

**LICENSING SUB-COMMITTEE A**

A meeting of the Licensing Sub-Committee A was held on 30 October 2017.

**PRESENT:** Councillors J A Walker (Chair), D J Branson and T Higgins

**ALSO IN ATTENDANCE:** Agenda Item 3 - Kilimandjaro's Restaurant, 243 Linthorpe Road, Middlesbrough  
Mr A A Ouedraogo - Applicant  
Mr M Thorley - Immigration & Enforcement - Making representations.

Agenda Item 4 - 60 Byelands Street, Middlesbrough  
Ms F Hussain - Applicant  
Mr K Hussain - Applicant's grandfather  
Making Representations:  
Sergeant P Higgins - Cleveland Police  
PC E Price - Cleveland Police  
J Hedgley - Public Health  
J McClusky - Trading Standards  
Councillor L Lewis - Central Ward Councillor

**OFFICERS:** C Breheny (agenda items 1 to 3 inclusive), C Cunningham, J Dixon (agenda item 4) and S Wearing.

**DECLARATIONS OF INTERESTS**

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

17/4 **LICENSING ACT 2003 - APPLICATION FOR TRANSFER OF PREMISES LICENCE – KILIMANDJARO'S, 243 LINTHORPE ROAD, MIDDLESBROUGH**

The Licensing Sub Committee held a hearing on the 30 October 2017 and a further adjourned hearing on the 6th November in view that an objection had been received by the Home Office Immigration Enforcement ("Immigration Enforcement") to consider an application to Transfer a Premises Licence in respect of premises known as Kilimandjaro of 243 Linthorpe Road Middlesbrough to Apollo Apollinaire Ouedraogo ("the Applicant").

The Committee determined to reject the application to Transfer the Premises Licence under Section 44(5)(b)(ii) of the Licensing Act 2003 ("the Act") because it considered it appropriate for the prevention of illegal working in the premises to do so

The reasons for the decision are as follows:

1. The Committee considered the Application on its own merits; the Report, Appendices, additional information provided by the Applicant and Immigration Enforcement, the relevant representations made by the parties; the Act, Licensing Objectives, Guidance made under Section 182 of the Act ("the Guidance") and the Council's Statement of Licensing Policy ("the Policy").
2. The Committee noted that a person who carries on or proposes to carry on a business which involves the use of the premises for licensable activities can make an application to the licensing authority for the transfer of the premises licence to him under Section 42(1) of the Act.
3. The Applicant made an application to transfer the Premises Licence for Kilimandjaro 243 Linthorpe Road Middlesbrough on the 20 September 2017
4. The Committee noted the Applicant made a request under Section 43(1) of the Act that the application to transfer was to have immediate effect. It noted that the Licensing Officer exempted the Applicant from the requirement to obtain the Premises Licence Holder's consent as he was satisfied the Applicant had taken all reasonable steps to obtain the consent of the Premises Licence Holder and that the Applicant would be in a position to use the premises during the application period for the licensable activities, in accordance with Section 43(5) of

the Act.

5. The Committee noted that where the Secretary of State is satisfied that the exceptional circumstances of the case are such that granting the application would be prejudicial to the prevention of illegal working in licensed premises, the Secretary of State must give the licensing authority a notice stating the reasons for being so satisfied under Section 42(8) of the Act. The Secretary of State is Immigration Enforcement for this case.

6. The Guidance at paragraph 8.99 states that objections may arise where Immigration Enforcement have evidence that the business or individuals seeking to hold the licence, or businesses or individuals linked to such persons are involved in employing illegal workers.

7. Immigration Enforcement served a notice objecting to the Application to Transfer the Premises Licence on the 4 October 2017 in the interests of the prevention of illegal working and immigration crime.

8. The Committee noted that Section 45(5)(b)(ii) of the Act states the Licensing Authority (namely the Licensing Sub Committee) must, having regard to the notice given by the Secretary of State, reject the application if it considers it appropriate for the prevention of illegal working in licensed premises to do so.

9. The Committee noted that the Guidance at 2.6 states that the prevention of crime and disorder includes the prevention of illegal working in licensed premises

10. The Committee noted that although in respect of determinations of Premises Licence applications or reviews the Guidance states at 9.25 when Immigration Enforcement exercise its powers as a responsible authority it will do so in respect of the crime and disorder objective because it is concerned with the prevention of illegal working or immigration offences. The Guidance also confirms at 11.26 that the licensing authority's duty is to promote the licensing objectives including the prevention of illegal workers in the interests of the wider community and not those of the individual licence holder. In addition at 11.27 the Guidance confirms the employment of illegal workers should be treated particularly seriously.

11. The Guidance clearly links illegal working as part of the promotion of the prevention of crime and disorder objective and also requires local authorities to treat the employment of illegal workers seriously.

