

## LICENSING SUB COMMITTEE B

A meeting of Licensing Sub Committee B was held on 12 August 2011.

**PRESENT:** Councillor Biswas (Chair); Councillors Harvey and Morby.

**OFFICERS:** B Carr, A Gray and T Hodgkinson.

**ALSO IN ATTENDANCE:**

S Taylor – Pallister Park Community Council (Agenda Item 4)  
 C Hughes – Community Worker, Pallister Park & Town Farm (Agenda Item 4)  
 P Waller – Applicant (Agenda Item 4)  
 Joan Smith – Cleveland Police Legal Representative (Agenda Item 5)  
 Sgt P Higgins – Cleveland Police (Agenda Item 5)  
 T Shield, Legal Representative for the Premises Licence Holder. (Agenda Item 5)  
 A Thurwell – Tenant – Brambles Farm Hotel (Agenda Item 5)  
 K McGowan - Operations Director – Trust Inns (Agenda Item 5)  
 B Hawthorne – Area Manager – Trust Inns (Agenda Item 5)

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

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

**LICENSING ACT 2003: APPLICATION FOR VARIATION OF PREMISES LICENCE - 257 CARGO FLEET LANE, MIDDLESBROUGH - REF. NO. MBRO/PR0210**

A report of the Assistant Director Community Protection had been circulated outlining an application to vary the Premises Licence in relation to 257 Cargo Fleet Lane, Middlesbrough, Ref No. MBRO/PR0210, as follows:-

Summary of Current Licensable Activities

|                              |                    |  |
|------------------------------|--------------------|--|
| Sale of Alcohol (off Sales). | Monday to Saturday | 8.00am to 11.00pm                        |
|                              | Sunday             | 10.00am to 10.30pm                       |
|                              | Good Friday        | 8.00am – 10.30pm                         |
|                              | Christmas Day      | 12 noon to 3.00pm &<br>7.00pm to 10.30pm |

A copy of the current Premises Licence was attached at Appendix 1 to the report.

Summary of proposed variation

- (i) To amend the plan to show the proposed changes to the layout of the premises
- (ii) To seek approval to amend the Licensing hours as follows:-

Monday to Sunday          6.00am to 10.00pm

Full details of the application and accompanying operating schedule were attached at Appendix 2 to the report along with additional conditions agreed with the Police which were attached at Appendix 3 to the report.

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

**Details of the application**

The Principal Licensing Officer presented the report. The applicant advised that the request for the amendment to the licensing hours should read 6.00am – 9.00pm. The report provided background information regarding the premises, which consisted of a General Dealer, Newsagent and Off Licence situated in a residential area serving the local community.

The report outlined that, on 22 June 2011, an application was received from the applicant to vary the premises licence for 257 Cargo Fleet Lane, Middlesbrough and that the applicant had advertised the application, as required by the Licensing Act 2003, in the Evening Gazette on 27 June 2011.

On 14 July 2011 a representation was received from Pallister and Town Farm Community Council, objecting to the application to vary the licence on the grounds of the prevention of public nuisance and crime and disorder, which was attached at Appendix 4 to the submitted report.

Members were advised that the Licensing Office had contacted the objectors to advise that the applicant already had permission to sell alcohol from 8.00am in the morning and consequently the application only related to the additional hours from 6.00am – 8.00am. They were also advised that the objections also had to relate to the four licensing objectives.

Further information was received from the Community Council on 22 July 2011 in the form of an email which detailed the fact that the premises were located in a ward which was viewed as being amongst the worst 10% of the Lower Layer Super Output Area (LSOAs) in the country for crime.

It was highlighted that the Government Guidance issued under section 182 of the Licensing Act 2003 stated that shops, stores and supermarkets were free to provide sales of alcohol for consumption off the premises at any times when the retail outlet was open unless there were good reasons, based on the licensing objectives for restricting those hours.

### **Applicant in Attendance**

The applicant presented the case in support of his application.

