

**LICENSING SUB COMMITTEE C**

A meeting of Licensing Sub Committee C was held on 26 January 2010.

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

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

**ALSO IN ATTENDANCE:** In relation to Agenda Item No. 3 only  
R Hameed – Making Representations.

In relation to Agenda Item No. 4 only  
D Bashir – Applicant.  
C Harvard – Applicant's Legal Representative.  
Sergeant Higgins; C Byfield – Cleveland Police.  
M Nevison – Police Legal Representative.  
K Sargent – Portman Street Residents Association.  
T McClug; J Chambers – Middlehaven Community Council.  
L Lewis – St Aidens Residents Association/Middlehaven Community Council.

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

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

**LICENSING ACT 2003: APPLICATION FOR PREMISES LICENCE – NICE BITES CATERING TRAILER, OUTSIDE ARENA NIGHTCLUB, 208 NEWPORT ROAD, MIDDLESBROUGH - REF. NO. MBRO/PR0182/066668**

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 Night-club, 208 Newport Road, Middlesbrough, Ref No. MBRO/PR0182/066668, 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.

The Chair introduced those present and outlined the procedure to be followed at the meeting. It was noted that the case had been due to be heard by the Sub Committee on 12 January 2010, however, the applicant had failed to attend and Members decided to defer the matter, on that occasion, to provide the applicant with a further opportunity to attend.

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. The Principal Licensing Officer withdrew from the meeting and telephoned the applicant who subsequently requested that the matter be dealt with in his absence.

Subsequently, in accordance with Regulation 20(1) of the Licensing Act 2003 (Hearings) Regulations 2005, the Committee agreed to proceed with the Hearing in the applicant's absence.

**Details of the Application**

The Principal Licensing Officer presented the report in relation to an application received on 20 November 2009 for a Premises Licence in relation to Nice Bites Catering Trailer, outside The

Arena Night-club, 208 Newport Road, as outlined above. The applicant had advertised the application, as required by the Licensing Act 2003, in the Herald and Post on 26 November 2009.

The report provided background information in relation to the premises, which consisted of a catering trailer outside a busy night-club on an industrial estate. The applicant hoped to offer hot food to the customers of the night-club. The proposed location of the trailer was in close proximity to residential premises.

On 18 December 2009, a representation was received from the management of the Arena night-club, 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 Peter Woodier of Carchoice Teesside Ltd (whose business premises were adjacent to the Arena night-club), objecting to the application on the grounds of the prevention of crime and disorder and the prevention of public nuisance.

### **Relevant Representations**

#### **Mr R Hameed – Owner of The Arena Night-club**

Mr Hameed, the owner of the Arena Night-club, was in attendance at the meeting and advised Members that he wished to object to the application with regard to:-

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

The Arena management currently operated a rigorous dispersal policy for its customers following the closure of the night-club. The night-club was closed on a floor by floor basis to ensure that customers were dispersed evenly and security staff remained outside the night-club assisting customers to obtain taxis until the area outside the Arena was cleared. The Arena night-club was covered all the way round by CCTV and the management employed SIA registered security personnel.

Mr Hameed indicated that he was 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.

The increase in litter as a result of the Mobile Catering Unit was also a concern. Urination was also a problem because of the lack of toilet facilities. The proposed location of the trailer was also very close to residential properties and as a consequence could be the cause of noise and public disorder.

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**

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

- A Member of the Committee asked whether Mr Hameed was aware of the proposed location of the mobile catering trailer. Mr Hameed responded that he thought that the trailer would be located directly opposite The Arena which would cause problems for the taxi rank which was already in that location.

### **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.

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 Nice Bites Catering Trailer, outside The Arena Night-club, 208 Newport Road, Middlesbrough, Ref No. MBRO/PR0182/066668, 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 representations by Mr Hameed of The Arena Nightclub.
5. Consideration was given to the written representations made by Mr. Woodier of Carchoice Teesside Ltd.

The applicant would be advised of the decision, in writing, and be 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 – BORO WINES, 22 BOROUGH ROAD, MIDDLESBROUGH – REF NO: MBRO/PR0025**

A report of the Head of Community Protection had been circulated outlining an application for a Premises Licence in relation to Boro Wines, 22 Borough Road, Middlesbrough, Ref No. MBRO/PR0025, as follows:-

Summary of Proposed Licensable Activities

Sale of alcohol (off sales)

Summary of Hours of Proposed Licensable Activities

8.00am – 9.00pm daily.

