

LICENSING SUB COMMITTEE B

A meeting of Licensing Sub Committee B was held on 18 November 2009.

PRESENT: Councillor Biswas (Chair); Councillors Lancaster and Williams.

OFFICERS: J Dixon, A Gray and T Hodgkinson.

ALSO IN ATTENDANCE: A Gray – Applicant.
Sergeant Higgins; PC Malcolm – Cleveland Police, Licensing Unit.
V Lamballe – Police Legal Representative.

**** DECLARATIONS OF MEMBERS' INTERESTS**

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

LICENSING ACT 2003: APPLICATION FOR PREMISES LICENCE – THE BEER VAN, UNIT 9 CAIRN COURT, FOREST GROVE BUSINESS PARK, RIVERSIDE PARK, MIDDLESBROUGH - REF. NO. MBRO/PR0162/065566

A report of the Head of Community Protection had been circulated outlining an application for a Premises Licence in relation to The Beer Van, Unit 9 Cairn Court, Forest Grove Business Park, Riverside Park, Middlesbrough, Ref No. MBRO/PR0162/065566, as follows:-

Summary of Proposed Licensable Activities

Supply of Alcohol (Off Sales)

Summary of Proposed Hours for Licensable Activities

11.00pm to 4.00am daily.

Timings to be extended to 11.00pm to 5.00am on specified dates and special events as detailed in the application.

Full details of the application and accompanying Operating Schedule and additional conditions agreed with the Principal Trading Standards Officer 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 presented the report in relation to an application for a Premises Licence received on 14 September 2009 in relation to The Beer Van, as outlined above. The applicant had advertised the application, as required by the Licensing Act 2003, in the Herald and Post on 1 October 2009, which was confirmed as being an accurate reflection of the facts by the applicant.

It was highlighted that the premises consisted of a single business unit on an industrial estate and that the applicant wished to offer alcohol sales on a delivery-only basis from the premises.

The Council's Principal Trading Standards Officer had not made representations in respect of the application due to the applicant agreeing to 25 conditions being added to the premises licence, should the application be successful. A copy of the conditions was appended to the application and operating schedule.

A representation was received from Cleveland Police on 9 October 2009 objecting to the application 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 2) to the submitted report.

Applicant in Attendance

The applicant was in attendance at the meeting and presented his case in support of the application.

The applicant wished to highlight that he intended to amend his application to state that he would not open on Sundays or Tuesdays as these tended to be quiet nights.

The applicant addressed the concerns expressed by the Police in their objection, as follows:-

- He did not agree that he was promoting irresponsible drinking by the comments he had made on a social networking site.
- He stated that the term he had used 'who is on it tonight' did not mean who is getting drunk tonight, as interpreted by the Police, but was merely a term used to ask 'who was out tonight'.
- With reference to his comments in relation to 'hangover foods' foods, the applicant explained that he was aware that students liked to get something for free or discounted and that he had been trying to establish the types of food students liked to eat the day after they had been for a night out. He had been looking into linking up with a local café to provide student discount in exchange for promoting each other's businesses.
- The applicant apologised for swearing on the social networking site and explained that he had done so on his own personal profile and not the profile he had established in relation to 'The Beer Van'.
- The applicant stated that he was not promoting the 'Carnage' event and took exception to the Police assumption that he would be willing to sell alcohol to those already under the influence. He stated that all of his staff would be trained in alcohol awareness and conflict management.
- The applicant stated that he was aware of another Company that promoted the Carnage event and had been selling alcohol to drunken people and produced a print-out from that Company's social network site account. The Council's legal representative advised that, in accordance with Regulation 18 of the Licensing Act (Hearings) Regulations 2003, all parties would need to be agreeable to new evidence being introduced at such a late stage. The Police confirmed that they were agreeable to the evidence being submitted and Members of the Committee confirmed that they were willing to accept the evidence and it was circulated to both parties.
- The applicant explained that he had initially intended to offer a £1.00 bonus to his drivers for each delivery they made. He stated that this was to assist in covering the cost of fuel and insurance for each driver's vehicle. He now understood that he would need to provide an appropriate vehicle, including insurance, for the drivers to use and had rescinded the offer of a £1.00 bonus per delivery.
- With reference to the Police comment that the applicant had said stated if he was unable to deliver in the Gresham Ward it did not matter as the Halls were in the University Ward and that was where all the wild parties were at, the applicant stated that he had not used those exact words. The applicant conceded that he had said 'the first year students go a bit wilder and they live in the Halls' and stated that his main target market would be students living in the Halls.
- The applicant advised that he had completed his NCPLH and understood the objectives of the Licensing Act 2003.