The applicant advised that should the application be approved, he had agreed with the Police Licensing Officers for the following additional conditions to be included on his licence:-

- (i) Only UK 'photo card style driving licence, valid non-expired passport and PASS approved proof of age ID to be accepted as a form of identification at the premises;
- (ii) A refusals book to be maintained and kept at the premises at all times;
- (iii) Signage stating that it is an offence to sell alcohol to persons under 18 years of age which are visible in the public areas of the store;
- (iv) Digital colour CCTV to cover both internal and external areas of the premises. This will be recording at all times, retain footage for a period of 31 days and be able to produce copied footage on a disc to be made available upon reasonable requests of members of police and other responsible authorities. There shall always be a member of staff on duty, who can operate the CCTV system including copying footage;
- (v) An incident book to be maintained and kept on the premises at all times;
- (vi) No alcohol to be stocked within arms reach of the entrance/exit door.

As a consequence the Police had not offered any objections to the proposed variation of the licence. Members were advised that the applicant had held a licence for the premises at 257 Cargo Fleet Lane for over 22 years and during that time he had never been prosecuted for failing to meet any of the licensing objectives.

The applicant stated that the proposed variation of the licence was to bring the hours for selling alcohol in line with the hours the premises were open for trading. He advised that the premises attracted up to 1000 customers a week and 800 of the customers were local people. Members were advised that the applicant had bought the freehold for the premises. He had a five year plan to modernise the premises and planned to offer an increased range of products for customers. All of his staff had worked for him for nine years or more and all of them lived locally.

The applicant advised that he was a responsible retailer and ensured that all his staff received regular training. Members were also advised that the applicant was the DPS and that both he and his son held a Personal Licence.

With regard to the amended layout of the premises, the applicant advised that he was trying to create a designated area for the alcohol to ensure it was easy to police and it was stored away from the general dealer part of the shop.

The applicant advised that the entries in his refusals book related mainly to requests from adults to buy alcohol on a morning outside the permitted licensing hours. He stated that he had not experienced any problems with children congregating outside the premises on a morning.

### **Questions to the applicant**

- In a response to a question from one of the objectors regarding whether there was a need to sell alcohol 15 hours a day, the applicant advised that the reason he had requested the additional 2 hours from 6.00am – 8.00am was because he had been getting frequent requests for alcohol sales during that period.
- In response to a question from one of the objectors regarding opening hours for the premises, the applicant advised that proposed opening hours for the premises would be from 6.00am – 9.00pm.
- In response to a question regarding who would be buying the alcohol from the premises, during the extended hours, the applicant advised that the alcohol was sold to people over the age of 18, usually to people working shifts. He advised that the premises did not sell alcohol to anyone who appeared to be intoxicated and he did not promote the sale of Alco pops.
- In response to a query regarding what would happen if an adult bought alcohol on behalf of a child, the Chair advised that it was a crime for an adult to buy alcohol on behalf of a child and enforcement penalties were very high

### **Relevant Representations**

#### **C Hughes – Community Worker & S Taylor Vice Chair Pallister Park Community Council**

The objector advised that she was representing the local Community Council who had discussed the application at their meeting on 13 July 2011 and subsequently decided to object to the application.

Members were advised that the premises were located in a Ward where according to the Index of Multiple Deprivation it was within the top 10% of LSOAs in the country for crime. Residents had indicated that there was enough alcohol fuelled crime in the area. One of the objectors lived in sheltered accommodation and had witnessed youths drinking alcohol.

The objectors also advised that people gathered on a bench near to the premises on a morning and police were currently investigating this issue. The CCTV was not very good as it was hidden by foliage. The objectors highlighted that Middlesbrough's Community Strategy stated that the Council was committed to reducing alcohol consumption in Middlesbrough and extending the selling hours would exacerbate problems. Members were advised that one of the objectors had anecdotal evidence regarding how she had suffered anti social behaviour because of alcohol fuelled behaviour.

The Principal Licensing Officer clarified whether the anti social behaviour problems were more prevalent on an evening or a morning as the application for the variation was also to reduce the closing time for the premises on an evening.

The objectors advised that anti social behaviour occurred from late at night up till 6.00am in the morning in a park located not far from the premises and in a field at the back of Cleveland View Nursing Homes.

A Member queried what evidence the objectors had that the extended hours would increase anti social behaviour. The objectors advised that it was the perception of residents. The Member commented that it appeared to be perception and hearsay. The objectors advised that statistics

proved that it was more than hearsay and that there was ample evidence that alcohol was causing problems in the area.

