

LICENSING SUB-COMMITTEE C

A meeting of Licensing Sub-Committee C was held on 12 January 2010.

PRESENT: Councillor Taylor (Chair); Councillors Morby and G Rogers.

OFFICERS: B Carr, J Dixon, A Gray, T Hodgkinson and
J Hodgson (for agenda item 3 only).

ALSO IN ATTENDANCE: In relation to Agenda Item No. 3 only

N Gulbhar – Applicant.
C Harvard – Applicant's Legal Representative.
Sergeant Higgins, J Arbuckle, C Byefield – Cleveland Police.
W Greer – Police Legal Representative.
A Robinson, N Hussain – In support of the applicant.

In relation to Agenda Item No. 4 only

D Wilson – Applicant.
D Scourfield – Applicant's Legal Representative.
R Hameed – Making Representations.

**** DECLARATIONS OF MEMBERS' INTERESTS**

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

SUSPENSION OF COUNCIL PROCEDURE RULE NO. 10 – ORDER OF BUSINESS

ORDERED that, in accordance with Council Procedure Rule No. 10, the Committee agree to vary the order of business to consider Agenda Items 4 and 5 as the first items of business to allow discussion to continue between parties connected with Agenda Item 3.

LICENSING ACT 2003: APPLICATION FOR PREMISES LICENCE – SIZZLERS MOBILE CATERING UNIT, OUTSIDE AREA NIGHTCLUB, 208 NEWPORT ROAD, MIDDLESBROUGH - REF. NO. MBRO/PR0238/066824

A report of the Head of Community Protection had been circulated outlining an application for a Premises Licence in relation to Sizzlers Mobile Catering, outside The Arena Nightclub, 208 Newport Road, Middlesbrough, Ref No. MBRO/PR0238/066824, as follows:-

Summary of Licensable Activities

Late Night Refreshment.

Summary of Hours for Licensable Activities

11.00pm to 4.00am. Thursday - Sunday

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, Mr Wilson, and his legal representative were 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 received on 24 November 2009 for a Premises Licence in relation to Sizzlers Mobile Catering, outside The Arena Nightclub, 208 Newport Road, as outlined above, which the applicant confirmed was an

accurate reflection of the facts. The applicant had advertised the application, as required by the Licensing Act 2003, in the Herald and Post on 3 December 2009.

The report provided detailed background information in relation to the premises, which consisted of a catering trailer outside a busy nightclub on an industrial estate. The Applicant hoped to offer hot food to the customers of the nightclub. The proposed location of the trailer was in close proximity to residential premises. A map showing the location of the premises was attached at Appendix 1 to the submitted report.

On 21 December 2009, a representation (attached at Appendix 2 of the report) was received from the management of the Arena nightclub, objecting to the application on the grounds of the prevention of crime and disorder and the prevention of public nuisance.

On 15 December 2009, a representation (attached at Appendix 3 of the report) was received from Mr Woodier of Carchoice Teesside Ltd (whose business premises were adjacent to the Arena nightclub), objecting to the application on the grounds of the prevention of crime and disorder and the prevention of public nuisance.

The Principal Licensing Officer brought to the Committee's attention that, for two weeks in September and October 2009, the applicant had operated his Mobile Catering Unit outside the Arena on an evening without a Premises Licence. The Council's Licensing Enforcement Team had advised the applicant of the requirement to obtain a Premises Licence and the applicant had ceased trading on an evening with immediate effect and subsequently submitted the application for a Premises Licence.

Applicant in Attendance

The applicant's legal representative presented the case in support of the application.

The applicant had been in the catering trade for over 25 years and had operated outside the Barker and Stonehouse premises, Cannon Park, for 9 years between the hours of 8.00am and 2.00pm. The applicant provided litter bins for his customers and always tidied up before leaving the site. The applicant could not recall any instances of public disorder whilst operating his mobile catering unit and there had not been any representations received from the Police. The legal representative advised that the applicant wanted to operate in the area as indicated on the site plan attached at Appendix 1 to the report.

The applicant's legal representative referred to the objection received from Mr Woodier of Car Choice Teesside Ltd. He alleged that Mr Woodier had connections with Café Venus (who had recently obtained a Premises Licence) and he therefore requested that the Committee not put too much weight on that representation.

Reference was made to another mobile catering unit (Snacks) which had previously been located outside the Arena Nightclub for a period of three to four months. The applicant alleged that a member of the Arena's staff had been working at the unit and he questioned why the Arena management had not objected to the presence of the unit. Mr Hameed, representing the Arena, was present at the meeting and advised that he was not aware of any member of his staff working at the mobile catering unit and had instructed his Designated Premises Supervisor to object to the unit. He stated he had observed the unit operating, however, it was not located outside the front door of the Arena.

The Principal Licensing Officer advised that the catering unit in question had been located in the car parking area near to the Arena and it had actually held a Premises Licence for the duration it had traded, however, the unit was no longer sited at that location.