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

The Principal Licensing Officer advised the Committee that the St Aidens Residents Association had objected to the application but were also questioning the validity of the application as the application had been advertised in the Herald and Post which was not delivered in the St Aidens area. The Officer withdrew from the meeting in an attempt to confirm whether this was the case. The Officer subsequently returned to the meeting and confirmed that the Herald and Post was not delivered in the St Aidens area.

The Council's legal representative advised that the application was still valid providing that the publication in which it had been advertised, in this case the Herald and Post, was delivered in the vicinity. It was confirmed that the Herald and Post was delivered in the vicinity of St Aidens.

The Police and other interested parties making representations (including the representative from the St Aidens Residents Association) confirmed that they were happy for the Hearing to proceed and for the application to be dealt with.

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 Principal Licensing Officer presented the report in relation to an application received on 26 November 2009 for a Premises Licence in respect of Boro Wines, 22 Borough Road, Middlesbrough, as outlined above. The applicant had advertised the application, as required by the Licensing Act 2003, in the Herald and Post on 3 December 2009, which was confirmed as being an accurate reflection of the facts by the applicant.

The report provided background information in relation to the premises, which consisted of a general dealers situated in close proximity to residential premises.

Members were reminded that the premises had previously enjoyed the benefit of an alcohol licence permitting 'off sales' which was converted to a Premises Licence under the Licensing Act 2003. The Premises Licence was granted on 12 August 2005 to Daud and Azhir Bashir. On 18 August 2006, the Premises Licence was transferred to Gursewak Singh, however, following a review of the licence at a Licensing Sub Committee hearing on 24 October 2008, the Premises Licence was revoked.

A further application was made by Daud Bashir, the previous licence holder, on 22 April 2009. Representations had been made by Cleveland Police, Middlehaven Community Council and St Aidens Residents Association. The application was due to be considered by the Licensing Sub

Committee on 17 June 2009, however, the applicant withdrew his application at the meeting and made the further application on 26 November 2009.

Details of four representations, received between 7 and 15 December 2009, were attached at appendices 2) to 5) of the submitted report. Cleveland Police and St Aidens Residents Association had objected to the application on the grounds of the prevention of public nuisance, prevention of crime and disorder and the protection of children from harm. Middlehaven Community Council and Portman Street Residents Association had objected to the application on the grounds of the prevention of public nuisance.

The Principal Licensing Officer highlighted that a statement, covering certain points, was received yesterday from the applicant's legal representative. The statement had been served on Cleveland Police who confirmed that they were happy to accept it. The information had not been served on the other parties making representations or the Committee and all parties were asked whether they were willing to accept the late information. It was subsequently confirmed that all parties making representations were willing to accept the information. In accordance with Regulation 18 of the Licensing Act 2003 (Hearings) Regulations 2005, the Committee also agreed to accept the information and all present were afforded the opportunity to read the statement.

### **Applicant in Attendance**

The applicant's legal representative made reference to the advertisement of the application in the Herald and Post in accordance with the Regulations. He accepted that the publication was not circulated in the St Aidens area but understood that those making representations who were present at the Hearing were happy to proceed. The legal representative asked whether consideration would be given as to whether advertisement of applications should be made in the Herald and Post in the future. The Chair confirmed that the issue would be considered.

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

Reference was made to the applicant's written statement which outlined the applicant's experience with off-licence premises since 1996 and his ownership of the Borough Road premises since 2000, although the premises had been an off-licence since 1989. The applicant and his brother had taken transfer of the Premises Licence in February 2002 and had both operated the premises. There had been no difficulties during the time the applicant and his brother had operated the premises and they had not been involved in any underage sales or test purchase operations involving underage sales.

It was stated that the applicant had leased the premises to Mr Gursewak Singh from 28 November 2005 to the present day. The applicant's legal representative highlighted that whilst the applicant remained the owner of the premises, he had not been involved in the underage sales which had led to the revocation of the Premises Licence in October 2008. It had been Mr Singh and his family who had been involved in the underage sales leading to the revocation of the licence.