- The applicant felt that he was taking more steps than other similar businesses to ensure no underage sales were made or sales to those already under the influence of alcohol. He intended to operate the 'Challenge 21' scheme.
- The applicant accepted that his business was aimed at people who had already been on a night out but not necessarily drinking alcohol. He added that he would never sell to anyone heavily under the influence of alcohol.
- The applicant stated that other businesses similar to his also targeted people who had been out drinking and did not see why he should be penalised for being honest and stating that this was, in fact, his target market. He felt that he should be given the chance to compete with other similar businesses and to prove that he would run his business responsibly.
- The applicant stated that he had felt intimidated by the Police and that they had informed him they would object to his application even before it had been submitted.
- The applicant stated that he had not realised he could volunteer to add conditions to the Premises Licence should his application be successful and considered the Police to have been unhelpful.

Questions to the Applicant

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, the applicant confirmed that he had been at University for two years but was currently on a 'gap' year. He did not consider that his business venture would interfere with his studies too much and felt that it was just as important to gain experience in business.
- When asked if he had any experience of the licensed trade, the applicant replied that he worked at a Social Club and that his grandmother worked at a local off licence and was a Personal Licence Holder.
- It was highlighted that if the application was successful, the applicant would be the employer of drivers and it was queried whether he had any experience. The applicant stated that whilst he had no direct experience of being an employer he had friends who were self-employed and they had given him advice. He added that his manager at the Social Club had helped him with licensing issues and he was also receiving advice from Business Link.
- A Member of the Committee made reference to the conditions proposed by Trading Standards and considered that they would incur considerable capital outlay. The applicant was asked if he envisaged any difficulties in this regard. The applicant responded that he would not have any difficulties and advised he had purchased a van, to be used for deliveries, for £1,000 and that his only other expenses would be for stock, a £1,000 deposit for the Unit, plus rent and insurance.
- Reference was made to the installation of a CCTV system and it was queried whether the applicant had accounted for this. The applicant stated that he would be able to purchase a CCTV system from the internet for approximately £200.
- In response to a query, the applicant advised that whilst he had a good understanding of the accounting side of the business, he intended to employ the services of an accountant.
- In response to a query regarding the proposed Designated Premises Supervisor, it was clarified that this would be the applicant's grandmother and that she would leave her current employment should the application be successful. The applicant added that he did not yet have his Personal Licence although he had obtained his NCPLH.