### **Summing Up**

#### The Applicant

The applicant advised that he could if required register details of alcohol sales for a period of time if required. He advised that he was willing to work with residents to ensure that his premises were not the cause of any problems.

#### C Hughes – Community Worker & S Taylor Vice Chair Pallister Park Community Council

The objectors did not have anything to add to their representations.

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 in respect of the application to Vary the Premises Licence in relation to 257 Cargo Fleet Lane, Middlesbrough, Ref No. MBRO/PRO210, the Committee made the following decision:

- i) To grant the application to amend the plan.
- ii) To grant the application to amend the licensing hours from 6.00am to 9.00pm - Monday to Sunday, subject to the conditions previously agreed with the Police.

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

1. The application was considered on its own merits, taking into account the four Licensing Objectives of the Licensing Act 2003.
2. Consideration was given to the Government Guidance of the Licensing Act 2003.
3. Consideration was given to Middlesbrough Council's Licensing Policy.
4. Consideration was given to the case made by the Applicant.
5. Consideration was given to the case made by representatives of the Community Council.

### **LICENSING ACT 2003: REVIEW OF PREMISES LICENCE – BRAMBLES FARM HOTEL, LONGLANDS ROAD, MIDDLESBROUGH - REF. NO. MBRO/PR0259**

A report of the Assistant Director Community Protection had been circulated outlining an application to Review the Premises Licence in relation to The Brambles Farm Hotel, Longlands Road, Middlesbrough, Ref No. MBRO/PR0259, as follows:-

#### Summary of Current Hours of Licensable Activities

|                                 |                    |  |
|---------------------------------|--------------------|--|
| Sale of Alcohol                 | 10.00am – 11.30pm  | Monday to Sunday   |
|                                 | 10.00am – 12.30pm  | Friday, Saturday, Sunday and Monday at Bank Holiday Weekends, Christmas Eve and Boxing Day |
| All other licensable activities | 10.00am – Midnight | Monday to Sunday   |
|                                 | 10.00am – 1.00am   | Friday, Saturday, Sunday and Monday at Bank Holiday Weekends, Christmas Eve and Boxing Day |

A copy of the current Premises Licence was attached at Appendix 1 to the report.

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

### **Details of the Application**

The Principal Licensing Officer reminded Members that an application had been received from Cleveland Police, on 30 June 2011, to Review the Premises Licence in relation to The Brambles Farm Hotel, Longlands Road, Middlesbrough on the grounds of the prevention of crime and disorder and the prevention of public nuisance. A copy of the application was attached at Appendix 2 of the report.

### **Relevant Representations**

#### **Cleveland Police**

The Police Legal Representative referred to the evidence contained in their application to review the licence attached at Appendix 2 of the report.

In December 2010, Cleveland Police had received information that the premises were opening and selling alcohol outside their permitted licensing hours. As a consequence, a joint meeting was held with the Police, the Area Manager for Trust Inns and the tenant regarding these concerns and to discuss the appointment of a new DPS for the premises.

On 7 January 2011, a burglary had been reported to Cleveland Police when the premises CCTV and hard drive had been stolen. Cleveland Police Licensing Officers had not been informed that the CCTV had been stolen and were unaware of this fact until recently. The Licensing Police had also subsequently discovered that the system had been kept on top of a fridge, contrary to the condition on the licence which stated that the CCTV should be kept in a locked and secure cabinet.

On 12 April 2011, Police Officers from Langbaugh CID visited the premises to request a copy of CCTV footage to assist in the investigation of a murder enquiry. The tenant had informed the Police that the CCTV system had been stolen in January 2011. As a consequence the Cleveland Police Licensing Officers visited the premises on 13 April 2011 to speak with the DPS. When Officers eventually managed to speak to the DPS her attitude was dismissive and she denied any responsibility for the premises or the CCTV system and she advised the officers that they should contact the tenant. The Police Licensing Officers contacted the tenant and she also denied any responsibility for the CCTV and advised that the theft of the CCTV system had been reported to Trust Inns Ltd, the Premises Licence Holder.

A Section 19 Notice (Criminal and Justice and Police Act 2001) was served on the premises and they agreed to close down voluntarily until the problem was rectified. Cleveland Police Licensing Officers also spoke to the Area Manager from Trust Inns Ltd and advised him to notify the Police once the CCTV system had been replaced.