The applicant's statement highlighted that he had not been involved in the Appeal against the revocation of the licence and also made reference to an error on page two of Sergeant Higgins' statement, which stated that he had made an application for a Premises Licence in June 2008. The applicant had stated that this was not the case as the licence was not revoked until October 2008, however, the applicant had made an application for a Premises Licence in June 2009. At this point the Police legal representative confirmed that this was a typographical error in Sergeant Higgins statement and should have read '... June 2009' and offered apologies on behalf of Cleveland Police.

The applicant's statement went on to outline the applicant's involvement with the business and explained that Mr Singh had arranged to transfer the business lease to Abdul Ghafoor without the applicant's knowledge. Mr Ghafoor was already trading from the premises before the applicant had discovered what was happening. The applicant's recollection was that Mr Ghafoor had taken over the running of the premises at the end of August 2008, prior to the revocation of the Premises Licence in October 2008.

When the applicant had realised that Mr Ghafoor had been involved in running the premises he had contacted him and Mr Ghafoor had advised that he had bought the business at 22 Borough Road for his daughter who was in the process of obtaining her Personal Licence with a view to running the shop. In June 2009 the applicant had submitted an application for a Premises Licence in respect of the premises at Borough Road and, at the subsequent hearing on 17 June 2009, the applicant withdrew his application as he did not wish to be associated with Mr Ghafoor.

The applicant's legal representative stated that the applicant was trying to make a fresh start and should not be criticised for withdrawing his application in June 2009. When the Singhs had gone into the premises as tenants they had the correct qualifications and held Personal Licences, therefore, there was no reason for the applicant to doubt that they would not be responsible tenants. It was highlighted that the applicant had not chosen Mr Ghafoor to run the business as this had been an arrangement made with Mr Singh without his knowledge.

It was explained that the current situation was that the premises were open and trading but without the benefit of a Premises Licence. The applicant was the owner of the premises and wished to make a reasonable return. The premises would have increased commercial interest by having the benefit of a Premises Licence. The application was made on the basis that the applicant would have more control than if a tenant was the Premises Licence holder.

Currently Imran Majid was the tenant of the premises and was a Personal Licence holder and would become the Designated Premises Supervisor should the application be successful. It was highlighted that Mr Singh was still legally the tenant of the premises although Mr Majid and his business associate, Naveed Gulbhar, were currently tenants of the premises but there had been no formal assignment of the lease.

Mr Gulbhar had attended a Licensing Sub Committee hearing on 12 January 2010 when his application for a Personal Licence was subsequently refused by the Committee due to his previous conviction for conspiring to supply a Class A drug. The applicant's legal representative advised that Mr Gulbhar had appealed this decision to the Courts and pointed out that the Committee should consider the application for a Premises Licence on its own merits.

The applicant's legal representative pointed out that the applicant had not been involved in any underage sales at the premises that had led to the revocation of the licence and considered that the premises was capable of meeting the four licensing objectives given the correct management.

Reference was made to the representation received from the Chair of St Aidens Residents Association which mentioned the opening of European Foods on the opposite side of Borough Road. This premises had the benefit of a Premises Licence, selling eastern European food and specialist drinks from that part of the world but not the type of western drinks that would be sold from Boro Wines. The applicant's legal representative considered the fact that European Foods had been operating without any problems showed that there was nothing wrong with seeking to operate an off-licence in this area.

In relation to the representations made in respect of the application, the applicant's legal representative highlighted that other than the Residents Associations and Cleveland Police, none of the other responsible authorities had made representations. He considered that if the concerns were as serious as some representations suggested, then Trading Standards would have objected. The legal representative stated that the Police had made objections largely based on confusion over responsibility of the shop owner and tenants and Mr Gulbhar's involvement in the premises.

The applicant's legal representative concluded that the applicant's interests in relation to the application were for a commercial return and that the applicant did not want to operate the business himself. The applicant had addressed representations made by Ms Lewis within his written submission. The applicant's legal representative stated that the application should be granted and urged the Committee to consider the application with the background of the applicant's successful trading since 1989.