- The applicant made several references to other similar businesses and the Council's legal representative reminded all parties that the Committee should only consider the application in question on its own merits.
- The applicant was asked whether he had any knowledge of the four licensing objectives to which he responded he had completed his NCPLH and had researched other businesses. He considered he had tried to go one step further in order to promote the licensing objectives.
- Reference was made to the application and the section on the four licensing objectives. It was considered that the applicant had not stated how he would meet the objectives. The applicant replied that he had created a website in relation to his business and that there would be a link for local residents to report a particular address if it was causing a nuisance. The applicant stated that he would warn the residents at that address and ban them from using his business and this would be one of the ways in which he would meet the prevention of public nuisance and prevention of crime objectives.
- A Committee Member stated that within the four licensing objectives section of the application there was no reference to staff training and the applicant was asked to expand on how he planned to arrange and deliver staff training. The applicant responded that he had not received much help from the Council when completing the application form and that Trading Standards had provided him with a list of conditions which included keeping a record of staff training. The applicant stated that he intended to prepare a training pack which would include training on licensing legislation. He added that he would also require all staff to undertake a course on alcohol awareness.
- The Principal Licensing Officer responded to the applicant's comment in relation to having not received help from the Council in completing his application form. The Principal Licensing Officer highlighted that the responsibility for training staff lay with the applicant as they would become the licence holder. The licensing section was always available to provide advice but it was not the responsibility of the Council to complete application forms.
- Members made reference to page 19, section c), promoting the public safety objective, and the applicant was asked if that was really what he believed to be the promotion of public safety. The applicant stated that it was a poor answer as he had not fully understood what was meant. In response to what he considered public safety to be, the applicant stated he now understood it more and considered that if you were to provide drunken people with more alcohol it would fuel trouble. He stated that all he could do would be to follow guidelines and if he was able to prevent crime and disorder and public nuisance it would increase public safety.
- The Principal Licensing Officer referred to the initial capital outlay required in starting up the business and queried whether the applicant believed he could purchase a CCTV system of the type mentioned for £200 as, from experience and speaking to other licence holders, such systems cost way in excess of £200. The applicant responded that he was confident he could purchase the CCTV for £200 and that he had a lot of experience in buying and selling from websites on the internet. He added that his uncle would be able to make up the system for him using various components which would keep costs lower.
- In response to a query, the applicant stated that he intended to employ four part-time staff and indicated that he would require employees to complete the appropriate NVQ training in alcohol awareness at his expense.
- In relation to his original proposal of paying delivery drivers £1.00 for each delivery made, the applicant was asked whether he had now withdrawn this incentive. The applicant confirmed that drivers would not receive any commission-based payments.
- In response to a query, the applicant confirmed that the business address was an industrial unit and would only be used for storage of stock and staff would be based there to answer the telephone to take orders.

- The applicant confirmed that orders could not be placed via social networking sites and could only be made by telephone.
- In response to a question, the applicant stated that the delivery van would only carry two orders at a time, therefore, a maximum value of approximately £60.00 worth of stock would be in the vehicle at any time.

The Police Legal Representative was afforded the opportunity to ask questions of the applicant and the following issues were raised:-

- It was highlighted that the applicant's business concept had substantially changed since July when he had advertised for delivery drivers who would be paid on a commission basis. The applicant was asked whether he had been aware, at that time, that he required a Premises Licence to operate his business and what had brought about the change in relation to the drivers. The applicant responded that he was aware of the requirement to hold a Premises Licence and had advertised for drivers in July as he was busy with his University studies and had wanted to put things in order. He stated that he had initially offered drivers the incentive of an additional £1.00 per delivery made in order to cover their vehicle running costs, however, when he had been made aware that drivers should not use their own vehicles for deliveries he had withdrawn the £1.00 bonus incentive and purchased a vehicle to be used for deliveries.
- It was queried whether the applicant had produced a training manual for employees. The applicant stated he felt sure he would be able to find an appropriate document on-line.
- Reference was made to the applicant's statement that college courses could be made available to drivers and it was queried where the courses were held. The applicant responded that Middlesbrough College offered courses in alcohol awareness at an approximate cost of £100.
- When asked how the applicant intended to fund such courses, he replied that he intended to use his own savings.
- Reference was made to the applicant's statement that he would be able to install a CCTV system for approximately £200 and to insure the delivery vehicle for all drivers and it was queried how he intended to sustain such payments. The applicant responded that it would cost approximately £2,000 to insure three drivers, fully comprehensive (two drivers plus himself) and this would be sustained through the business.
- In response to a query regarding staffing, the applicant confirmed that he and one other member of staff would be based at the premises to take orders over the telephone. He added that there would be no direct contact with customers at the unit.
- It was submitted to the applicant that the target market of his business was students coming home from a night out and it was suggested that, in reality, they would already be drunk. The applicant considered this to be a stereotypical statement and did not consider that all students who had been for a night out would be drunk.
- The Police Legal Representative reaffirmed that the Police were concerned in relation to the applicant's understanding of the four licensing objectives. The applicant replied that he did not know the objectives 'off by heart' but had obtained his NCPLH and considered having the objectives in place would make the Police and Council's jobs easier.
- The applicant was asked how his delivery vehicle would be identified. He responded that it would carry the company livery and he had been provided with an estimate of £80 for this to be done.
- Reference was made to the applicant's grandmother and it was queried whether he intended for her to work at the business premises and what her working hours would be. He advised that she would work from 11.00pm to 4.00am and that she was happy to do so. He added that he had two people waiting to start as delivery drivers.

