

**LICENSING SUB COMMITTEE B**

A meeting of the Licensing Sub Committee B was held on 19 May 2008.

**\*\*PRESENT:** Councillor Biswas (Chair); Councillors Morby and J Walker.

**\*\*OFFICIALS:** C Breheny, T Hodgkinson and A Gray

**\*\* ALSO IN ATTENDANCE:** M Hindmarsh – Applicant  
S Upton – Principle Trading Standards Officer  
R Smith – Police Legal Representative  
PC Walker – Licensing Unit, Cleveland Police  
Mrs Woods – Chair of Beckfield Community Council

**\*\* DECLARATION OF INTERESTS**

No declarations of interest were made at this point of the meeting.

**LICENSING ACT 2003 – APPLICATION FOR PREMISES LICENCE: 3 CAIRN COURT, FORREST GROVE BUSINESS PARK, MIDDLESBROUGH TS2 1QE – REF: MBRO/PR0350**

A report of the Head of Community Protection had been circulated outlining an application for a Premises Licence for 3 Cairn Court, Forrest Grove Business Park, Middlesbrough, TS2 1QE - Ref No. MBRO/PRO350, as follows:

Summary of proposed Licensable Activities

Sale of Alcohol (Off Sales).

The sale of alcohol is to be made by delivery only.

Summary of proposed hours for Licensable Activities

10.00 pm – 6.00 am Daily

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.

The applicant was present at the meeting and confirmed that copies of the report and Regulation 6 Notice had been received.

**Details of the Application**

The Principal Licensing Officer advised that Mrs Woods, Chair of Beckfield Council, had contacted the Licensing Office to submit an objection in respect of the application. However, due to the fact that Mrs Woods did not live in close proximity to the premises the Committee was unable to consider her representation. The Legal Advisor advised the Committee that the legislation had not anticipated this type of application and therefore consideration was only able to be given to comments from residents within the ward where the premises was situated.

The Principal Licensing Officer advised that there was an error in the report in respect of the objection submitted by the Principal Trading Standards Officer. The Committee was informed that Trading Standards objected on the grounds of prevention of children from harm as well as the prevention of crime and disorder and the prevention of public nuisance.

The Principal Licensing Officer confirmed that there were no absent parties and presented the report which was confirmed as being an accurate reflection of the facts by the applicant.

The report outlined that, on 26 March 2008, an application was received for a Premises Licence, as stated above, and the applicant had advertised the application, as required by the Licensing Act 2003, in the Herald and Post on 2 April 2008.

It was stated that the premises consisted of an industrial unit in a non-residential area. The Applicant wished to offer alcohol sales on a delivery only basis from these premises between the hours of 10.00 pm and 6.00 am.

The applicant first made an application to provide an alcohol delivery service on 18 September 2007 when he was the premises licence holder for Boys End News, 83 Kensington Road, Middlesbrough. At this time the premises had the benefit of a premises licence which allowed for the sale of alcohol (Off Sales) between the hours of 7 am and 10 pm daily. The application to vary the licence to allow for the sale of alcohol (Off Sales) for 24 hours a day was heard by the Licensing Committee on 29 November 2007. After hearing objections from Trading Standards Officers, Environmental Health (Noise) Officers, the local Community Council and numerous local residents, Members decided to refuse the application to vary the licence.

On 17 January 2008 the applicant made a further application to operate an alcohol delivery service from premises at Unit 13 Victoria Street, Middlesbrough. On 4 March 2008, Members met to consider the application following concerns raised by Cleveland Police, Trading Standards and Gresham Community Council. After hearing representations from all parties and after considering numerous conditions proposed by Cleveland Police and Trading Standards, Members decided to grant the licence for an initial period of 6 months to allow for monitoring to ensure there would be maximum protection for residents. Numerous conditions to regulate the running of the business were also imposed on the licence.