12. The Committee did not consider the objection made by Immigration Enforcement was a fishing expedition to inquire into the Applicant's background under paragraph 8.100 of the Guidance.

13. The Committee, after hearing the information in respect of an inspection by Immigration Enforcement on the 22 September 2017 was satisfied that a person who was not entitled to remain in the UK or to work was working in the Premises known as Kilimandjaro Restaurant at Unit 3 Navigation Point, Hartlepool Marina, Hartlepool. The Applicant was the Premises Licence Holder for the activities at this premises.

14. Immigration Enforcement confirmed that the individual was not entitled to remain in the UK from the 14 July 2016 when his application to remain was rejected. The worker knew and had documentation from this date confirming that he was not entitled to remain or work in the UK. He had applied for an out of time application on the 4 December 2016 and because this was out of time the individual had no right and knew he had no right to remain or work in the UK.

15. During the inspection on the 22 September 2017, the individual was on the Premises in Hartlepool wearing the Kilimandjaro uniform whilst the premises was open and serving the public. The individual claimed that he was helping out the restaurant serving customers and that he had been doing that for about three months. The Premises Licence holder claimed he was paid in kind.

16. The Applicant told the Committee that he had copies of Council tax and housing benefit forms issued to the individual and a copy of a Job Seekers Allowance sheet with various other

information. However the dates on the documents were some time prior to the individually working on the premises. The Immigration Enforcement Officer confirmed employers are expected to carry out specific checks in order to have a defence. He advised this is clear on the government website and any employer can phone a number that checks will be made whereby it would clearly be revealed the individual was not entitled to remain in the UK. The Applicant confirmed he had not carried out these checks. The Licensing Committee were also concerned that it was a contradiction that the Applicant claimed he thought the individual could work but still did not pay the individual but claimed he was paid in food / kind.

17. Immigration Enforcement confirmed that a Civil Penalty Notice in the sum of £15,000 had been issued to Kilimandjaros Food Trade Limited for which the Applicant is the sole Director for employing an illegal worker at the Premises Unit 3 Navigation Point Hartlepool Marina.

18. The Committee considered that the Applicant was the Premises Licence Holder responsible for the premises where the illegal worker was found. The Applicant claimed he had applied for a Transfer prior to the visit, however, it was confirmed to Committee that there was no record of any such application by Hartlepool Council. Therefore the Committee was satisfied the Applicant was the Premises Licence Holder of that premises at the time of the incident.

19. The Applicant claimed he was not responsible for the premises because he had transferred the business to a Mr Smith under a franchise agreement and Mr Smith should have been named on the Licence. The agreement provided by the Applicant was in the name of the Company Kilimandjaro Food Trade Limited. However, the Committee noted that the Applicant was called by a member of staff to go to the premises when the visit took place. Mr Smith was not present. After hearing the information the Committee considered the Applicant was aware of what was happening at the Premises. The Committee also considered that in any event he had failed to take any reasonable steps or checks to prevent illegal workers at those Premises to avoid undermining the promotion of the prevention of crime and disorder objective at those Premises.

20. The Committee was therefore satisfied that Immigration Enforcement had evidence that the Premises Licence Holder and / or businesses or individuals linked to him were involved in employing illegal workers.

21. The Middlesbrough Premises is currently the same operation and will continue to be the same operation, namely a restaurant with the sale of alcohol, as the Applicant's Hartlepool Premises.

22 Therefore the Committee decided to reject the application on the grounds that is appropriate to do so in the interests of the prevention of illegal working

23. The Applicant may appeal the decision within 21 days from the date of receipt of the decision notice to the Teesside Magistrates Court. However, if the appeal is dismissed the Council will be seeking its costs in defending the case against the Applicant.

24. The Interim effect of the Transfer will cease on the date the Applicant receives the notice of the decision.

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**LICENSING ACT 2003 - APPLICATION FOR PREMISES LICENCE – BYELANDS NEWS, 60 BYELANDS STREET, MIDDLESBROUGH**

**DECISION**

1. The Licensing Sub Committee heard an application for a Premises Licence in respect of 60 Byelands Street Middlesbrough for the off sale of alcohol from 10.00am until 10.00pm daily from Ms Farah Hussain (proposed premises licence holder and Designated Premises Supervisor) under Section 18 of the Licensing Act 2003 ("the Act").

2. After considering the Application on its own merits, the relevant written and oral

representations of the parties to the hearing, the Act, Policy and Guidance the Licensing Sub Committee considered that it was appropriate to refuse the application in order to promote the prevention of crime and disorder and public nuisance, in the interests of public safety and the protection of children from harm.