Questions to the Applicant

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

- A Member of the Committee referred to the representations received at Appendix 2 and 3 of the report and asked whether there was any truth in the statement that the applicant had traded illegally for two weeks in September/October. The applicant confirmed that he had

placed his mobile catering unit outside the Arena for a two-week period, but had been unaware of the requirement to hold a Premises Licence. As soon as the Council's Enforcement Officer advised him of the requirement, the applicant had ceased trading on an evening and made the application for a Premises Licence. The Principal Licensing Officer advised that the confusion was probably caused because traders operating in the Town Centre were required to obtain a Street Trading Consent but because the Arena was outside the Town Centre operators were not required to obtain one. All operators selling hot food after 11.00pm were required to hold a Premises Licence under the Licensing Act 2003.

- In response to a query, the applicant advised that he operated between the hours of 8.00am and 2.00pm whilst he was based at Cannon Park.
- A Member of the Committee asked the applicant the approximate distance between his mobile catering unit and residential properties. The applicant responded that, in his opinion, the unit was approximately 100 yards away from residential properties.
- The applicant was asked what kind of patronage the mobile catering unit had experienced whilst situated outside The Arena. He advised that the trade had been spread evenly throughout the night, although there had been an increase in the last hour after the Arena Nightclub closed.
- The applicant was asked if any member of the Arena nightclub had made representations to him regarding the location of the catering unit. He advised that he had not received any representations from the nightclub and that he had a good relationship with the security staff. He advised that he had a good rapport with his customers and was an experienced, mature trader.
- Mr Hameed asked the applicant what he would do if a public disorder incident occurred at his mobile catering unit. The applicant responded that he would close his trailer down and notify the Police by telephone.
- Mr Hameed queried how many people would be working at the catering unit during the proposed hours of trading. The applicant advised that there would be two people working at the unit.

Relevant Representations

Mr R Hameed – The Arena Nightclub

Mr Hameed, representing The Arena Nightclub, was in attendance at the meeting and advised Members that he wished to object to the application on the following grounds:-

- The prevention of crime and disorder
- The prevention of public nuisance
- Public safety

Mr Hameed advised that The Arena currently operated a rigorous dispersal policy for its customers following the closure of the nightclub. The nightclub was closed on a floor by floor basis to ensure that customers were dispersed evenly and security staff remained outside the nightclub assisting customers to obtain taxis until the area outside the Arena was cleared. The Arena was fully covered by CCTV outside the building and employed SIA registered security personnel.

Mr Hameed was concerned that the applicant had indicated that he would close the trailer and leave if a public disorder incident occurred, in effect, leaving the trouble behind. He was also concerned because the proposed location of the mobile catering unit was not covered by CCTV and if a public disorder incident occurred, the security staff at the Arena would probably have to become involved. The Arena staff also found it more difficult to move people on when they were waiting for food.

During the time the applicant was operating, Mr Hameed had observed sporadic fights and boisterous singing around the area where the trailer was located. He was concerned that these public disorder incidents would be associated with the Arena.

Mr Hameed also expressed concern in relation to increased litter as a result of the mobile catering unit and urination due to the lack of toilet facilities. The noise emanating from the mobile catering unit generator was further concern and Mr Hameed advised that he was not aware of any acoustic checks being made with regard to the level of the noise.

Mr Hameed requested that if the Committee was to approve the application, it be subject to certain conditions appertaining to security, CCTV and the provision of toilet facilities.

Questions to Mr Hameed

All parties were afforded the opportunity to ask questions of Mr Hameed and the following issues were raised:-

- A Member of the Committee asked whether there had been any instances where his staff had needed to clean up litter as a result of the location of the mobile catering unit. Mr Hameed responded that there had been occasions when food remnants had been left and he was aware that Altrac (another business in close proximity to the trailer) had removed litter.
- Mr Hameed was asked if he was aware of any instances of criminal damage to the Arena or the car lot. He responded that there had been cases where people had urinated on the cars but that it had not been reported to the Police.
- In response to a query regarding the scope of the CCTV cameras for the Arena, Mr Hameed responded that the cameras covered the front door, sides and rear of the building plus all exit points and fire escapes. In total there were 32 cameras at the premises. Mr Hameed pointed out that he was not responsible for providing CCTV coverage for the mobile catering unit and expressed concern that he and his security staff would feel morally obliged to assist in dispersing any fighting occurring at the catering unit.

Summing Up

Mr Hameed

Mr Hameed summed up by stating that if the Committee decided to grant the Premises Licence he would feel more comfortable if conditions were attached in respect of security, CCTV and toilet provision. He advised that there was already one catering outlet at Café Venus, which served The Arena customers and this was picked up by The Arena CCTV cameras and that there had not been any problems associated with the venue.

The Applicant

The applicant's legal representative, summed up by stating that he did not believe it was feasible to attach conditions to a Premises Licence requiring an operator to employ security staff as the security personnel would not have any legal authority. He advised that the applicant would be amenable to a condition requiring that some form of CCTV be attached to the catering unit providing it did not prove to be too costly or too technical. He stated that he would be very surprised if any of the other mobile catering units had conditions regarding CCTV and security attached to them.

It was confirmed that there were no further questions and all interested parties other than the Officers of Legal Services and the Members Office, withdrew whilst the Committee determined the application.

Subsequently all the parties returned and the Chair announced the Committee's decision.