On 14 March 2008, following information received in relation to the operation of the business, Police and Council Licensing Officers visited Unit 13 Victoria Street, Middlesbrough, to check compliance with the licence conditions. Upon arrival Officers discovered that the business was not being operated from the premises and that the delivery service was taking place from different premises. The applicant is currently being investigated for the offence of carrying on a licensable activity from premises otherwise than in accordance with an authorisation. Since this incident the applicant has surrendered the licence in respect of the premises at Unit 13 Victoria Street, Middlesbrough.

Since the latest application in respect of premises at 3 Cairn Court, Forrest Grove Business Park, Middlesbrough, Licensing Officers have discovered that the applicant, who is also a Personal Licence Holder, has been convicted of a relevant offence under the Licensing Act 2003, namely obtaining property by deception. He is currently being investigated for offences in relation to his failure to notify the court that he was the holder of a personal licence and failure to notify the Licensing Authority of a relevant conviction.

On 15 April 2008 a representation was received from Mr Paul Honeyman, the owner of a nearby business, who objects to the application on the grounds of the prevention of crime and disorder and the protection of children from harm and was attached at Appendix 2 to the submitted report.

On 22 April 2008 a representation was received from the Principal Trading Standards Officer who objects to the application on the grounds of the prevention of crime and disorder and the prevention of public nuisance and was attached at Appendix 3 to the submitted report.

On 22 April 2008 a representation was received from Cleveland Police on the grounds of the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm and was attached at Appendix 4 to the submitted report.

The Committee was advised of the following options:

1. Grant the application subject to conditions consistent with the operating schedule and mandatory conditions if applicable.
2. Grant the application subject to the addition of new conditions.

3. Reject the whole or part of the application.

### **Applicant in Attendance**

The applicant was invited to present the case in support of the application. The applicant advised that his business would run as an alcohol delivery service between the hours of 10pm and 6am and that he would deliver alcohol to customer addresses. The applicant explained that he had been granted a licence to operate the business from a different premise but had had some trouble with the landlord. The applicant stated that he had handed in his previous licence and had contacted the landlord of the premises at 3 Cairn Court.

### **Questions from Members**

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

- In response to a query relating to his previous licence the applicant accepted that he had continued to operate his business even though he had been unable to operate from the premises for which the licence had been granted. The applicant advised that he had spoken to PC Walker, after ten days of operating the business, and had returned the licence to the Licensing Office.
- A Member queried what the problem had been with the previous landlord. The applicant explained that the landlord owned a number of units that were monitored by security cameras, which worked on motion sensors. Following the granting of the licensing application the landlord had advised that he did not want vehicles travelling past the cameras.
- In response to a query in respect of his understanding of the four licensing objectives the applicant confirmed that he had been aware that he needed to comply with all the conditions of his licence.
- A Member made reference to the information submitted by the Police in respect of the applicant's conviction. The applicant provided details in respect of the conviction and advised that despite his past conviction he did believe that he was a fit and proper person to hold a licence.
- Clarification was sought on how the applicant intended to keep noise disturbance to a minimum. The applicant stated that the engine would be switched off once the driver arrived at the customer's premises and that there would be no sounding of the horn.
- Clarification was sought on how the applicant intended to ensure that no alcohol would be delivered to young people under the age of 18. The applicant advised that ID in the form of a passport or drivers licence would be needed and that this information would be captured at the point of order. A refusal book would also be kept and all refusals would be documented.
- A Member queried what would happen if a driver arrived at a party where there was one adult and thirty children. The applicant advised that the sale would be refused.
- A Member queried how many vehicles the applicant intended to use to operate the delivery service. The applicant advised that initially one van would be used and that he would be the driver.
- Reference was made to the reservations expressed by the applicant's previous employer. In response the applicant stated that he had never sold alcohol to under 18's and confirmed that he had always requested ID.

### Questions from Cleveland Police

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

- In response to a query relating to when the difficulties with the landlord had first arisen the applicant stated that he had been made aware of the issue within the first week of operation.
- The Police Representative clarified with the applicant whether he had instigated the conversation with PC Walker or whether the Police had contacted him. The applicant acknowledged that the Police had instigated the conversation.
- In response to a query in respect of the action taken to ensure that the conditions of the previous licence would be complied with the applicant stated that he had spoken to the landlord and would do everything possible to comply with the conditions.

