

LICENSING SUB COMMITTEE C

A meeting of Licensing Sub Committee C was held on 13 November 2006.

PRESENT: Councillor B Taylor (Chair); Councillors Lancaster and Heath.

OFFICIALS: J Dixon, A Gray, J Hodgson and P Robertson.

PRESENT AS AN OBSERVER: N Wilson, Legal Services.

ALSO IN ATTENDANCE: C Harvard, Forth & Co. – Legal Representative for the Applicant.

R Hameed - Applicant.

J Miller, Project Co-ordinator, - Hameed Holdings.

Sgt. P Higgins – Police Licensing Unit.

M Nevison – Legal Representative for the Police.

**** DECLARATIONS OF MEMBERS' INTERESTS**

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

LICENSING ACT 2003: APPLICATION FOR VARIATION OF PREMISES LICENCE - THE ARENA, 208 NEWPORT ROAD, MIDDLESBROUGH - REF. NO. MBRO/PR0354/19905.

A report of the Head of Community Protection had been circulated outlining an application for a Variation of the Premises Licence for The Arena, 208 Newport Road, Middlesbrough, Ref No. MBRO/PR0354/19905.

Summary of Current Licensable Activities

Sale by retail of alcohol for consumption on and off the premises.

Recorded music, live music and facilities for dancing.

Summary of Current Hours of Licensable Activities

Live music, recorded music and facilities for dancing:-

7.00pm to 2.00am – Monday to Saturday.

12.00 noon to 12.30am – Sundays

12.00 noon to 2.00am - All Sundays preceding Bank Holidays (except Easter Sunday)

Sale of Alcohol:-

11.00am to 11.00pm – Monday to Saturday

12.00 noon – 12.30am – Sundays

12.00 noon – 2.00am – All Sundays preceding a Bank Holiday (except Easter Sunday)

Summary of Proposed Variation of Licensable Activities

Plays, films, indoor sporting events, live music, recorded music, performance of dance, provision of facilities for making music, provision of facilities for dancing, supply of alcohol and late night refreshment.

Removal of all embedded restrictions transferred to the licence during the previous conversion of licence.

Summary of Proposed Variation to Hours for Licensable Activities

11.00am to 7.00am daily – supply of alcohol.

11.00am to 7.30am daily – all other licensable activities.

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, accompanied by his Legal Representative and Project Co-ordinator, was present at the meeting and confirmed that copies of the report and Regulation 6 Notice had been received.

Details of the Application

The Senior Licensing Officer presented the report which was confirmed as being an accurate reflection of the facts by the applicant.

The report outlined that, on 29 July 2006, the applicant had made an application to vary the licence, as stated above, and had advertised the application, as required by the Licensing Act 2003, in the Herald and Post on 4 October 2006.

Two representations had been received in relation to the application and were detailed in the report.

A representation was received from Cleveland Police on 13 October 2006 which objected to the application on the grounds of the prevention of crime and disorder, prevention of public nuisance and the protection of children from harm and was attached at Appendix 2 to the report.

A representation was received from Linda Cummins, Principal Environmental Health Officer (Noise Team) which objected to the application on the grounds of the prevention of public nuisance and was attached at Appendix 3 to the report.

Members were advised that following discussion prior to the meeting, the applicant had agreed to amend the submitted Operating Schedule to include seven of eight proposed conditions requested by Environmental Health, however, their representation remained as agreement was not reached in relation to the final condition. With the Chair's permission, a copy of the proposed conditions was circulated to those present.

In addition, the applicant had agreed to amend the submitted Operating Schedule to include ten of 13 proposed conditions requested by the Police, however, their representation remained as agreement was not reached in relation to three of the conditions and they remained opposed to the proposed variation in hours for the premises.

It was noted that further documentation had been submitted by the applicant's legal representative on 7 November 2006, which contained the following information:-

- Report by Acoustic Solutions dated 1 November 2006.
- Email correspondence between the Applicant and the Council's Planning Department date 1 November and 6 November 2006.
- The Final Report of the Council's Overview and Scrutiny Board - Night Time Economy, dated 14 June 2005.
- A summary of the review of the night time economy produced by the Council's Economic Regeneration and Transport Scrutiny Panel.
- Club Scan brochure.
- Social Responsibility Standards for the Production and Sale of Alcoholic Drinks.