DECISION

ORDERED that the application for a Premises Licence in respect of Sizzlers Mobile Catering, outside The Arena Nightclub, 208 Newport Road, Middlesbrough, Ref No. MBRO/PR0238/066824, be refused for the following reasons:-

1. The premises was in a remote area close to residential premises.
2. The Committee was concerned that locating a mobile catering unit in this area would become a hotspot for crime and disorder.
3. That granting a licence would conflict with The Arena's dispersal policy at closing time as door staff continually arranged for transport to move patrons out of the area to avoid people congregating in the vicinity of The Arena.
4. Concern was expressed at the Hearing regarding litter in the area of The Arena and the Committee felt that granting a licence would exacerbate the problem.

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 issued by the Secretary of State, in particular:-
 - Prevention of public nuisance, starting at paragraph 2.32
 - Prevention of Crime and Disorder, starting at paragraph 2.1
 - Annex D (pool of conditions)
3. Consideration was given to Middlesbrough Council's Licensing Policy, in particular:-
 - Prevention of nuisance pages 10 to 15
 - Crime and Disorder pages 17 and 18
 - Paragraph 156 in relation to Late Night Refreshment Houses
4. Consideration was given to the case presented by the applicant.
5. Consideration was given to the representations by Mr Hameed of The Arena Nightclub.
6. Consideration was given to the written representations made by Mr. Woodier of Carchoice Teesside Ltd.

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

LICENSING ACT 2003: APPLICATION FOR PREMISES LICENCE – NICE BITES CATERING TRAILER, OUTSIDE ARENA NIGHTCLUB, 208 NEWPORT ROAD, MIDDLESBROUGH - REF. NO. MBRO/PR0238/066668

A report of the Head of Community Protection had been circulated outlining an application for a Premises Licence in relation to Nice Bites Catering Trailer, outside The Arena Nightclub, 208 Newport Road, Middlesbrough, Ref No. MBRO/PR0238/066824, as follows:-

Summary of Licensable Activities

Late Night Refreshment.

Summary of Hours for Licensable Activities

11.00pm to 7.00am daily.

Full details of the application and accompanying operating schedule were attached at Appendix 1 to the submitted report.

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 sent to the applicant. At 11.40am the Principal Licensing Officer withdrew from the meeting in an attempt to contact the applicant. Subsequently, the Officer returned and advised the Committee that he had telephoned the applicant who claimed that he had not received the Regulation 6 Notice. The applicant was given the opportunity to attend the meeting but declined and requested that it be adjourned. The applicant was advised that the Committee may decide to hear the matter in his absence, however, he reiterated that he was unable to attend.

ORDERED that, under Section 20 (2)(a) of the Licensing Act 2003 (Hearings) Regulations 2005, the Hearing in respect of the above application be adjourned in order to provide the applicant with a further opportunity to attend. It was confirmed that all parties would be notified of the date and time of the re-adjourned hearing in due course.

LICENSING ACT 2003 – APPLICATION FOR A PERSONAL LICENCE – MR N GULBHAR

A report of the Head of Community Protection had been circulated outlining an application for a Personal Licence in relation to Mr Naveed Gulbhar.

A copy of the application was 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 and his legal representative were 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 in relation to an application received on 27 November 2009 for a Personal Licence in respect of Mr Gulbhar.

It was highlighted that a Personal Licence, if granted, would permit the applicant to sell, or authorise the sale, of alcohol in any premises holding a Premises licence. A Personal Licence lasted for a period of 10 years unless surrendered, suspended or declared forfeit by the Courts. At the end of the 10-year period, the Licence may then be renewed for a further 10 years.

The report provided detailed information in relation to the applicant who had been given a 42 month prison sentence for conspiracy to supply a Class A drug, namely heroin. As a result of the sentence imposed, the offence could never become spent for the purposes of the Rehabilitation of Offenders Act 1974. The information was revealed on the applicant's CRB disclosure submitted with his application on 27 November 2009, despite the applicant having gained an accredited licensing qualification.

In relation to the relevant legislation, it was explained that an applicant must be granted a Personal Licence if they met the following criteria:-

- They were 18 years of age or over.
- They possessed an accredited licensing qualification.
- They had not forfeited a Personal Licence in the preceding 5 year period.
- They did not have any unspent convictions for any relevant offences detailed in the Act.

Where an applicant had an unspent conviction for a relevant offence, the Act allowed the Police to object to the granting of a Personal Licence if they considered it would undermine the Prevention of Crime and Disorder objective.

Subsequently, on 1 December 2009, a representation was received from Cleveland Police who objected to the application as they believed it would undermine the Crime and Disorder objective. A copy of the representation was attached at Appendix 2 to the submitted report.

It was noted that conspiring to supply a controlled drug was contrary to Section 1(1) of the Criminal Law Act 1977 and was not listed as a relevant offence under the Licensing Act 2003. However, given that the acts of supplying or possession with intent to supply a controlled drug did fall within the relevant offences under the Licensing Act, the Police requested that Members give consideration to refusing the application on those grounds.

Members' attention was also drawn to the relevant sections of the Government Guidance and Middlesbrough Council's Licensing Policy.

Applicant in Attendance

The applicant, Mr Gulbhar, accompanied by his legal representative, was in attendance at the meeting and confirmed that the report was an accurate representation of the facts.

The applicant's legal representative was invited to present the case in support of the application. Due to the late commencement of the Hearing, the legal representative advised that two character witnesses in support of the applicant were present and requested that they be permitted to present their evidence first. All parties agreed.