### Questions from Trading Standards

Trading Standards were afforded the opportunity to ask questions of the applicant and the following issues were raised: -

- In response to a query relating to the address from where the business had been operating the applicant confirmed that he had been operating the business from his home address.
- The Trading Standards Representative clarified with the applicant whether the alcohol had been stored at a residential property. The applicant confirmed that the alcohol had been stored at his home address.
- The Trading Standards Representative made reference to the applicant's original application to run the business from 83 Kensington Road and the Committee's decision to refuse the application as the premises was situated in a residential area.
- In response to a query regarding what reassurances the applicant could provide to ensure that the any future conditions were complied with the applicant advised that he would run everything from the premises and comply with all conditions.

### **Relevant Representations**

#### Cleveland Police/ Legal Representative and PC Walker

The Police Legal Representative, R Smith, and PC Walker were in attendance at the meeting to present the representation against the application. It was confirmed that the Committee and the applicant had read the statement submitted by PC Walker.

PC Walker advised that he had been a Police Officer for 27 years and had joined the Licensing Unit in January 2007. PC Walker advised that he had been aware that the applicant had been granted a licence to operate from Unit 13, Victoria Street but had received information that the applicant was operating the business from a private residential address.

PC Walker advised that a visit had been undertaken to the premises at Unit 13, Victoria Street at approximately 11.30pm on 14 March 2008. PC Walker advised that he had been unable to gain access to the unit as the entrance gates were locked. A telephone call was therefore made to the applicant on his business telephone number and a test purchase undertaken. PC Walker advised that at the end of the conversation he disclosed his identity to the applicant and arranged for an interview to be undertaken.

At interview the applicant had advised that he had experienced some difficulties with his landlord and had therefore been operating the business from a residential address. PC Walker stated that

the applicant had not adhered to the conditions of his licence and had not declared his criminal conviction to the Licensing Authority.

The Legal Representative queried whether prior to the telephone conversation with the applicant there had been any contact between PC Walker and the applicant. PC Walker advised that the applicant had not been in contact with the Police Licensing Unit to access any training or clarification on his licensing conditions.

Reference was made to the applicant's criminal conviction and a print out of the PNC record was distributed. The Police Legal Representative highlighted that on 12 January 2007 the Applicant had been convicted of a relevant criminal offence, namely obtaining property by deception. Members were advised that when submitting a licensing application the applicant had a duty to advise the Licensing Authority of any relevant convictions and yet he had failed to do so.

PC Walker stated that despite the possibility of imposing additional conditions he did not believe that the applicant would comply with all of the conditions or promote the four licensing objectives. PC Walker advised that the applicant was previously granted a licence on a six-month temporary basis and had failed to adhere to the conditions imposed.

### Trading Standards

The Principle Trading Standards Officer, S Upton, was present at the meeting to present a representation against the application.

The Principle Trading Standards Officer advised the Committee that Trading Standards wished to recommend that the application be refused on the grounds of the licensing objectives Prevention of Crime and Disorder and Protection of Children from Harm.

The Committee was advised that experience from enforcement exercises carried out by Trading Standards and the Police, at other licensed premises within the area, had demonstrated that under 18's were visiting licensed premises and attempting to buy alcohol. The Principle Trading Standards Officer was of the opinion that delivery services would prove even more attractive to underage drinkers, as sales occurred outside of the public eye and were therefore less likely to be detected.

The Committee was advised that test purchase operations carried out in 2006 on similar delivery operations within Middlesbrough had highlighted major problems with this type of operation. In addition on 30 October 2007 an illegal sale of tobacco was made to two sixteen year olds by the applicant at his premises Boys End News. Trading Standards had also received two complaints about underage alcohol sales from the premises.

The Principle Trading Standards Officer stated that the department was concerned about the applicant's ability to prevent underage sales on a delivery service when the applicant had failed to prevent underage sales for other age restricted products at his Boys End News premises where such sales were easier to manage.