3. The Committee considered the Applicant's case, in summary, the main relevant areas in support of the Applicant's case and that there would be no negative impact included:

- That the conditions on the licence will prevent any negative impact
- That it would be a family store
- That the premises licence holder would talk to other businesses and get involved in any scheme such as neighbourhood watch.
- Residents spoken to do not seem to be in opposition
- Family members lived near to the shop
- That the applicant would monitor her customers
- Alcohol sales were required in order to make the Applicant's business competitive with other similar businesses in the area.

4. The police produced evidence that within a 500 metre radius of the premises, 22 alcohol related crimes had been committed since 27 March 2017. The information showed that various different crimes involving alcohol took place at all times of day and night and included assaults, attacks with weapons, injuries, dependant drinkers and criminal damage. The Police confirmed that the incidents were produced on the basis of alcohol being a factor in the offences or reports made.

5. Public Health made representations that the area is one of the most deprived areas of Middlesbrough and the ward is a hotspot of alcohol related crime. A number of the cases have involved people drinking in the home and the impacts on the licensing objectives are broad including abuse and violence in the home affecting children. Central Ward had the highest number of alcohol attributable admissions to James Cook University Hospital.

6. Trading Standards confirmed the problems in the area.

7. The Ward Councillor confirmed the area is saturated with off licences and the area is deprived and suffers high levels of crime and anti-social behaviour.

8. All responsible authorities were concerned that when Ms Hussain made the application the operating schedule did not in any way address any of the issues.

9. All responsible authorities were concerned that at a meeting on the 19 September 2017, the Applicant

- had to be informed the application was subject to a Cumulative Impact Policy.
- had no experience in alcohol sales
- Lacked knowledge as to how she would put into practise her responsibility to uphold the licensing objectives.
- Did not consider the detrimental impact a competitive convenience store would have on the area
- Was unaware it was an offence not to purchase alcohol from a person / organisation / business registered to do so by the government.

10. The premises is situated in Central Ward within Middlesbrough which has been declared by the Licensing Authority as being subject to a Cumulative Impact Policy in relation to off licence sales of alcohol.

11. The Guidance and the Policy confirms that the effect of adopting a special policy creates a rebuttable presumption that an application for a premises licences which is likely to add to the existing cumulative impact will normally be refused or subject to certain limitations, unless the applicant can demonstrate in the operating schedule that there will be no negative impact on one or more of the licensing objectives.

12. The Policy confirms that five wards were identified as being subject to a cumulative impact policy in relation to off sales of alcohol and at the time of the study those wards accounted for

61% of off sales premises, 61% of all crime and disorder and 53% of anti-social behaviour out of the whole of Middlesbrough.

13. The Policy confirms Central ward has the highest numbers of crime and disorder and Anti-Social Behaviour in Middlesbrough. That Central Ward is saturated due to the number, type and density of the premises selling alcohol off the premises. That the Licensing Authority is satisfied that there is good evidence that crime and disorder or nuisance occurring in this location is being caused by the customers of off licence premises is evidenced and that the cumulative impact of off licensed premises in this location is evident.

14. The Licensing Sub Committee considered that this particular ward within the cumulative impact area suffers from serious and wide ranging alcohol related harms, crime and disorder and anti – social behaviour and the objectives are being seriously undermined.

15. The Licensing Sub Committee in accordance with the Guidance considered that Police are an essential and the main source of advice on the impact and potential impact of licensable activities, particularly on the crime and disorder. The Licensing Sub Committee therefore accepted the police representations and information about the problems in the area in accordance with the Guidance.

16. The Committee was concerned that the Applicant confirmed that people have entered the shop wanting to sell stolen goods. Although she did not accept such goods it shows that criminality is attempted in the shop and in the vicinity.

17 The Premises Licence is within an area which has three schools and the committee considered in light of the information received, as a result of the saturation of alcohol sales, children are likely to be harmed by either themselves drinking alcohol and causing anti- social behaviour or witnessing crime and disorder or anti-social behaviour or being exposed to drunken activity.

18 The Applicant confirmed that in order for her to take over the business, she requires the ability to sell alcohol to compete with other premises of similar nature, namely convenience stores with the ability to sell alcohol.

19. The Committee was concerned when the Application was made, the Applicant was not aware that Central Ward was subject to a cumulative impact policy and that the operating schedule did not fully address such issues or how they would be tackled. Both the Guidance and Policy are clear that Applicants should undertake such considerations.

20. The Licensing Sub Committee therefore has no justification to depart from the special cumulative impact policy. It considers that conditions themselves would not prevent a negative cumulative impact on the objectives in this particular area for this type of premises., in addition, in view of the Applicant's lack of experience and knowledge of alcohol sales may be a risk and cause harm

21. The Licensing Sub Committee considered that his operation would be likely to add to the existing negative cumulative impact on the licensing objectives.

22. Appeal provision and costs warning.