In addition, the applicant had submitted further information on 10 November 2006, including a variety of Home Office and good practice documents, in support of his application.

The Committee's attention was drawn to two further documents circulated at the meeting with the permission of the Chair. The first was an Addendum to the Environmental Noise Assessment carried out by Acoustic Solutions in respect of the premises, the second was a reference in respect of the applicant submitted by Mrs Croft, Middlesbrough Council's Entertainment and Events Manager and Mr Lindsey, Manager at the Middlesbrough Theatre.

Applicant in Attendance

The applicant, Mr Hameed, was in attendance at the meeting accompanied by his legal representative, Mr Harvard and his Project Co-ordinator, Mr Miller. The Legal representative presented the case in support of the application.

The Committee was informed that the applicant had considerable involvement with the late night entertainment industry in Middlesbrough and was a member of various voluntary organisations, including the Crime and Disorder Partnership, Middlesbrough Night Time Steering Group, Middlesbrough Pubwatch (of which he was Chair) and the Town Centre Company. It was noted that the applicant had operated the Bar Fresco premises and, in partnership with his brother, the Absolute Hush premises in the town centre for the past seven and four years respectively. The applicant had now disposed of these premises. The applicant had also been approached by the Council's Events and Entertainment Manager to provide assistance in an advisory capacity.

It was stated that the applicant had requested a terminal hour of 7.30am as he was satisfied that there would be sufficient demand from people who did not want to go into the town centre and from shift workers, etc. The applicant wished to bring the building back into use and was willing to invest at least £1 million in the building and considered it an opportunity to promote Middlesbrough's night time economy and attract inward investment.

The Legal Representative went on to address the Committee in relation to the representations submitted in respect of the application, as follows:-

1. Representation from Environmental Health - The Committee was advised that the applicant had commissioned Acoustic Solutions to undertake an acoustic assessment of the premises following the representation submitted by Environmental Health which recommended that the assessment be carried out prior to the hearing. As requested, the report had recorded likely noise levels emitted from the premises from the nearest occupied dwelling, which had been identified by Environmental Health as being a flat above the 24 hour veterinary hospital at 204 Newport Road.

The applicant had sought confirmation from the Council's Planning Department with regard to the uses for the buildings in the vicinity of the Arena and it had been confirmed that none of the surrounding buildings had residential use or plans to change the use to residential.

The Legal Representative confirmed that the applicant had agreed to comply with seven of the conditions proposed by Environmental Health in relation to noise limitation. However, the applicant did not accept the final condition in relation to entertainment noise not raising the ambient noise level and not being audible inside nearby noise sensitive premises after 11.00pm. It was stated that there had been no noise complaints whilst the premises operated under the previous owner and that the applicant was only aware of one complaint being made in the past. It was further stated that the applicant would be willing to co-operate fully with Environmental Health should ongoing monitoring in relation to noise be deemed necessary once the premises commenced operation.

2. Representation from the Police – The Committee was advised that the applicant was willing to work with the Police and was in agreement with numbers 1 – 6 of the conditions they proposed in relation to CCTV, drinks promotions, incident book and drugs policy. It was noted that the applicant would, in addition, keep a record of training provided to employees. The applicant was not in agreement with condition number 7. relating to four registered door staff being on duty from 8.00pm until closing, with an additional member of door staff for every 100 persons when there was more than 300 patrons on the premises as he felt it to be excessive and difficult to implement from an operational point of view. The applicant was happy to agree to conditions numbered 8 to 11 in relation to refusals, operation of the Challenge 21 scheme, being a member of the Pubwatch Scheme and for no drinking vessels being allowed to leave the premises. The applicant was not in agreement with conditions 12 and 13 stating no under 18s be allowed on the premises after 7.00pm and that they must be accompanied by an adult at all times as he planned to host special under 18 events, including dance classes.

Applicant

The applicant, Mr Hameed, was afforded the opportunity to address the Committee and spoke in support of his application. He provided further background information in respect of himself, the premises and his application, stating that he hoped to help reduce disorder in Middlesbrough, not add to it, and had carried out research in other parts of the country in connection with the night time economy.

The applicant made reference to the Final Report of the Overview and Scrutiny Board on Middlesbrough's night time economy and quoted various statistics from a survey it had undertaken which indicated that people did not want to go into the town centre at night for several reasons including personal safety. The survey had also indicated that people wanted different forms of entertainment and the applicant outlined his proposals to provide diverse forms of entertainment at the premises including: poetry readings, comedy nights, dance classes, performing arts, plays, films and fashion shows as well as live music.