### **Questions from those making Representations**

#### Cleveland Police

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

- In response to a query the applicant confirmed that Mr Singh took over the premises in November 2005.
- The Police legal representative referred to the applicant's written statement and highlighted that in July 2006 the applicant had been the DPS at the premises, however, Mr Singh's son had applied to become the DPS at the premises in July 2006. In response to a query, the applicant stated that he had not been in day to day control of the premises during the seven month period he had been DPS at the premises whilst Mr Singh was in charge. The applicant stated that he had been assisting the Singhs but was not running the business.
- The Police legal representative submitted that the applicant had still been responsible for the Premises Licence during the period November 2005 to July 2006 and the applicant confirmed that this was the case.
- The Police legal representative referred to page two of the applicant's written statement and asked whether it was correct that Mr Singh had transferred the lease to Mr Ghafoor without the applicant's knowledge and that Mr Ghafoor had taken charge of the business prior to the Premises Licence being revoked. The applicant confirmed this was correct.
- It was stated that at a meeting with Sergeant Higgins and PC Malcolm in January 2009, the applicant had advised them that Mr Ghafoor was a relative and it was queried why he had been unaware that a relative had taken charge of the premises. The applicant replied that Mr Ghafoor was a very distant relative.
- In response to a query, the applicant confirmed that Mr Ghafoor had been in charge of the business from approximately August 2008 to June 2009.
- The Police legal representative stated that Mr Majid was to be the DPS at the premises should the Premises Licence be granted and it was queried how much time Mr Majid would spend at the premises. The applicant replied that the business arrangement was between the two people he had expected to run the premises, namely Mr Majid and Mr Gulbhar.
- The legal representative pointed out that the premises would be open 91 hours per week and Mr Majid could not be there 91 hours a week and it was queried whether Mr Gulbhar would be on the premises when Mr Majid was not. The applicant replied that Mr Gulbhar would be at the premises however, he had failed to obtain his Personal Licence.
- It was acknowledged that Mr Majid had a business association with Mr Gulbhar and it was queried whether the business had been leased to Mr Gulbhar as well. The applicant stated that the business continued to be leased by Mr Singh and the outcome of the application for the Premises Licence would determine whether Mr Majid and Mr Gulbhar took over the lease from Mr Singh.
- The Police legal representative referred to page four of the applicant's statement and questioned whether he seriously considered that Mr Gulbhar could rehabilitate himself just because he was working closely with someone who had no convictions. The applicant explained that he had meant that Mr Gulbhar should be given a chance.
- Reference was made to Mr Ghafoor and the fact that the Police had advised the applicant that Mr Ghafoor was running the shop in January 2009, however, he had still been in charge of the premises in June 2009. The applicant stated that Mr Ghafoor had

never made an application for a premises licence. The Police representative reminded the applicant that Mr Ghafoor had his previous Premises Licence revoked and that it would have been unlikely he would have been granted one.

- The applicant stated that he had been led to believe that Mr Ghafoor's daughter would be applying for a Premises Licence and running the business. He had been told that Mr Ghafoor would have no involvement in the business and that it would be his wife and daughter running the shop. In response to a query, the applicant stated that whilst Mr Ghafoor had still been working at the shop in June 2009, there was no Premises Licence, therefore, no sales of alcohol were being made.
- The Police legal representative referred to page four of the applicant's statement which made reference to Ms Lewis having a personal vendetta against the applicant. The legal representative considered this to be a strong accusation and queried whether Ms Lewis's son had been prosecuted for stealing from the applicant's shop. The applicant confirmed that he was not prosecuted.

#### Mrs Lewis - Chair of St Aiden's Residents Association

Mrs Lewis, Chair of St Aiden's Residents Association, was invited to speak in support of her representations on behalf of St Aiden's Residents Association.

Mrs Lewis referred to the applicant's statement which stated that he had caught Mrs Lewis's son with 'his fingers in the till' at 22 Borough Road. Mrs Lewis stated that her son had been nine years old at the time of the incident and the till had not been open. Mrs Lewis stated that she had nothing against the applicant but was against the things she had witnessed prior to 2005 when the applicant and his brother had been running the shop. Mrs Lewis added that the St Aiden's area was quiet at the moment and she hoped it would stay that way.

#### Mr McClurg - Middlehaven Community Council

Mr McClurg, Vice Chair of Middlehaven Community Council, was invited to speak in support of his representations on behalf of Middlehaven Community Council.

Mr McClurg addressed the Committee and stated that he endorsed the comments made by Mrs Lewis. Mr McClurg stated that the area was currently peaceful with little anti social behaviour and added that the residents were happy at the moment and feedback at the community council meetings was positive.

#### Mr Sargent - Portman Street Residents Association

Mr Sargent, Portman Street Residents Association, was invited to speak in support of his representations on behalf of Portman Street Residents Association.