Referees supporting the Applicant

Mr Robinson

Mr Robinson, proprietor of Bob's Traditional Barbers, 8 Borough Road, had prepared a written reference in support of the applicant and read it aloud to the Committee. He stated that he had known the applicant and his family for approximately 10 years and was aware of the applicant's 'brush with the law' approximately five years ago. Mr Robinson stated that he had witnessed the applicant grow into a young man with a good attitude, strong family values and a willingness to help. He considered that everyone deserved a second chance in life.

Mr Robinson added that the applicant had assisted him with his own business for no personal gain and that he had found him trustworthy and outgoing and wanting to progress in life. Mr Robinson highlighted that the applicant and his business partner currently ran the convenience/newsagent shop on Borough Road (which was confirmed as being 'Boro Wines') and that the applicant ensured the store was run correctly and kept well-stocked. Mr Robinson stated that if he did not feel the applicant should be granted a licence he would not be supporting him but he believed that it would be the next progressive step both for the business and the applicant. The applicant was to be married shortly and Mr Robinson considered that the applicant had shown he had matured and was ready to accept responsibility.

Mr Naheem Ali Hussain

Mr Hussain was also in attendance at the meeting, having also prepared a written character reference in respect of the applicant which he read aloud to the Committee.

Mr Hussain confirmed that his business address was Global Accountancy, 18 Borough Road. Mr Hussain stated that he had known the applicant in a social capacity for almost 10 years but had attended schools situated next to each other. He explained that the applicant had helped him to settle into senior school and he had regarded him as an older brother, finding him to be reliable and helpful. Mr Hussain stated that he kept in touch with the applicant after leaving secondary education and some time later, the applicant had advised him of the charges made against him in relation to conspiracy to supply class A drugs. Mr Hussain felt shocked and very disappointed.

Mr Hussain advised that he met several times with the applicant after he had served his sentence as he was seeking employment and had asked for assistance in producing a CV. The applicant had asked Mr Hussain for advice on opening a business and eventually gained employment working in a shop. The applicant had done well in finding a suitable business and had secured financial backing from families and friends, however, the applicant required a Personal Licence in order to progress the business.

The applicant had confided in Mr Hussain that he wanted to work and to be able to support his future wife and family and did not want to live off state benefits. Mr Hussain considered that the

applicant had reformed and changed a lot. He found him to be honest, reliable, conscientious and courteous. He was motivated to succeed and Mr Hussain felt that he deserved to be given a chance.

Questions to the Referees

Questions from Cleveland Police to Mr Robinson

The Police legal representative was afforded the opportunity to ask questions of the referees and the following issues were highlighted:-

- Mr Robinson was asked how well he knew the applicant and whether he knew him prior to the period November 2003 - March 2004. Mr Robinson responded that he met the applicant at a works Christmas party in 2000 when he was introduced to him by some friends. The applicant was 17 years old at the time. He stated that he first found the applicant to be very withdrawn and impressionable and did not know him very well. Mr Robinson stated that the applicant came out of prison in 2005 and that he had seen criminals come out of prison and knew whether they would re-offend. He felt that the applicant had matured and learnt a lot in prison and that to gain a personal licence was the next stage for him in order to have a better quality of life. He was due to be married shortly and wanted to start a family and support them. Mr Robinson considered that in 2000 the applicant was impressionable.
- When asked how Mr Robinson had found the applicant in 2003, he replied that he felt he was easier to get on with as he had previously felt that he was holding something back but added that he had no idea the applicant had been dealing in drugs.
- Mr Robinson was asked if he still felt the applicant was impressionable in 2003. Mr Robinson responded that prior to serving time in prison the applicant had appeared withdrawn and had found it difficult to have a conversation with him.
- Mr Robinson was asked how regular his contact with the applicant had been since his release from prison in 2005. Mr Robinson stated that he did not see the applicant for approximately six to eight months after he had been released but felt that he had appeared to have learnt his lesson. He added that he had seen the applicant almost every day for the past 18 months at his place of work. Mr Robinson advised that the applicant was very outgoing with the customers in his shop and was well-liked by them. Mr Robinson had witnessed him refuse the sale of cigarettes to persons he believed to be under the age of 16. Mr Robinson stated that he had stopped using the shop at one point but now the applicant was working there and it was being run correctly, people had started to use the shop again and the pay-point machine had been reinstated at the premises. He stated that the applicant worked very hard, seven days a week at the shop.
- It was queried whether Mr Robinson was aware of any underage sales being made at the applicant's premises. He advised that many of the people using the applicant's shop also used his shop for haircuts. He considered that the local customers tended to stock up on alcohol from Sainsbury's and other similar outlets and that if the premises was successful in obtaining a premises licence, customers would buy less alcohol not more as the applicant's shop would be selling alcohol at premium prices.
- The Police legal representative queried whether, if Boro Wines was to be granted a premises licence in the future, problems would be transferred back to the immediate local area. Mr Robinson responded that it would not affect his business and if there were any problems he would make a complaint to the Council. Mr Robinson felt that the applicant was ready for that next step and added that he had closed his shop and was losing money in order to attend the hearing to support the applicant and would not have done so if he felt that he was not responsible enough to hold a Personal Licence.
- When asked whether Mr Robinson had contact with the applicant on a professional or social basis, Mr Robinson stated that the applicant came to his shop to get his hair cut and they had mutual friends. He stated that he had probably come to know him better since his release from prison and the fact that, in his opinion, the applicant was rehabilitated. Mr Robinson added that he met a lot of people in his line of work and felt that he was a good judge of

character.