- Reference was made to Carnage UK which the Police considered promoted irresponsible drinking. The applicant stated that he had participated in the event several times but had never gone home drunk afterwards. He stated that the events had been given bad press. He added that pubs did not give away free drinks and tended to put their prices up higher. He considered the Police to have a stereotypical view of the events and stated that whilst he did not totally agree with the events, it should not be considered that everyone who participated in the events did so to get drunk. The applicant considered that it was a normal night out for most people going into town to go from pub to pub but that Carnage was more of an image thing.
- The Principal Licensing Officer provided clarification in relation to Carnage insofar as Carnage was a Company that operated organised pub crawls all over the country aimed at students who paid a fee to participate. The Council and Police had expressed concerns regarding the events which had incurred bad publicity recently and there had been problems with underage sales.
- In response to a query, the applicant stated that Carnage organised approximately two events per year, however, he felt it had declined in popularity.
- A Member of the Committee referred to the application which requested an additional hour of trading for bank holidays and other events such as Carnage. The applicant stated that he had only requested the additional hour for Carnage event dates due to competition from other Companies that operated until 6.00am, but confirmed that he would withdraw the request for the additional hour on Carnage event dates should the Committee wish.
- The applicant was asked whether he intended to offer alcohol at cost price. The applicant confirmed that he no longer intended to offer discounted alcohol or provide free vodka jellies and had only advertised such offers in order to mimic other similar companies.
- The Council's legal representative referred to the Police representative's query in relation to the applicant's understanding of the four licensing objectives and asked the applicant if he understood what the objectives meant. The applicant replied that he understood that the licensing objectives were in relation to underage sales and keeping children from harm.
- A Committee Member referred to the applicant's earlier mention of a second company providing food. The applicant clarified that he had intended to promote that company through his own business and whilst he would have links with the Company it would be independent of him.
- In response to a query from the Principal Licensing Officer, the applicant confirmed that he had completed his NCPLH in June/July 2009 and had completed it prior to making the comments on the social networking site.
- The Principal Licensing Officer questioned whether the applicant felt he had acted responsibly when he had posted his comments and advertised that he would be giving away free vodka jellies on the social networking site, given that the NCPLH course covers promotion of the licensing objectives.
- A Member considered that the applicant appeared to be reliant on other people to do things for him, for example, his grandmother to work for him, someone else to obtain and install his CCTV system, someone to do his book-keeping, etc. It was queried where the applicant was obtaining his funding as he was only a student. The applicant stated that he would use money from tuition fees, approximately £3,000 a year from the Student Loan Company. He intended to employ a proper accountant to keep the books to ensure everything was done correctly.
- The applicant was asked whether he had any idea of the cost involved in employing someone to look after his accounts for the year. The applicant replied that he had not yet looked into it but had been advised by someone that it would cost approximately £500.

- The Principal Licensing Officer referred to the deposit required for the industrial unit as being £1,000 and queried how much rent the applicant would be paying thereafter. The applicant replied that the rent was £273 a month.
- A Member referred to the conditions requested by Trading Standards and queried in what situations would a driver refuse a sale of alcohol. The applicant responded that customers would place orders over the telephone and staff would follow a script, asking for ID to be made available when the driver arrived with the order. The driver would refuse the sale if he felt that the customer was causing trouble or their ID was not real and then write in the refusals book.