Mr Sargent expressed his concern in relation to the condition of the outside of the premises and hoped that the licence would not be granted as he felt it would make the situation worse and encourage anti social behaviour.

#### **Questions from Members**

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

- A Member of the Committee asked the applicant to clarify several points and the applicant confirmed that the present situation was that he owned the premises and leased them to Mr Singh and his son. Following problems with the Singhs the premises licence was revoked in October 2008, however, the Singhs still held the lease.
- In response to a query, the applicant stated that the lease (currently held by Mr Singh) was not due to expire until 2026.



- A Member queried whether the applicant felt that, given the present situation, it might be reasonable to revoke the lease from Mr Singh. The applicant replied that Mr Singh had put the business up for sale which was how Mr Ghafoor had come to be involved in running the business previously. The applicant stated that he had been in the process of taking legal action against Mr Singh as he had been in arrears with his rent and Mr Singh had put the business up for sale and was looking for a tenant to take over the remainder of the lease.
- In response to a query, the applicant advised that it was possible for Mr Singh to sub-let the lease without the applicant having to revoke the lease from Mr Singh. It would be up to Mr Singh and the potential lessee to discuss an asking price for the business and a new lessee would take over the lease for the remainder of its term.
- The Committee expressed concern that Mr Singh still remained the leaseholder, having had his premises licence revoked for making underage sales. The applicant stated that he could personally guarantee that the Singhs would never be able to trade from the premises.
- A Committee Member queried how many times the applicant had visited the premises since the lease had been assigned to Mr Singh to check that the conditions of the lease were being met. The applicant replied that he visited the premises once a month and had replaced broken windows.
- The Committee Member stated that the Singhs had brought in Mr Ghafoor, who had his own premises licence revoked, and he had been on the premises for several months, and it was queried how the applicant had been unaware of Mr Ghafoor running the business if he was visiting the premises on a monthly basis. The applicant explained that he had found out about Mr Ghafoor in approximately September and the transfer of the lease had already taken place without the applicant's knowledge. He added that a new lessee had the opportunity of a running period to ensure that the business was as it should be and that was the situation at that time.
- In response to a query the applicant confirmed that the business was still for sale and agreed that resolution was needed but Mr Singh was entitled to hold the lease.
- It was queried whether Mr Majid and Mr Gulbhar were hoping to take over the lease from Mr Singh. The applicant replied that this was possible, however, he did not feel that they would wish to do so without the benefit of a Premises Licence as the business was currently not doing very well.
- A Member of the Committee asked if it was correct to say that the application had been made on the basis that if Mr Gulbhar failed his appeal (in respect of his Personal Licence being refused) Mr Majid and Mr Gulbhar would not want to take over the business or the lease. The applicant confirmed that this was correct and added that he did not want to revoke Mr Singh's lease as he would then be left with the responsibility of being the tenant at the premises and responsible for utility bills etc.
- A Member made reference to page one of the applicant's statement which highlighted that he had not been involved in underage sales or test purchases and queried whether the applicant felt any moral responsibility towards running the shop. The applicant responded that he did not.
- The Member sought clarification in relation to the statement contained at page four of the applicant's statement "... Mr Majid will not be an employee of mine, he will be a tenant." The applicant explained that if the Premises Licence was granted, Mr Majid would be self-employed, running his own business and he would be responsible for his own business.
- The applicant was asked whether it would be fair to say that the business had been badly managed by the tenants he had allowed into the premises. The applicant did not agree and considered that it had only been badly managed prior to the revocation of the

licence. He added that he had been in the trade since 1996 and currently ran a night-club and recognised the importance of adhering to conditions as it was his livelihood.