- The Police legal representative submitted to Mr Robinson that prior to his conviction, the applicant had been more of an acquaintance than a friend and queried what kind of impression he gave, for example, did he appear to come from a stable background or appear highly intelligent. Mr Robinson stated he had found the applicant difficult to get on with and that he appeared withdrawn.

Questions from Members to Mr Robinson

- In response to a query from a Member of the Committee, Mr Robinson stated that the applicant appeared to be intelligent and had first discovered that the applicant had been dealing drugs from a friend who was running Boro Wines at that time. He stated that he was shocked and disappointed. Mr Robinson added that he did not agree with drugs and acknowledged that the applicant had committed a very serious offence and had witnessed the damage drugs caused to people's lives.
- Mr Robinson was asked whether the applicant's character had changed when he was released from prison, to which he responded that he had noticed a change. The applicant was more outgoing and chatty and he felt that the applicant was unlikely to re-offend as he wanted to progress in life.

Questions from Members to Mr Hussain

- A Member asked whether Mr Hussain and the applicant had attended school together and what the applicant had been like at that time. Mr Hussain confirmed that they attended schools situated next door to each other and that the applicant had been popular and wanted to do well in life.
- In response to a query as to the last time Mr Hussain had contact with the applicant prior to his conviction, Mr Hussain stated that he had not spoken to the applicant for approximately four months prior to his conviction and was not aware of what he had been doing.
- When asked if he felt the applicant had changed, Mr Hussain stated that he felt he had changed. He added that he had not wanted to keep in contact with the applicant when he had discovered that he had been sent to prison but had bumped into him in town after his release and found him to be totally different.
- Mr Hussain was asked whether he considered the applicant to be a social person with friends around him. Mr Hussain responded that the applicant used to have a lot of friends. A Committee Member highlighted that Mr Robinson had described the applicant as being withdrawn. Mr Hussain stated that he was referring to the applicant prior to leaving school at 16.
- The Committee Member summarised that within a period of one year, the applicant had gone from being very sociable with lots of friends to being very withdrawn, according to Mr Robinson. Mr Hussain was asked whether he had assumed the reason for this was because the applicant was taking drugs. Mr Hussain responded that he had not thought that the applicant was taking drugs.
- A Member of the Committee queried whether Mr Hussain's role had been to provide the applicant with advice. Mr Hussain stated that he had helped the applicant as he had helped him when they were younger at school. He had come into contact again with the applicant when he was at university and the applicant had obtained a fork lift licence and had been employed as a fork lift operator but wanted to progress in life.

It was confirmed that there were no further questions of the witnesses. The witnesses were thanked for attending the meeting and left at this point.

Applicant in Attendance

The applicant's legal representative presented the case in support of the applicant.

The legal representative stated that there was no argument in relation to the charges brought against the applicant under the Misuse of Drugs Act and acknowledged that they had been serious offences, however, the offences were not specified as relevant offences under the Licensing Act 2003.

Whilst the legal representative had not represented the applicant at the time, he had read the papers and stated it was clear that the basis of the plea made by the applicant was that his involvement in drug dealing was around 13 February 2004 until 27 February 2004. The applicant then ceased acting solely as a supplier and made a rendezvous set by the Controller. He stated that the applicant had not been a Controller, however, a test purchase had been made from him. This information was logged with the Crown Court and accepted. The relevance was to the seriousness of the offence and his involvement. Ten others had been involved and received prison sentences of varying terms, with the Controller receiving six and a half years, and the applicant receiving three and a half years.

The legal representative referred to Sergeant Higgins' statement and the fact that the applicant made no reply to all questions when interviewed about the offences by Police on 6 April 2004. The legal representative confirmed that this was correct and that the applicant had made no reply based on legal advice. The applicant was subsequently sentenced to three and a half years imprisonment and was released in December 2005.

It was stated that the applicant had completed a BIIAB training course and passed in May 2009 which covered the importance of the Licensing Act and the licensing objectives.

The applicant's legal representative wished to make clear to the Committee that the applicant was trying to distance himself from the premises licence application that had been made by the owner of Boro Wines. The applicant had worked at Boro Wines for the past 18 months and the premises currently did not have the benefit of a Premises Licence.

It was highlighted that, during his time in prison, the applicant had taken strenuous steps to rehabilitate himself. He had obtained a qualification as a fork-lift truck driver and had found employment in that capacity just one week after his release from prison. The applicant held that post for one year before he was made redundant. He was then unemployed for just two days before gaining employment in a Call Centre. He worked at the Call Centre for one year, including night shift work, but was poorly paid. The applicant left his post at the Call Centre to take up the opportunity of working at Boro Wines for the owner, Mr Bashir, who was a distant relative. When the applicant commenced work at Boro Wines, the premises licence had already been revoked, therefore, the applicant had no involvement with any underage sales from the premises that had led to the licence being revoked. It was highlighted that one of the applicant's character references had witnessed the applicant refusing to sell cigarettes to a minor.