Relevant Representations

Cleveland Police

Cleveland Police were in attendance at the meeting to make representations in relation to the application.

PC Malcolm advised the Committee that he had been made aware of the Beer Van's account on a social networking site in June 2009 and had monitored it for two months.

PC Malcolm had spoken to the applicant over the telephone in August 2009 and discussion was around the applicant's proposed business plan. PC Malcolm stated he became concerned when he had asked the applicant if it would cause him any problems if he was not allowed to make deliveries in the Gresham Ward and he had responded that it made no difference to him because he wanted to deliver to the Halls of Residence as that was where all the wild parties were held. When PC Malcolm asked the applicant what he had meant by this statement, the applicant had apologised.

PC Malcolm stated that the applicant had given him a brief insight into the proposed alcohol delivery business but the applicant's business plan was unclear. PC Malcolm has advised that a meeting would need to be arranged to discuss in more detail.

Subsequently, a meeting between the applicant, PC Malcolm and Sergeant Higgins was held on 23 September 2009. PC Malcolm stated that the applicant's business model remained unclear in terms of how it would work and it appeared that he had not thought through many of his proposals. PC Malcolm confirmed that he and Sergeant Higgins had offered advice to the applicant but the applicant's remarks had concerned them as he was advertising/promoting his business to people coming in from a night out who would potentially be drunk already.

The Police Legal Representative asked PC Malcolm why the applicant had stated that he felt intimidated by him. PC Malcolm responded that the applicant was angry when he had telephoned him to discuss the application and indicated his willingness to add conditions to the licence but PC Malcolm had stated that the Police had the right to object. The applicant had stated that this was not fair and had put the phone down. This occurred prior to the meeting on 23 September.

Based on the four licensing objectives, PC Malcolm considered that granting the application would undermine each objective for the following reasons:-

- Protection of Children from Harm – Issues in relation to test purchases, especially if bonuses were being paid to drivers for each delivery (acknowledged that this had now been rescinded). Potential for deliveries to be made to underage people.
- Public Nuisance – Nuisance to neighbours with deliveries being made late at night.
- Prevention of Crime and Disorder – Main cause of anti-social behaviour was drunken people. Police were looking to prevent anti-social behaviour.
- Public Safety – Potential for drunken people to use the delivery service, fuelling further drinking and increasing concerns in relation to public safety.

Questions to those Making Representations

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

- The applicant responded to PC Malcolm's statement that he had put down the phone during their telephone conversation. The applicant alleged that PC Malcolm was not interested in what he had to say, therefore, he had stated that he was going to telephone the Council.
- PC Malcolm stated that during the telephone conversation he had advised the applicant that he would be objecting to the application but was happy to arrange to meet, or discuss, any potential business plan with the applicant. In the meantime, the applicant had spoken to the Council, however, PC Malcolm had advised the applicant he would assist where possible but it was the applicant's responsibility to complete the application form. He also advised the applicant that the Police had the right to object.
- The applicant considered it unfair that PC Malcolm had stated he would be objecting to the application before he had seen it. PC Malcolm responded that from the evidence he had seen on the social networking site, he considered that the application would potentially be operating without a licence. The applicant stated he did not feel that there was sufficient evidence to suggest that he would act irresponsibly.