- Reference was made to the applicant's previous statement that he visited the premises on a monthly basis and it was queried whether he considered this to be a contributory factor to the poor running of the business and whether he should have a more 'hands-on' approach. The applicant responded that he spent most of his time at the night-club and he could spend all day at the shop but a breach of the conditions could happen in the one hour that he was not on the premises. He felt that no additional involvement with the business at 22 Borough Road would make any difference. He considered that it was the responsibility of the people running the business.
- The applicant provided examples of how he and his brother had helped someone with an alcohol addiction whilst they had been running the premises and of the difference it had made to the individual's life, indicating the responsibility he felt towards others as a manager.
- The Council's legal representative sought clarification on several points and the applicant confirmed that he was the owner of the premises but would not be involved in the day to day running of the business should the Premises Licence be granted. Mr Singh still held the lease and had not sold the business. The applicant did not intend to revoke the lease from Mr Singh.
- The legal representative queried how the applicant could guarantee that the Singhs would have no involvement in the business when they had rights under the terms of the lease. The applicant responded that Mr Singh wanted to relinquish the lease so had put the business up for sale. The applicant stated that he could put a new tenant in the premises with a new management team and that he would create a new lease but the benefit of a Premises Licence would make it a more feasible sale. The applicant explained that he had been pursuing Mr Singh for rent arrears and for the next 21 years a subtenant would be in place.
- In response to a further query the applicant confirmed that the subtenant would be a 'tenant at will' rather than a legal subtenant as he did not want the premises to be empty.
- A Member of the Committee stated that if the Premises licence was granted, the business would be more profitable and queried whether Mr Singh would then want to remain in control of the business. The applicant replied that he was willing to give the Committee a written statement that the Singhs would have nothing to do with the running of the business and offered to draft a new lease.
- When asked if he would revoke the lease, the applicant replied that he would create a new lease for the remainder of the term and guarantee that the Singhs would not be involved in the business nor allowed to return in the future.
- The Committee queried whether the applicant could guarantee his proposal as the situation with the lease appeared to be complicated. The applicant responded that Mr Singh no longer wished to hold the lease as he would be liable for the rent. The applicant stated that he would then be able to lease the business to someone else without having to take action against Mr Singh.

### **Relevant Representations**

#### Cleveland Police

Cleveland Police presented its case in support of the representations against the application.

The Police legal representative made reference to Sergeant Higgins' statement dated 17 January 2010 and led Sergeant Higgins through the statement.

The Police legal representative highlighted that in July 2006 a routine joint inspection between

Cleveland Police and Middlesbrough Council Licensing Officers was carried out at 22 Borough Road and it was noted that Part A of the Premises Licence was not present and could not be produced for inspection when requested. Sergeant Higgins advised that the applicant had been the DPS at that time and confirmed that he had not been prosecuted for the offence.

Sergeant Higgins confirmed that in August 2006 an application was made by Mr Gursewak Singh to transfer the Premises Licence into his name and an application was made to vary the DPS into the name of Daljeet Singh (son). At that time the applicant owned the property and was leasing it to Mr Singh. The application had been made following the joint inspection in July 2006.

Sergeant Higgins confirmed that the Premises Licence was revoked in October 2008 following underage sales being made from the premises and stated that the applicant had made an application for a Premises Licence in 2009 but had withdrawn his application at the Licensing Hearing in June 2009.

Sergeant Higgins confirmed that the Police first became aware of Mr Ghafoor working at 22 Borough Road in December 2008/January 2009, following revocation of the Premises Licence. However, the applicant had advised that Mr Ghafoor had been working at the premises since August 2008 which was prior to the revocation.

Sergeant Higgins advised that the Police had met with the applicant in January 2009 and discussed their concerns regarding Mr Ghafoor and his previous history. It was highlighted that there were two specific problems - a premise that had a history of underage sales and a proposed tenant with history of making underage sales. The Police had also suggested to the applicant that a condition preventing Mr Ghafoor working or visiting the premises as it was Mr Ghafoor's daughter who was proposing to hold the licence and run the premises at that time.

The Police legal representative made reference to the Licensing Hearing held on 12 January 2010 in respect of Mr Gulbhar. It was highlighted that Mr Gulbhar had been sentenced to 42 months imprisonment following his conviction for conspiracy to supply Class A drugs and Sergeant Higgins was asked how serious an offence this was. Sergeant Higgins stated that it was a very serious offence and that, given Mr Gulbhar's previous history, the Judge had viewed the offence very seriously.

Since 2002 the applicant had either been the owner or DPS in 2008 Mr Singh was the DPS and the premises licence was revoked but Mr Ghafoor was working at the shop and now Mr Gulbhar was working there having had serious convictions. The Police felt that the applicant had a cavalier approach to choosing tenants and that it was a frightening prospect to the way the off licence might be operated.

Reference was made to the 10 conditions proposed by the applicant. Sergeant Higgins confirmed that whilst he was happy to accept the conditions he did not feel that the people the applicant had chosen as tenants or those that would be running the premises in the future would be suitable to enforce such conditions.