The Cleveland Police Licensing Officers visited the premises on 20 April 2011 and noted that a CCTV system had been put in place however it was located on top of a fridge which was contrary to the licensing condition. On both occasions that the Police visited the premises neither the DPS nor the tenant was present.

On 3 June 2011, following a routine licensing check of the premises, children were found to be present on the premises at 9.40pm contrary to the licensing condition. The tenant was advised to remove the children from the premises.

Members were advised that the main concern of the Police was the lack of control and responsibility for the premises. Sgt Higgins advised that the DPS did not appear to have any involvement in running the premises. The situation was that the tenant was running the premises and was in day to day control of them.

It was highlighted that the same situation had occurred in 2009 when the DPS at that time had premises in Leeds and the tenant had assumed responsibility for the day to day control of the premises. There was also a history of problems associated with the CCTV system. Going back to 2006 there had been four occasions when the condition in relation to CCTV had been breached. It was evident to the Police that the premises required strong management and a DPS who would assume day to day responsibility for the premises.

Sgt Higgins was asked if the Police had tried to engage with the Premises Licence Holder. Members were advised that the matter was brought to the attention of the Premises Licence Holder in 2009 in a meeting between the tenant and the Area Manager and at that time the Police were advised that the tenant would become the DPS. The Police advised that they had a constructive relationship with the tenant and the Operations Manager and they did not have an issue with Trust Inns Ltd.

### **Questions to the Police**

- In response to a query from the Premises Licence Holder's legal representative Sgt Higgins advised that there was generally no issues in relation to disorder at the premises;
- In response to a query whether the alleged murder was linked to the premises Sgt Higgins advised that there was no suggestion that it was linked to the premises;
- In response to a query whether the Police suggested that the tenant should become the DPS, Sgt Higgins advised that the issue was raised in the meeting in 2009. Sgt Higgins advised that in Oct 2010 there was a change of DPS for a short period, but after suspicions of out of hours drinking the DPS reverted to Jennifer Bradley;
- In response to a query regarding the occasion where the children were present at the premises after 9pm., Sgt Higgins couldn't comment if the occasion was a private function as he was not present;
- In response to whether the Police would be happy for the current tenant to remain, the Police did not object to the tenant but stated the premises needed a responsible DPS.

### Legal Representative for Premises Licence Holder

The Legal Representative for the Premises Licence Holder advised that the company owned 600 premises and held the premises licence for the vast majority of them. He stated that the company were very rarely involved in Review procedures and viewed their responsibility very seriously. He explained that tenants were autonomous and usually employed their own DPS.

Members were advised that the existing DPS would not be continuing in that role as an alternative DPS had been identified. Trust Inns were waiting for confirmation from the Police regarding the suitability of the new DPS.

With regard to the allegation of out of hours drinking, the legal representative advised that he would refute the allegation as no alcohol was being sold. It was simply that people were waiting for taxis.

In relation to the CCTV system, Members were advised that there had been an active CCTV system at the premises in a secure cabinet for some time. He advised that there had never been an incident at the premises where CCTV footage had been required. There had been no underage sales and no anti social behaviour. He acknowledged that the CCTV system was not replaced as quickly as it should have been because of a breakdown in the ordering system.

In relation to children being on the premises after 9.00pm, he advised that the condition had not been breached. The condition stated that children should not enter the premises after 9.00pm and the children were already on the premises at 9.00pm as the function had overrun. The function suite had not been used as it was not covered by CCTV and none of the children present were drinking alcohol. In relation to the derogatory remarks referred to in the Police statements, he advised that the tenant had addressed this matter with the customers concerned.

The legal representative advised that the premises were well run and that the tenant had been let down by the DPS.