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

- It was queried whether the Police felt that the applicant had addressed each licensing objective adequately in his application form. PC Malcolm responded that he did not feel the applicant had addressed the objectives in full. Sergeant Higgins added that the Police were predominantly concerned regarding the applicant's target market which was people returning from a night out, the vast majority having already consumed alcohol.
- The applicant stated that all other alcohol delivery businesses were aimed at the same target market. Sergeant Higgins responded that the Committee was considering his application and highlighted that the other businesses had been willing to invest £20,000 in the delivery vehicles and that the applicant was purely targeting his business at people who were returning from a night out.
- The applicant stated that he was being more responsible by selling later at night. Sergeant Higgins responded that this was the issue the Police had and did not agree that it was responsible to sell late at night.
- A Member of the Committee asked how much of a concern the proposed type of operation was to the Police. Sergeant Higgins stated that alcohol delivery services caused a number of concerns. One was that it brought alcohol to people's homes possibly some of whom were unable to go out to buy alcohol as they had alcohol problems. It was considered that this was exploiting vulnerable people. There was more chance of people being drunk the later into the night it was. Most people went to bed before midnight so people who were still drinking and having alcohol delivered to their homes in the early hours of the morning could potentially cause disturbance for neighbours. It was stated that these concerns could be minimised by adding appropriate conditions to a licence, as had happened with other similar applications, however, it was considered that the target market of this application was so specific that the Police considered conditions would not be appropriate in this case.

Summing Up

Applicant

The applicant summed up by stating that he should not be criticised for narrowing down his target market as he would not sell to people with alcohol problems or anyone causing trouble.

The applicant considered that statistics showed students did not cause as much trouble as other people who had been drinking.

The applicant stated he was focussing his business on a gap in the market and that his trading hours would not be starting as early or finishing as late as some similar companies. The applicant stated that he had requested a terminal hour of 4.00am in order to compete but would now be happy to trade until 3.00am and would not operate on Tuesdays or Sundays as they were quiet days. He added that older people tended to go out on Sundays and he was targeting a younger market.

Cleveland Police

The Police legal representative summed up by stating that the Police were concerned with the applicant's business model and felt that by requesting a licence for the hours 11.00pm to 4.00am, the applicant was focussing on people whose night had long since begun, not people who were having a night in. The Police considered that the applicant was targeting people who had been out drinking and wanted to 'top up'.

The applicant's attitude was another concern to the Police due to his comments on a social networking site and his attitude during the meeting with Police Officers when he had talked about wild parties and then tried to minimise his comments. The applicant was providing a rapidly changing business model. He had mentioned wanting to mimic other Companies then stated that he wanted to be different.

The Police considered the applicant to have a lack of understanding around the licensing objectives and he had been unable to state what the objectives were. The applicant lacked experience, understanding and a cohesive business plan. The Police considered that the applicant intended his business to be a money-making venture with little regard for anyone else and requested that the Committee refuse the application.

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 Premises Licence in respect of The Beer Van, Unit 9 Cairn Court, Middlesbrough, Ref No. MBRO/PR0162/065566 be refused.

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

1. The case presented by the applicant.
2. The representations made by Cleveland Police, both in writing and verbally at the meeting.
3. The four Licensing Objectives of the Licensing Act 2003.
4. Relevant Government Guidance, particularly in relation to:-
 - Prevention of Public Nuisance, starting at paragraph 2.32, Annex D.
 - Prevention of Crime and Disorder, starting at paragraph 2.1, Annex D.
 - Protection of Children from Harm, starting at paragraph 2.41, Annex D.
 - Public Safety, starting at paragraph 2.19, Annex D
5. Middlesbrough Council's Licensing Policy particularly in relation to:-
 - Prevention of Public Nuisance, Pages 10 to 15.

- Crime and Disorder, Pages 17 and 18.
- Protection of Children from Harm, Pages 19 and 21.
- Public Safety, Pages 16 and 17.

Members had made their decision based on the following reasons:-

1. The applicant had failed to demonstrate a clear understanding of the four licensing objectives of the Licensing Act 2003.
2. The applicant had failed to adequately demonstrate how he would promote the four licensing objectives of the Licensing Act 2003.
3. The applicant had not demonstrated that he had an adequate business plan in place.
4. The Committee was concerned at the nature of the postings which the applicant had made on a social networking site promoting his business pending his application for a premises licence. This was of particular concern as the applicant clearly stated at the Hearing that he intended to use the social networking site as a promotional source for his business should the application be successful.

The applicant was reminded of the right to appeal to the Magistrates Court within 21 days of the date of the decision.