The Police legal representative referred to the period when the applicant and his brother had been running the premises and asked those making representations how they felt about the applicant wishing to become the licence holder again. In response it was stated that the general feeling amongst residents was that the area was currently peaceful with little anti social behaviour and they were opposed to the granting of the premises licence.

#### Questions from the Applicant's legal representative to the Police

The following issues were raised:-

- In response to a query, Sergeant Higgins advised that the European Food Store had held a premises licence since August 2008 and confirmed a further licensed premises in the vicinity of 22 Borough Road as being Starlight News in Diamond Road which was run by a Mr Daljeet Singh .

- Sergeant Higgins confirmed that Mr Daljeet Singh had applied to have the premises licence transferred to him from his father, Mr Gursewak Singh, prior to the review hearing when the licence was subsequently revoked.
- It was confirmed that Daljeet Singh had been the DPS at 22 Borough Road for a short time and was the DPS at the premises in Diamond Road.
- The Principal Licensing Officer clarified that that on 12 August 2005 the applicant and his brother were the premises licence holders and the applicant's brother was the DPS. On 25 August 2006 Gursewak Singh became the premises licence holder with Daljeet Singh as the DPS, one month later the DPS was transferred to Gursewak Singh. It was confirmed that according to the records held by the Council's Licensing Section, the applicant had never been DPS at 22 Borough Road.
- In response to a query, Sergeant Higgins confirmed that three underage sales had been made from the premises at a time when Gursewak Singh had been the DPS, however, no underage sales had been made from the premises during the period when the applicant had been the premises licence holder and his brother had been the DPS.
- Reference was made to page three of Sergeant Higgins statement in relation to Mr Ghafoor running the premises and the applicant withdrawing his application for a premises licence in June 2009 due to Mr Ghafoor's involvement in the premises. Sergeant Higgins advised that the applicant had stated that he was unaware of arrangements between Mr Singh to transfer the licence to Mr Ghafoor. Sergeant Higgins had made the applicant aware of this fact in January 2009 but he had failed to revoke the lease from Mr Singh in order to remove Mr Ghafoor from the premises.
- Sergeant Higgins acknowledged the applicant's explanation that Mr Ghafoor's daughter had intended to become the licence holder once she had obtained the relevant licensing qualification, however, Sergeant Higgins stated that the Police had never seen Mr Ghafoor's wife or daughter at the premises during visits.
- The applicant's legal representative pointed out that during the time Mr Ghafoor had been working at the premises, there was no premises licence. Sergeant Higgins accepted this but considered that the visits the Police had made to the premises indicated who would be working in the shop had the application been granted in June 2009. Sergeant Higgins added that Mr Ghafoor had worked at the shop from August 2008 when the premises licence had been in place until it was revoked in October 2008.
- In response to a query Sergeant Higgins expressed concern in relation to the people working at the premises and was concerned that the applicant wished to be the licence holder yet have no involvement in running the premises.
- In response to a question, Sergeant Higgins accepted that the applicant could not have foreseen the problems that the Singhs would cause at the premises but highlighted that the applicant had considered Mr Ghafoor and Mr Gulbhar as potential tenants.
- Sergeant Higgins confirmed that no proposed conditions to the premises licence would satisfy the Police due to the people running the premises who would have the day to day responsibility of complying with the conditions.
- The applicant's legal representative queried whether it would alleviate the Police concerns to have a condition stipulating that the premises licence holder must be on the premises at all times and a further condition stating that no-one with criminal convictions to be employed at the premises. Sergeant Higgins reiterated that his concern was that the premises had previously had its premises licence revoked for making underage sales and the people proposed to run the premises were unsuitable. Sergeant Higgins felt that the applicant had a casual approach to licences.
- When asked what evidence Sergeant Higgins had to comment that the applicant had a casual approach and would not promote the licensing objectives, Sergeant Higgins

responded that it was unacceptable for someone to hold a licence and have no involvement with the running of the business. He felt that the applicant would continue to consider unsuitable people to run the premises and that the licensing objectives would be undermined.