The Principle Trading Standards Officer advised that sufficient controls had been built into the applicant's previous licence and yet the applicant had operated his business from a residential premise. Members were reminded that the Committee had refused the applicant's initial application as the premise was situated in a residential area. The Principle Trading Standards Officer stated that conditions were only effective if complied with and it was questionable as to whether the applicant would comply with the conditions, as he had breached such a fundamental condition of his temporary licence.

### Summing Up

The Chair invited all parties to sum up.

### Cleveland Police

The Police Legal Representative stated that any licensable activity involved a responsibility to the wider community. However, history had shown that the applicant was only willing to disclose

information relevant to him and was unwilling to seek guidance or comply with the conditions imposed on his licence.

The Committee was reminded that the applicant had operated his business from a residential address and had not complied with the condition to operate from Unit 13, Victoria Street. The Police Legal Representative stated that the applicant had not shown any positive steps and had failed to comply with the numerous conditions imposed on his licence. Reference was made to the applicant's illegal sale of tobacco to two sixteen year olds in October 2007 and the Police Legal Representative was of the opinion that history had repeated itself.

The Police Legal Representative stated that the Committee and the wider community could have no confidence in the applicant and that the community had to take control. The Police Legal Representative advised that many people had been effected by underage drinking, disorder and public nuisance and no matter what conditions were attached to the licence the applicant would not promote the licensing objectives.

#### Trading Standards

The Principle Trading Standards Officer stated that there was a problem with underage drinking in the town and that young people were attempting to buy alcohol. Delivery services had been identified as a cause for concern and the potential for underage sales was high, as these sales could easily go unseen. The Principle Trading Standards Officer stated that the applicant had breached licensing conditions by trading from a residential address, despite having been refused a licence to operate from a premise situated in a residential area.

#### The Applicant

The applicant stated that he would abide by the conditions of the licence and only trade from the designated premise.

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.

#### **DECISION**

**ORDERED** that the application for a Premises Licence for 3 Cairn Court, Forrest Grove Business Park, Middlesbrough, TS2 1QE be refused.

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

1. The four Licensing Objectives of the Licensing Act 2003.
2. Relevant Government Guidance, particularly in relation to:-
  - Prevention of Public Nuisance, starting at paragraph 2.32.
  - Prevention of Crime and Disorder, starting at paragraph 2.1.
  - Protection of Children from Harm, starting at paragraph 2.41.
  - Public Safety, starting at paragraph 2.19.
  - The Pool of Conditions at Annex D.
3. Middlesbrough Council's Licensing Policy particularly in relation to:-
  - Prevention of Public Nuisance (pages 10 to 15, in particular paragraph 38).
  - Prevention of Crime and Disorder (pages 17 and 18).
  - Protection of Children from Harm (pages 19 and 21).
  - Public Safety (pages 16 and 17).
4. The case presented by the applicant.

5. The representations made by parties present at the hearing and the written representations received.

The Committee had decided to refuse the application for the following reasons: -

1. The Committee did not consider the applicant to be a fit and proper person to hold a licence.
2. Since obtaining a personal licence, the applicant has been convicted of a relevant offence under the Licensing Act 2003, namely obtaining property by deception.
3. Upon being convicted of this relevant offence, the applicant failed to notify the court that he held a personal licence.
4. The applicant also failed to notify the Licensing Authority that he had been convicted of a relevant offence under the Licensing Act 2003.
5. The applicant was currently undergoing investigation for the offence of failing to notify the Licensing Authority of a conviction for a relevant offence.
6. The applicant was also being investigated by the Police for offences of carrying on a licensable activity, other than in accordance with the appropriate authorisation.
7. The applicant had breached a fundamental condition of his previous premises licence by operating his business from a residential premises on 14 March 2008.
8. The Committee was concerned that the applicant had shown no positive steps of how he would abide by any future conditions of a licence. The Committee's view was that any non-compliance with conditions would result in a failure to promote the Licensing Objectives.