The applicant advised that he intended to invest approximately £1.25 million in the Arena and hoped to create around 80 part time jobs as a result.

In an attempt to help alleviate the Police's concerns regarding patrons from late night town centre premises travelling to the Arena during the early hours of the morning, the applicant advised that he intended to instigate a cut off time of 3.00am whereby no-one would be admitted to the premises unless they were a member of the club and in this respect he intended to introduce a modern ID scanner to read specific data and intended to implement the Challenge 21 scheme. The applicant advised that he proposed to offer a free bus service from nearby towns to the venue, for example Redcar or Darlington, on special evenings but, in response to Police concerns, would not provide large coaches from Middlesbrough town centre.

Questions to the Applicant

Members of the Committee, and those making representations, were invited to ask questions of the applicant and the following issues were raised:-

- In response to a query in relation to whether the cost of employing 80 staff would impact upon the prices charged by the venue, the applicant advised that he had devised a business plan and intended to provide an "affordable night out" as he considered people would be willing to pay affordable prices for varied entertainment and he confirmed that he would not promote the use of cheap drinks promotions.
- In answer to a question regarding the type of entertainment to be provided between the hours of 2.00am and 7.30am, the applicant advised that this would vary from night to night and week to week but would predominantly include live music and dancing to music between those hours.
- A query was raised in relation to the proposed membership scheme and 3.00am cut off point. The applicant informed that the proposals were to help allay the Police's concerns that people leaving the town centre would use the Arena as a final drinking venue as admission would not be gained after 3.00am unless they were a member of the club.

Relevant Representations

Environmental Health - Representations

Mr Robertson, Principal Environmental Health Officer, was in attendance at the meeting and was invited to present the representations against the application.

Mr Robertson advised that he had been involved with the Arena in the past, under different ownership, and confirmed that Environmental Health had held pre-application discussions with the applicant and provided him with evidence of previous noise complaints upon his request.

The Committee was informed that, under previous ownership, the Environmental Health Noise Team had been heavily involved with residents of nearby Union Street, Greta Street and Glebe Road who had lodged noise complaints each time the Public Entertainment Licence (under the old Regulations) had come up for renewal. Significant acoustic works had been carried out on the building to stop noise escaping and it was confirmed there had been no further complaints since that time, however, the building had not been in operation for the past year and Environmental Health were aware of the potential for noise complaints.

The Environmental Health Officer made reference to the Acoustic Noise Assessment Summary, circulated at the meeting, and advised that the summary had been provided as the original assessment had not included assessment of noise after 2.00am as requested by Environmental Health. The summary concluded that there would be no statutory noise nuisance caused to the occupants of the nearest dwelling. At the time the assessment was requested, the flat above the veterinary hospital was in use as there was a requirement for a vet to be on the premises 24 hours a day. In the last fortnight the practise had been taken over by a national chain of vets and there was no longer a requirement for a member of staff to be on the premises 24 hours a day, therefore, the flat was no longer in use.

Reference was made to the eight conditions proposed by Environmental Health and it was confirmed the applicant had agreed to the first seven. The final condition, which had not been agreed, had been requested for the following reasons:-

1. The acoustic report submitted showed this to be the case, stating no impact on the existing noise levels.
2. The applicant was asked to consider nuisance, disturbance and loss of amenity in the acoustic report but had only considered the most serious level of noise – nuisance. No guarantees had been given in relation to disturbance or loss of amenity.
3. The application was for all-night entertainment, it was reasonable that neighbours should not hear it in their bedrooms.

Questions

Members of the Committee and the applicant were given the opportunity to ask questions of the Environmental Health Officer and the following issues were raised:-

- In response to a query relating to possible noise from taxis leaving the premises throughout the night, it was stated there was a large lay-by to the front of the building into which cars could pull in to drop off and pick up. The main cause of noise disturbance was from low frequency bass noise which tended to travel through building structures.
- Reference was made to the imminent introduction of the smoking ban on licensed premises and it was queried whether account had been taken of patrons going outside the building to smoke and allowing noise to escape through opened doors. It was confirmed that there would be lobby areas at entrance/exit points with doors which should contain the noise.
- Clarification was provided in relation to the sound readings contained within the acoustic assessment and it was noted that whilst the specified sound levels would have no impact on the nearest dwelling, the figure was close to the borderline for noise impact.