### Questions to the Premises Licence Holder's Legal Representative

- In response to a query from the Councils Legal Representative regarding whether the current DPS had formally resigned, the Premises Licence Holder's legal representative advised that the DPS had not yet resigned as the company were waiting for confirmation from the Police regarding the suitability of the new DPS;
- In response to a query from a Member regarding the wording of the CCTV condition, the Premises Licence Holder's legal representative advised that it would be difficult for the Council to prosecute when the condition says should have CCTV rather than must. He accepted that the premises should have had the CCTV system and that it should have been replaced more quickly;
- In response to a query about the availability of the DPS and the problems making contact with her, the Area Manager from Trust Inns advised that they had not realised that the problem was as bad as it was until after a meeting with PC Bryan and PC Price. He advised that they had built up a good working relationship with the Police;
- In response to a query whether the Premises Licence Holder had learned anything after the problems associated with the premises in 2009, Members were advised that the company would need to check their files. The premises were previously handled by a Management Company;
- In response to a query regarding the number of staff who held a Personal Licence, Members were advised that only the DPS currently held a Personal Licence;
- In response to a query regarding why boxers used the premises, the tenant advised that they used a converted gym at the rear of the premises but did not enter the gym through the pub as there was an alternative entrance;
- In response to a query as to why the CCTV system was kept on top of the fridge, members were advised that the system was previously kept in a locked room, but the door to the room had been removed;
- In response to a query regarding the employment and qualifications of staff, the tenant advised that she had obtained all the NCPLH qualification and confirmed that most of the staff were already in place when she was appointed. She confirmed that the DPS intended to resign her position and that the DPS would no longer be employed at the premises.

The tenant advised that on the occasion that the Police visited and she was not present at the premises, it was on a Wednesday which was usually her day off.

Sgt Higgins advised Members that when interviewed by Police officers, the current DPS had advised that she was no longer working at the premises and that was the reason why the Police had requested a review of the licence. He advised that the Police would not be objecting to the new DPS proposed by the Premises Licence Holder; however the Police would like to be assured that the DPS would have day to day responsibility and control of the premises and have a regular presence.

### Summing Up

#### Cleveland Police

The legal representative for Cleveland Police referred Members to Points 9.6 and 9.7 of the Council's Licensing Policy Statement of Principles in relation to the Licensing Act 2003, which stated that the Licensing Authority should encourage applicants to ensure that the DPS or a Personal Licence Holder was on the premises at all times when alcohol was being sold to ensure that there was an accountable responsible person present.

The legal representative also referred to point 2.13 of the Home Office Guidance issued under section 182 of the Licensing Act 2003 which stated that the DPS was the key person who would usually be charged with day to day management of the premises.

Members were also requested to remove the current DPS because the DPS had to be somebody who was in control and accepted responsibility for the management of the premises.

### Premises Licence Holder's legal representative

The Premises Licence Holder's legal representative pointed out that Paragraph 9.6 of the Council's Licensing Policy Statement of Principles in relation to the Licensing Act 2003 referred to certain high risk town centre premises.

Members were advised that the Premises Licence Holder wanted to operate a well run premises that did not cause issues. He advised that there had been no evidence to suggest that there had been any public disorder, anti social behaviour, underage sales or public nuisance at the premises.

The legal representative accepted that things could have been better, but stated that the tenant was running the premises very well, but she had been let down by the DPS. He stated that the new DPS had been identified and the Police had indicated that they did not have any objections to the new DPS. The premises were well run and he asked Members to take this into account when making their decision.

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**

The Committee decision was to permit the continuation of the Premises Licence in relation to the Brambles Farm Hotel, Longlands Road, Middlesbrough, Ref No. MBRO/PRO259, subject to the following conditions:

- i) That the current DPS be removed;
- ii) That condition no.5 of the Prevention of Crime and Disorder be amended as follows - "*The premises must be covered by colour CCTV and all footage must be kept in a locked and secure cabinet. Such recordings shall be retained for a period of 30 days and made available within a reasonable time upon request by the police.*"
- iii) That condition no.2 of the Protection of Children from Harm be amended as follows - "*Children under the age of 16 shall not be permitted to remain on the premises after 9.00pm.*"
- iv) That a further condition be added to the premises licence as follows - "*The Area Manager to make quarterly visits to the premises*".
  1. The application was considered on its own merits, taking into account the four Licensing Objectives of the Licensing Act 2003;
  2. Consideration was given to the Government Guidance of the Licensing Act 2003;
  3. Consideration was given to Middlesbrough Council's Licensing Policy;
  4. Consideration was given to the case made by the Applicant;
  5. Consideration was given to the case made by the premises licence holder;
  6. The Committee considered that the Designated Premises Supervisor had not been in day to day control of the premises and this fact had not been disputed by either party;
  7. The Committee considered that there had been a lack of communication between the premises licence holder and the tenant of the premises.