

**LICENSING SUB COMMITTEE B**

A meeting of Licensing Sub Committee B was held on 9 February 2009.

**PRESENT:** Councillor Biswas (Chair); Councillors Mawston and G Rogers.

**OFFICERS:** C Cunningham, J Dixon and T Hodgkinson.

**ALSO IN ATTENDANCE:** PC Malcolm – Cleveland Police.  
R Smith – Police Legal Representative.

**\*\* DECLARATIONS OF MEMBERS' INTERESTS**

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

**\*\* EXCLUSION – PRESS – PUBLIC**

**ORDERED** that the press and public be excluded from the meeting for the following items on the grounds that, if present, there would be disclosure to them of exempt information as defined in Paragraph 7 of Part 1 of Schedule 12A of the Local Government Act 1972 and that the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

**LICENSING ACT 2003: APPLICATION TO TRANSFER PREMISES LICENCE – MARIO'S TAKEAWAY, 205 LINTHORPE ROAD, MIDDLESBROUGH - REF. NO. MBRO/PRO435**

A report of the Head of Community Protection had been circulated outlining an application to transfer the Premises Licence in relation to Mario's Takeaway, 205 Linthorpe Road, Middlesbrough, Ref No. MBRO/PRO435.

Summary of Current Licensable Activities

Late Night Refreshment.

Summary of Current Hours of Licensable Activities

11.00pm – 3.00am Sunday to Thursday

11.00pm – 4.00am Friday and Saturday.

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

At the appointed time, the applicant was not present at the meeting. It was confirmed that a copy of the Regulation 6 Notice and the report had been hand delivered to the applicant's address. The Principal Licensing Officer advised that he had made several attempts to telephone the applicant and had left messages on his voicemail service as a result of the applicant failing to answer his telephone. Subsequently, his messages were responded to by the applicant's nephew who was fully aware of the Licensing Hearing and had offered to attend to act as an interpreter for the applicant as his English was poor. The Principal Licensing Officer had advised that an independent interpreter would be required but that he would be permitted to accompany his uncle to the hearing, should he wish to do so.

At 10.15am the Principal Licensing Officer withdrew from the meeting in an attempt to contact the applicant. Subsequently, the officer returned and advised the Committee that, again, the applicant was not answering his telephone and he had left a further message in relation to the Hearing. The Principal Licensing Officer also checked that no messages had been left for him by the applicant in connection with his failure to attend and subsequently confirmed that no message had been left.

The Chair queried whether the Notice was actually hand delivered to the applicant himself and it was confirmed that it was not, however, the applicant was aware of the details of the Hearing as his nephew had spoken on his behalf, to the Principal Licensing Officer. In response to a further query, the Principal Licensing Officer confirmed that he had not spoken personally to the applicant but his nephew had spoken on his behalf and explained that the applicant did not speak good English.

At 10.40am, the Committee decided it had explored all options available and was satisfied that the applicant had been provided with ample opportunity to attend the Hearing. Subsequently, in accordance with Regulation 20(2)(b) of the Licensing Act 2003 (Hearings) Regulations 2005, the Committee decided to proceed and the application was heard in the applicant's absence.

### **Details of the Application**

The Principal Licensing Officer presented the report in relation to an application submitted on 10 December 2008 to transfer the Premises Licence, with immediate effect, to the applicant. It came to light that the applicant failed to serve a copy of the application on Cleveland Police, as required by the Licensing Act 2003 and it was, therefore, deemed that the application had not been properly made. Subsequently, the applicant was contacted on 12 January 2009 and advised to serve a copy of the application on the Police. This was done on 14 January 2009.

Under the legislation in relation to transfer of Premises Licences, it was highlighted that where a request was made for the transfer to have immediate effect, the applicant was allowed to continue to carry out licensable activities at the premises as if they were the holder of the Premises Licence until the application was determined. It was confirmed that the applicant had been operating the business from the address for a couple of months.

On 15 January 2009 a representation was received from Cleveland Police objecting to the transfer on the basis that granting the application would undermine the crime and disorder objectives. The Police advised that the applicant was currently on bail in relation to three sexual offences under Section 3 of the Sexual Offences Act 2003 and had been charged with falsely displaying a Food Hygiene Award. A copy of the representation was attached at Appendix 1 of the submitted report. A witness statement had also been provided by PC Malcolm and had been circulated prior to the meeting.

### **Questions from Members**

In the absence of the applicant, Members asked questions of the Officer and Police representatives as follows:-

- It was queried whether the Principal Licensing Officer had a copy of the false Food Hygiene Certificate which had been displayed by the applicant. The Officer replied that the Environmental Health department was undertaking the prosecution in relation to the offence and would have a copy in their file. It was stated that the Food Hygiene Certificate had been awarded to another premise but the applicant had taken it and displayed it at his premises. The applicant subsequently failed to attend the original Court hearing and a warrant was issued.
- Reference was made to the applicant's three sex offences and it was queried whether he was on bail for three separate offences. PC Malcolm responded charges in relation to one of the offences had now been dropped. The applicant was subject to bail conditions in relation to the remaining two sexual offences and had been charged, awaiting Court at the end of March.
- Clarification was sought in relation to a point in PC Malcolm's statement regarding intelligence in connection with a 14-year-old girl. It was clarified that PC Malcolm's statement referred to the registered charity, SECOS, who work with young vulnerable females and that they reported problems with this particular premise and a pattern had been noted where incidents of females going missing were being located at the premises. It was explained that one female regularly went missing and was known to frequent the premises in question. This gave cause for concern given the nature of the offences which the applicant had been charged with and that sexual activity had taken place on the premises.
- In response to a query it was confirmed that the applicant had not been charged with offences in relation to the 14 year old female.