At this point the applicant's Legal Representative advised the meeting that the applicant was willing to agree to condition number eight of those proposed by Environmental Health which allowed Environmental Health to withdraw its representation.

Cleveland Police - Representations

Sgt Higgins, Police Licensing Unit, and Mrs Nevison, Police Legal Representative, were in attendance at the meeting and were invited to present the representations against the application.

Sgt Higgins confirmed that he had been a licensing sergeant for the past four years and knew the Middlesbrough area very well. He outlined the Police's concerns with regard to the application which was predominantly centred around the proposed opening hours of the premises.

Sgt Higgins commended the applicant with regard to his proposals to offer a variety of diverse events but considered that such events would not be feasible after the hour of 2.00am and was unclear what the applicant intended to offer to patrons between the hours of 2.00am and 7.30am other than replicating a nightclub atmosphere which existed in abundance in the town centre. He added that the Police were in favour of the proposed membership scheme but felt that there would still be a considerable amount of customers attracted to the Arena as a last drinking venue from the town centre and that they would simply apply for membership.

Sgt Higgins confirmed that he had worked with the applicant through the Pubwatch scheme and that there had never been any problems with any of the premises he had operated in the past and that the Police representation was purely based on the terminal hour requested.

Reference was made to the graph contained within Sgt Higgins' witness statement which was made up of every licensed premise within the town and the number of times the Police had attended each for incidents of disorder. The graph indicated an increase in the number of call outs since the introduction of the Licensing Act 2003, however, it also showed a decrease in assaults over the same period. The Police were of the opinion that the later the terminal hour for the premises, the greater the amount of disorder associated with it.

Sgt Higgins went on to outline the pressure on Police resources at the present time and felt that if the terminal hour of 7.30am was granted, the Police would have insufficient resources to deploy to the venue and for other Police duties across Middlesbrough. He also considered that if the terminal hour was granted it might begin a trend of other venues in the town centre applying for later opening hours. Further potential problems in relation to transport and lack of parking facilities was highlighted.

Questions

The applicant was afforded the opportunity of asking questions of the Police and his legal representative raised a number of queries in relation to the graph contained within the Police witness statement (made up of every licensed premise within the town and the number of times the Police had attended each for incidents of disorder). The following points were made:-

- Sgt Higgins confirmed that the list of premises also included fast food takeaways and that the comparative information was comparing like for like premises over the same period the previous year.
- The World Cup in summer 2006 did not appear to have produced an increase in incidents at licensed premises, however, it was noted that Middlesbrough FC's European Cup Final appearance in April 2006 might have contributed to an increase in incidents that month.

The applicant's legal representative raised further queries in relation to disorder at licensed premises with late licenses and Police resources which were addressed by Sgt Higgins.

A Member of the Committee sought clarification from the applicant with regard to his proposed membership scheme for the club and it was confirmed that under the scheme, patrons would not be admitted to the club unless they were a member.

A further point of clarification was provided in relation to the applicant's proposals to transport patrons to the club from nearby towns and it was confirmed that this would occur before the hour of 12.00 midnight.

Summing Up

The Chair invited all parties to sum up.

Environmental Health

The Environmental Health Officer confirmed that since the applicant had now agreed to all of the conditions proposed by Environmental Health, the representation was withdrawn.

Cleveland Police

Sgt Higgins summed up the representations for the Police by stating that he had known the applicant for some time and worked with him in respect of other premises he had owned. He considered the applicant's proposals to provide a variety of diverse entertainment at the venue to be commendable but stressed that the Police concerns were based on the terminal hour for the premises. Sgt Higgins expressed further concern that should the licence be granted, Police

resources would be stretched at that time of day and that Officers would be deployed to the venue rather than tackling core crime across the town.

The Applicant

The applicant addressed the Committee and stated that he had carried out in depth research into the 'night time economy' and referred Members to various documentation including Home Office statistics relating to 24 hour licensing and the Licensing Act 2003. He concluded that, by opening later and, therefore, staggering the opening hours compared with others in the town centre, this would result in a decrease in binge drinking.