The Committee was advised that the applicant was a young man who had motivated himself and deserved an opportunity. It was not necessary for him to make the application as he could continue working in the shop, however, he aspired to hold a Personal Licence so that if the owner's application for a Premises Licence was successful he would be in a position to work alongside his commercial partner, who was a Personal Licence holder, at the premises. If the application for a Premises Licence was successful, it might be a requirement for a Personal Licence holder to be present at the premises at all times. The applicant also wished to be more involved in the business and to have greater responsibility.

The applicant was due to be married at the end of January 2010 which was in line with the cultural requirements of his family, highlighting that he was not a rebellious person. The applicant wished to lead a normal family life and to provide for his family. It was acknowledged that the applicant's conviction was for a serious offence, however, the conviction would never become spent and he felt the applicant deserved a chance.

In terms of the risk of re-offending, the legal representative circulated a copy of the applicant's Pre-Sentencing Report, compiled by the applicant's Probation Officer, to the Committee (circulated to the Police prior to the meeting).

Reference was made to the report, which stated that the applicant had been naive when approached by acquaintances who knew he was struggling to pay debts at a time when his

father had been out of the country. The applicant had insisted that he only became involved in drug dealing due to financial pressures. It was highlighted that paragraph 10 of the pre-sentencing report stated that the risk of the applicant re-offending appeared to be low and also that there was no reason to be concerned that the applicant was a risk to the public, property or himself.

The applicant's legal representative stated that should he be successful in obtaining a Personal Licence, and should the application for a Premises Licence be granted in respect of Boro Wines, the applicant would be working long hours in the shop. The applicant was well aware of the requirements to promote the four licensing objectives and was aware that he would be closely monitored given his background and would not want to make any mistakes. The legal representative felt confident that the applicant would maintain a high degree of personal motivation and would not allow underage sales.

It was suggested that the applicant had shown considerable determination and this was a compelling argument supporting his application for a Personal Licence. The applicant had attempted to obtain a Hackney Carriage licence, however, his application was refused by the Licensing Committee. It was then granted following appeal to the Magistrates Court only to be refused again following a further appeal to Crown Court. The applicant's legal representative considered that a reasonable period of time had elapsed since the applicant's conviction and stated that the applicant no longer had the propensity to re-offend due to his commitment to work.

Applicant

The applicant, Mr Gulbhar, verified his name and address and confirmed that he was in agreement with the case presented on his behalf by his legal representative.

The applicant stated that he was a changed person and wanted to work. He hoped that if he was given the opportunity to hold a Personal Licence it would enable him to work more hours and hopefully have his own business in the future.

Questions to the Applicant

Cleveland Police

The Police Legal Representative asked questions of the applicant and the following issues were raised:-

- The Police legal representative referred to the pre-sentencing report which stated that the applicant had started dealing drugs to pay mounting debts and queried what those debts were. The applicant replied that at the time he had sold drugs he had been working at Hibernia Foods for three years and fell ill with tuberculosis. He stated he received £70 per week sick pay and had a car and loans to pay for. He added that his father was out of the country at the time and he had a lot of responsibility. He stated that he had made the wrong decision by becoming involved with the 'wrong people' and began selling drugs. He confirmed that he was living with his mother and brother, sister-in-law and nephew at the time.
- In response to a query, the applicant stated that he did not have a drug addiction and had entered into drug dealing for financial reasons.
- The Police legal representative made reference to the pre-sentencing report that alluded to the applicant's brother having previously had an addiction to Heroin. The applicant confirmed that this was true but highlighted that his brother was 'clean' at the time he had sold drugs.
- It was submitted to the applicant that surely he would not stoop so low as to sell drugs that his brother had been addicted to. The applicant responded that he had realised what he was doing was wrong and had stopped selling drugs. He stated that he had only sold drugs for a couple of weeks.
- The Police legal representative referred to the Police test purchase operation carried out on 25 February 2004 when arrangements were made to collect the drugs from the Coronation

pub car park. When asked, the applicant confirmed that he had been the driver of the car that had attended the car park with the drugs but denied that he had answered the telephone to make the arrangements for the rendezvous.