- The Council's legal representative asked whether the applicant had submitted any representations for the Committee to consider and it was confirmed that he had not.

### **Relevant Representations**

#### Cleveland Police

Cleveland Police were in attendance at the meeting to make representations in relation to the application. The Police legal representative submitted that the application be refused on two grounds:-

- The applicant had failed to attend the Hearing.
- It was considered that the Police could not be satisfied that the applicant could meet the Crime and Disorder objective of the Licensing Act 2003.

The Police legal representative outlined the concerns raised by the Police as follows:-

- The applicant was facing two charges in relation to sexual offences, one of which had taken place at the premises.
- The applicant showed no respect for the licensing laws and had falsely displayed a food hygiene certificate. The applicant was also on bail in relation to this offence.
- The crime and disorder objective would be greatly undermined in Middlesbrough town centre should the application be granted.

#### Questions from Members

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

- In response to a query it was clarified that the applicant was currently on Court bail for a total of three offences, two sex offences and one in relation to food hygiene.
- Further clarification was provided in relation to the offences for which the applicant had been charged. PC Malcolm explained that two of the sexual offences had taken place on the same night in a Middlesbrough nightclub. One of these charges had now been dropped but the other was still pending hearing in Crown Court. The applicant had also been charged with a further sexual offence which had occurred at the takeaway premises.
- In relation to the food hygiene certificate, it was confirmed that the applicant had failed to attend Court and a warrant was issued. The Court hearing in relation to this offence was awaited.
- It was confirmed that the applicant was subject to two sets of bail conditions and that he had been banned from entering the nightclub at which the alleged offences had taken place. The applicant was also banned from parts of Middlesbrough town centre.
- A Member of the Committee queried whether there was a condition that someone must be with the applicant at the premises at all times. The Police legal representative responded that this was not a condition and that the Courts were unable to set such a condition as part of the bail conditions due to civil liberties and the Human Rights Act. The Courts were able to restrict the applicant's movements in relation to the complaints. The applicant was free to operate his businesses as usual. The committee expressed concern that despite one of the offences taking place at the premises, the applicant was still allowed to continue operating his business as normal.
- In response to a query, the Council's legal representative confirmed that any hot food takeaway could be operated up until 11.00pm, however, the premises in question held a Premises Licence allowing it to operate until 3.00am Sunday to Thursday and 4.00am on

Fridays and Saturdays. The applicant was allowed to continue opening until these hours as he had submitted the application for a transfer of the premises licence.

- The age of the victim in relation to the offence which had taken place at the premises was queried. The Police legal representative confirmed that the victim was 16 years of age and that the offence had taken place when she had visited the premises to apply for a job.
- In response to a query regarding the concerns raised by SECOs, PC Malcolm advised that the Police had received telephone calls direct from the charity in relation to the premises and concerns were raised, however, these were not documented. The Police felt that it had been important to include this within its representations.

### **Summing Up**

#### **Cleveland Police**

The Police confirmed that they had nothing further to add to the case they had presented. 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 Council's Legal Representative announced the Committee's decision.

### **DECISION**

**ORDERED** that the application for a Transfer of Premises Licence in relation to Mario's Pizza, 205 Linthorpe Road, Middlesbrough, Ref No. MBRO/PRO435, be rejected on the grounds of crime prevention, for the following reasons:-

- i) The applicant had been charged with two sexual offences, one of which the Committee was advised occurred at the premises.
- ii) The charity SECOs had expressed their concerns to the Police that young females going missing had been located at the premises.
- iii) It was noted that young females would frequent the premises after drinking on a night out and, therefore, would be in a vulnerable state.
- iv) The applicant also forged and displayed a food hygiene certificate and failed to appear in Court resulting in a warrant being issued.
- v) The Committee upheld the view of the Police that in order to prevent crime and disorder, the applicant should not be put in a position of authority or responsibility of holding the premises licence for the premises.

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

1. The application, on its own merits, taking into account the Crime and Disorder objective of the Licensing Act 2003.
2. Relevant Government Guidance, particularly in relation to:-
  - Prevention of Crime and Disorder, starting at paragraph 2.1.
  - Transfer of Premises Licences, starting at paragraph 8.66.
3. Middlesbrough Council's Licensing Policy particularly in relation to:-
  - Prevention of Crime and Disorder, pages 17 and 18.

4. The applicant had failed to attend and had not submitted any written representations in support of his application.
5. The written and verbal representations made by Cleveland Police.