Applicant's Legal Representative

The applicant's Legal Representative summed up by stating that the Council's Final Report to the Overview and Scrutiny Board in respect of Middlesbrough's night time economy had indicated that the majority of people surveyed did not want to go into the town centre at night time and many people sought different entertainment from that already on offer in the town centre.

It was stressed that the applicant fully understood the concerns expressed by the Police but had undertaken research and produced statistical information in this respect. He stated that the applicant was a responsible person who was very aware of the factors required to be taken into account when operating late night premises and of promoting the four licensing objectives.

He reiterated that the applicant wished to attract people to the venue who did not want to go into the town centre and those who sought the diverse entertainment proposed which would cater for all age groups and was prepared to invest over £1 million in the premises.

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 AS FOLLOWS:-

1. That the Variation of the Licensable Activities to include: plays, films, indoor sporting events, live music, recorded music, performance of dance, provision of facilities for making music, provision of facilities for dancing, supply of alcohol and late night refreshment, be granted.
2. That the removal of all embedded restrictions transferred to the licence during the previous conversion of the licence be granted.
3. That the Variation in Hours for Licensable Activities be granted as follows:-
Sale of alcohol - 11.00am to 2.30am daily
All other Licensable Activities – 11.00am to 3.00am daily;
and subject to modification of the conditions of the licence as follows:-
 - i) The addition of the eight proposed conditions by Environmental Health, and agreed with the applicant at the Hearing as follows:-
 1. A double-door 2 metre lobby shall be incorporated in the fire exit on the premises' south-western façade.
 2. All fire exit doors shall incorporate acoustic seals.
 3. The licensee shall have control of music sound levels at all times, not the DJ or other performers.
 4. Where practicable, entertainment noise shall be played through house amplification system and loudspeakers.

5. Entertainment noise shall be controlled via frequency adjustable sound limiters to control sound output at 63Hz and 125Hz mid frequencies, set to operate at levels agreed with the Licensing Authority.
 6. All bass bins and loudspeakers shall be acoustically isolated from the building structure to prevent flanking caused by structure-borne sound transmission.
 7. Where practicable, the premises shall incorporate downward facing loudspeakers featuring narrow directivity patterns in order that sound is directed on to the dance floor only.
 8. Entertainment noise shall not raise the existing ambient noise levels and shall not be audible inside nearby noise sensitive premises after 11.00pm.
- ii) The addition of the conditions proposed by the Police and listed in the representation at Appendix 2 to the submitted report, numbered 1 to 6 and 8 to 11, as agreed with the applicant.
 - iii) That condition number 7 as proposed by the Police be amended to read:-
"Where the premises is open after 8.00pm on Fridays, Saturdays and Sundays, a minimum of two SIA approved door staff shall be on duty until closing time."
 - iv) That the conditions numbered 12 and 13 as proposed by the Police, relating to persons under the age of 18 being accompanied by an adult at all times and not to be allowed on the premises after 7.00pm, be deleted.

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

1. The written representation submitted by the Environmental Health Department and evidence provided at the meeting.
2. The written and verbal representations submitted by Cleveland Police.
3. The Witness Statement submitted by Sgt Higgins.
4. Relevant Government Guidance, particularly in relation to:-
 - Prevention of Crime and Disorder, starting at paragraph 7.20, Annex D.
 - Prevention of Public Nuisance, starting at paragraph 7.38, Annex G.
 - Protection of Children from Harm, starting at paragraph 7.47, Annex H.
5. Middlesbrough Council's Licensing Policy particularly in relation to:-
 - Prevention of Public Nuisance, (pages 10 to 15, particularly paragraphs 42-43).
 - Prevention of Crime and Disorder (pages 17 and 18).
 - Protection of Children from Harm (pages 19 to 22, particularly paragraphs 95-99).

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

1. Whilst the Committee welcomed the proposals for investment in the premises and plans to provide a variety of diverse entertainment, it considered that a terminal hour of 3.00am to be appropriate for the following reasons:-
 - i) It was concerned with regard to crime and disorder upon hearing evidence from the Police which indicated that a terminal hour of 7.30am would be difficult to regulate with the Police resources available at that time of day.
 - ii) That there might be an impact on local residents from patrons travelling to the premises from other late night premises in the town centre.
 - iii) It was concerned with regard to lack of public transport during the early hours of the morning and the lack of car parking facilities which might lead to patrons parking outside residential dwellings.