- Reference was made to the length of the prison sentence given to the applicant and, in response to a query, the applicant stated that he had been 22 years old at that time and that the most senior person involved in the selling of the drugs had been approximately 30 years old.
- It was suggested to the applicant that the reason he had been given a three and a half year prison sentence was due to him being a significant player in the conspiracy to supply drugs and that without him the deals would not have taken place. It was queried whether the applicant agreed that he had been in charge of the drugs and the telephone despite his age. The applicant stated that he agreed but the man in charge of the operation had received six and a half years in prison and was the Controller.
- The Police legal representative considered that the applicant had been very much a part of the organisation to have received a three and a half year prison sentence as his previous convictions were of a minor nature.
- The Police legal representative acknowledged that it was to the applicant's credit that he had gained employment and queried approximately how much he earned and what his outgoings were. The applicant responded that he earned in the region of £350 to £380 per week and paid his mother approximately £100 month lodge money and was saving for his wedding.
- It was queried whether the applicant would do the same thing again if he found himself in debt. The applicant replied that he had learnt his lesson and would never want to go down that path again. He stated that he wanted to work and would rather work for nothing than become involved in selling drugs again.
- In response to a query, the applicant stated that if he was granted a Personal Licence he would not sell alcohol to underage persons in order to keep money coming in.
- The applicant was asked whether he was buying into the business and whether it was a family business. The applicant stated that the business belonged to a distant relative and that his father and commercial partner were helping him to finance his business venture.
- When asked why he felt it necessary to obtain a Personal Licence, the applicant responded that his commercial partner already had a Personal Licence and if the application for a Premises Licence in respect of Boro Wines was successful, the applicant and his commercial partner would be able to work shifts in the shop between them. The applicant added that he also would like the opportunity to prove that he was rehabilitated.
- The applicant was asked why his Hackney Carriage application had been refused. The applicant stated that the Licensing Committee had deemed him not to be a fit and proper person, however, the Court had granted the licence. The Council had then appealed that decision and the licence was refused by the Crown Court.

Members of the Committee

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

- A Member referred to the applicant's statement that at the time he had sold drugs he had needed help with debts and his father had been out of the country and it was queried whether the applicant's mother had been at home and whether the applicant had advised her about his debt problems. The applicant stated that his mother had been at home but he had not wanted to place her under any further stress as she had been worried about the fact he had been ill with tuberculosis.

- It was queried whether the applicant's mother could have helped with his debts. The applicant stated that he had not dared ask for help at that time as there were lots of things going on within the family.
- The applicant was asked whether his family had been in a position to help him financially at that time. The applicant stated that if his father had been there at the time then yes.
- The applicant was asked why he had chosen to sell drugs which was worse than having a debt. The applicant replied that he was young and naïve at the time.
- A Member referred to the applicant's referees and considered that they had provided conflicting references. One had stated that the applicant was very sociable and outgoing, the other had stated that he was withdrawn and difficult to talk to. Rather than ask for help from his parents the applicant had chosen to involve himself in Class A drugs. In paragraph 8 of the pre-sentencing report, the applicant disclosed that he used cannabis on a daily basis. The applicant advised that he no longer used cannabis and had not used it since he was released from prison in 2005.
- It was submitted that prior to his conviction, the applicant was using cannabis and dealing heroin and it was queried whether the applicant obtained his cannabis from the same people who were distributing the heroin. The applicant confirmed that this was the case.
- When asked if the applicant received cannabis as part-payment for his role in the dealing of heroin, he confirmed that he was paid partly in cannabis and partly in cash.
- The applicant was asked if his use of cannabis had contributed to his involvement in dealing drugs and he conceded that this was correct.
- In response to a query, the applicant advised that he had been on remand for six and a half months and had then served a further year in prison. The applicant confirmed that he was not subject to any form of rehabilitation for drugs.
- A Member of the Committee queried the average age of the people he sold drugs to. The applicant stated that the majority of people had been in the region of 30 and over. When asked if he had ever sold drugs to very young people, the applicant replied that he had not.
- A Member queried whether the applicant had considered approaching the Mosque or a representative from the Asian business community for assistance given that he felt unable to approach his family. The applicant replied that he felt that would have brought shame on the family and he did not know anyone from the business community well enough at that time.
- It was queried whether the applicant remained in contact with any of the other members of the drugs ring who he had been involved with. The applicant confirmed he no longer had contact with any of them.
- When asked how the applicant had felt being in prison, he stated that he felt ashamed of himself and wanted to make a fresh start. When he was released from prison he had felt determined to work legitimately and never wanted to return to prison.

Relevant Representations

Cleveland Police

The Police legal representative made reference to Sergeant Higgins' statement dated 29 December 2009 and led Sergeant Higgins through the statement.

Sergeant Higgins advised that he had based the information on the applicant's offences on documents at the Police Station relating to the investigation.

Sergeant Higgins stated that the Police concerns in relation to the application were based on the fact that holding a Personal Licence was a gateway to authorise the sale of, or to make sales oneself, of alcohol. A Personal Licence allowed a person to become a Designated Premises

Supervisor and to be in charge of a shop or public house and such a position carried a lot of responsibility. It was highlighted that a large amount of anti social behaviour and violent crime was caused by people who were drunk. Sergeant Higgins stressed the importance of alcohol being served in a responsible way and considered that a responsible DPS was the key to ensuring the four licensing objectives were met. The Police had concerns that the applicant would not act responsibly given his track record. The Police did not feel that the applicant was suitable to hold a Personal Licence with the type of convictions he had. It was stressed that the applicant had been seriously involved in an organised crime group dealing in drugs throughout the north east and north west of England.

The Police legal representative highlighted that when the Police make an objection to an application for a Personal Licence, there must be compelling circumstances and it was noted that the applicant's conviction was in 2004 and queried what kind of timescale the Police would look at. Sergeant Higgins responded that he considered that the conviction was still recent and that not enough time had elapsed to make the application exceptional or compelling.

Questions to the Police

All parties were afforded the opportunity to ask questions of the Police. The applicant's legal representative confirmed that he had no questions.

