cleveland Police objected to the application in its entirety and would submit an alternative objection to the applicant being the DPS of the premises should the Committee be minded to grant the application.

It was highlighted that PC Bryan's statement was dated 14 December 2010 and that this should read 14 December 2011.

The Police legal representative outlined the concerns as follows:-

- The application related to premises on Linthorpe Road in a highly-populated area with existing off-licences in that area and high levels of anti-social behaviour. Cleveland Police had recently objected to an application for an extension to the hours of an off-licence nearby to the premises.
- The premises was situated in the middle of a retail block, including restaurants, and was currently unoccupied. PC Bryan stated that, to her knowledge, the premises in question had never held a licence to sell alcohol, however, previous intelligence in relation to the premises had been gathered in relation to crime and illegal activity.
- In relation to the applicant being DPS of another premises that caused the Police concern, PC Bryan stated that she had initially visited the applicant at the other premises following a request from Middlesbrough Council. The Council's Licensing Officer had advised the applicant that he must obtain a Personal Licence and make the necessary arrangements

Summing Up

The Applicant

The applicant's representative summed up by stating that Councillor Hubbard's written representation made reference to Fleet Stores having always closed at 10.00pm and it was highlighted that between 2006 and 7 July 2011 the store was permitted to open until 11.00pm. There was no documentary evidence that the premises was linked to anti-social behaviour or underage sales of alcohol and no representations had been made by the responsible authorities.

The applicant was a responsible licence holder but conceded she had made a mistake in accepting an informal resolution in relation to the premises licence which had impacted on her business.

Beckfield Community Council

The Chair of Beckfield Community Council summed up by stating that whilst they had no objection to the applicant trading in the community, residents were concerned due to the history of the premises in 2006. Mrs Woods stated that there were already several stores, pubs and clubs within the local area that sold alcohol beyond 10.00pm.

Mrs Woods expressed concern that financial cuts would mean fewer Police Officers and Street Wardens who were relied upon by local residents living in close proximity to the premises. Mrs Woods provided Members of the Committee with photographs of a resident living in close proximity to the store who had raised a fire safety issue and anti-social behaviour issues with Street Wardens.

Reference was made to the alcohol reduction scheme and it was highlighted that the total number of outlets selling alcohol, as at 20 July 2010, was 463. Mrs Woods was not aware of how many further premises licences had been granted since that time. Mrs Woods stated that Middlesbrough had a high proportion of alcohol-related problems and residents believed that an extension in hours at the premises would add to this. Beckfield Community Council also objected to the proposed loss of specific times for Good Friday and Christmas Day.

It was confirmed that there were no further questions and all interested parties other than the Officers of Legal Services and the Members Office, withdrew whilst the Committee determined the application.

Subsequently all the parties returned and the Chair announced the Committee's decision.

ORDERED that the application to vary the Premises License in respect of Fleet Stores, 48 Cargo Fleet Lane, Middlesbrough, Ref No: MBRO/PR0085, be granted, as follows:-

1. Sale of Alcohol Monday to Sunday 8.00am – 11.00pm.

The decision was made for the following reasons:-

1. The Committee considered that the information produced by the objectors to be general to the town and not specific to this licensed premises.
2. There was no evidence to suggest that an increase in hours, as requested, would be detrimental to the area in general or nearby residents in particular.

In reaching the above decision Members had considered the following:-

1. The application, on its own merits.
2. The case presented by the applicant.
3. The representations made by Beckfield Community Council, both in writing and verbally at the meeting.

4. The representations made by Councillor Hubbard, Beckfield Ward Councillor, both in writing and verbally at the meeting.
5. The four Licensing Objectives of the Licensing Act 2003.
6. Relevant Government Guidance, particularly in relation to:-
 - Prevention of Crime and Disorder, starting at paragraph 2.1, Annex D.
 - Prevention of Public Nuisance, starting at paragraph 2.32, Annex D.
7. Middlesbrough Council's Licensing Policy particularly in relation to:-
 - Crime and Disorder, Pages 32 to 42.
 - Prevention of Public Nuisance, Pages 23 to 29.

The Chair took the opportunity to thank Mrs Woods, Chair of Beckfield Community Council, for her involvement and the work she did in the community with the best interests of its residents at heart. The Committee wished to encourage the Premises Licence Holder to work with the community and to attend Community Council meetings occasionally.