Members of the Committee raised the following issues:-

- A Member referred to the organised crime ring that the applicant had been a part of when convicted of conspiracy to supply a Class A drug and questioned how the Police rated the seriousness of the crime ring. Sergeant Higgins responded that the crime ring was the main group for dealing drugs and supplying heroin in Middlesbrough at that time.
- A Member asked whether Sergeant Higgins believed the applicant to have been the Controller at any time when the crime ring was in operation. Sergeant Higgins stated that when the test purchase officer called the number he was given a date, time and location to meet the dealer. The person that turned up at the location was the applicant and the officer identified the applicant as the person who had taken the phone call and made the arrangements.

Summing Up

Cleveland Police

The Police legal representative summed up by stating that the applicant had received a three and a half year prison sentence for his involvement in supplying drugs and, in his experience of Crown Court, the Crown was not obliged to accept everything put forward. On the basis of the plea, the Judge would decide the sentence. The Judge who had passed sentence clearly believed the applicant to have been a significant player in the organisation due to the length of the sentence, notwithstanding the applicant's age and previous record. The Police legal representative acknowledged that the applicant's Pre-sentencing Report was very good but considered it unfortunate not to have contained the Judge's comments.

The legal representative considered Sergeant Higgins to have put forward the Police objections succinctly in that the length of time between the commission of the offence and the application was insufficient. Five years might appear a long time to the applicant but the Police did not consider that it was.

It was stated that the applicant must demonstrate a significant change which could only occur over a significant period of time in order to establish whether he had learnt from his mistakes. It was highlighted that, when under financial pressure, the applicant had resorted to dealing with this in a very drastic and foolish way.

The Police legal representative concluded that the applicant needed to demonstrate that he had learnt over a period of time but sufficient time had not elapsed since his conviction. The applicant had previously been refused a Hackney Carriage licence and the Police did not consider him suitable to hold a Personal Licence as they did not feel the applicant would fulfil the licensing objectives.

The Applicant

The applicant's legal representative summed up by stating that the applicant's plea was not challenged by the Crown and detailed his involvement as a supplier not as a Controller at any stage and the applicant did not accept that he had acted as Controller. He highlighted that the suppliers had been sentenced to three-and-a-half to four years in prison depending upon their degree of involvement and the time of plea. Another member of the group was sentenced to six-and-a-half years.

The legal representative accepted the Police concerns in relation to the length of time that had elapsed between the applicant's conviction and the application but stated that the applicant had the best opportunity in relation to employment as he had been running the premises in Borough Road for some time. The legal representative stated that the applicant did not really need to make the application but wanted to as part of the rehabilitation process. The applicant was also mindful that the premises had applied for a Premises Licence and if this was granted, and he was a Personal Licence holder, he would be available to work at the premises at any time.

The applicant's legal representative reiterated that within one week of being released from prison the applicant had found employment on the basis of the qualification he had gained whilst in prison. The applicant had always worked and did not want to go back to prison.

It was highlighted that the applicant had demonstrated acting responsibly by refusing to sell cigarettes to under 16s and that the views and accounts given by the applicant's referees should assist in providing exceptional reasons for giving the applicant the opportunity to hold a Personal Licence. The applicant's legal representative stated that the applicant's family was supporting him and the applicant was shortly entering into an arranged marriage at the wish of his family.

It was acknowledged that the applicant had failed to obtain a Hackney Carriage licence, however, the criteria for determining such applications was different to that of the Licensing Act 2003 and in relation to his application for a Personal Licence, Members must be satisfied that the applicant would promote the four licensing objectives.

It was concluded that the applicant was motivated and had turned his life around. The applicant was aware that if he was granted a Personal Licence and made a mistake there was every chance that it would be revoked, putting himself, his wife and family under financial pressure which he did not want to do. The applicant's legal representative considered that the applicant had demonstrated that he was responsible to hold a Personal Licence and that the reasons provided were exceptional enough for the application to be granted.

It was confirmed that there were no further questions and all interested parties other than the Officers of Legal Services and the Members Office, withdrew whilst the Committee determined the application.

Subsequently all the parties returned and the Chair announced the Committee's decision.

DECISION

ORDERED that the application for a Personal Licence submitted by Naveed Gulbhar of 85 Park Lane, be refused the following reasons:-

1. The applicant was convicted of conspiracy to supply Class A drugs. The Committee recognised that this offence was not listed as a relevant offence under the Licensing Act 2003 but was aware of ongoing consultation currently taking place by the Department for Culture, Media and Sport, to include conspiracy to supply drugs as a relevant offence under the Act.
2. The Committee did not consider that sufficient time had elapsed since the date of the conviction to justify the grant of a licence.
3. The Committee considered that the offence was so serious that granting the licence would not result in promotion of the crime and disorder objective.

4. The Committee did not consider that the applicant had demonstrated exceptional and compelling circumstances to justify granting the application.

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

1. The application, on its own merits, taking into account the four licensing objectives of the Licensing Act 2003.
2. Relevant Government Guidance particularly in relation to:-
 - Guidance relating to Personal Licences starting at paragraph 4.1.
3. Middlesbrough Council's Licensing Policy, particularly in relation to:-
 - Personal licences page 6.
 - Prevention of crime and disorder pages 17 to 19.
4. The case presented by the applicant.
5. Representations made in writing and verbally at the meeting by Cleveland Police.

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