- In response to a query it was confirmed that the reason for the application to have the premises licence revoked in October 2008 was due to underage sales from the premises. Sergeant Higgins confirmed that he had not been aware of Mr Ghafoor working at the premises since August 2008 until he had sight of the applicant's statement at today's hearing.
- To assist, the Principal Licensing Officer advised that on 4 and 7 August 2008 a Licensing Officer visited the premises and identified Mr Ghafoor working there. He stated that he was working there temporarily.

\*\* At 1.25pm the meeting was adjourned and reconvened at 1.35pm. \*\*

#### Questions from the applicant's legal representative to those making representations

- The applicant's legal representative asked Mr McClurg how close the premises was to residential homes and where Stephenson House was in relation to the premises. Mr McClurg stated that residential homes were approximately 15 yards from Boro Wines and that Stephenson House was located to the rear of Borough Road.

#### Questions from Members

- A Member of the Committee asked Sergeant Higgins when he first became aware of Mr Ghafoor working at the premises. Sergeant Higgins replied that he observed Mr Ghafoor in the premises after the premises licence had been revoked in October 2008, however, Council officers had witnessed him working at the premises prior to the revocation.
- A Member raised a query in relation to the CCTV system at the premises. Sergeant Higgins advised that the CCTV system had not been working at the time of the underage sales and was still not working.
- Reference was made to the various sightings of both Mr and Mrs Ghafoor working at the premises at various times. The applicant advised that, at that time, members of Mr Ghafoor's family had intended to take over the business and that his wife and daughter had spent a lot of time at the premises.
- A Member asked Sergeant Higgins what level of incidents had been reported in relation to the premises. Sergeant Higgins replied that there were no specific incidents linked to the premises as it no longer held a licence. The level of incidents in the general area had fallen and residents were reporting that the area was quieter.
- A Member asked those making representations whether they had noticed a reduction in incidents in the area since the premises had its licence revoked. Ms Lewis responded that there was a 100% improvement and the area was much better. She stated that residents previously experienced youths congregating and general antisocial behaviour but this had stopped since the licence was revoked.
- The Police legal representative made reference to Ms Lewis's objection which stated that many residents did not use the premises as they felt intimidated and queried whether this was still the case. Ms Lewis advised that this was when the licence had been in place as people gathered outside the shop drinking.
- The applicant's legal representative made reference to Sergeant Higgins comment in relation to the reduction in incidents in the general area of the premises and queried what factors had been considered. Sergeant Higgins advised that there was a general downward trend in crime across Middlesbrough and factors could include certain people being in prison, certain Police operations being in force, etc.

- The applicant's legal representative queried whether the downturn in incidents could be due to the redevelopment of housing in the area and many properties being empty. Sergeant Higgins accepted that this could be a contributory factor. In response to a further query, Sergeant Higgins advised that Police figures showed a steady reduction in crime over the last five years.

\*\* At 1.50pm, the Chair announced that the Committee would adjourn for a period of 40 minutes and that everyone should return at 2.30pm prompt. \*\*

At 2.30pm, all interested parties were present and the meeting was reconvened.

### **Summing Up**

#### Cleveland Police

The Police legal representative summed up by stating that the key points submitted by Sergeant Higgins in relation to the application were as follows:-

- The applicant had not always been the Personal Licence Holder. He had owned the building since 2000 and residents in the vicinity had said that shortly after this time problems began. The applicant had never been the DPS at the premises but was unaware of this.
- The applicant and his brother held the licence and in 2006 he was sent a warning letter in relation to not displaying Part A of the licence on the premises.
- The licence was transferred to Gursewak Singh and subsequently revoked in October 2008.
- During a meeting between the applicant and the Police in January 2009, the Police expressed concerns in relation to Mr Ghafoor running the premises, having had his own premises licence revoked previously. The applicant had stated during this meeting that Mr Ghafoor was a relative.
- In June 2009 the applicant withdrew his application for a Premises Licence at the Licensing Hearing due to the continued involvement of Mr Ghafoor with the premises.
- Mr Gulbhar made an application for a Personal Licence which was subsequently considered by the Licensing Sub Committee on 12 January 2010. During that Hearing it became apparent to the Police that Mr Gulbhar was working at the premises – a fact unknown to the Police prior to the Hearing.
- The applicant's statement read "... it would be reasonable to say that Mr Gulbhar would be associating with someone who had no convictions, ie Mr Majid, and ought to be given the opportunity to demonstrate that he had rehabilitated himself." The Police legal representative considered that this statement demonstrated the lack of understanding by the applicant as to the seriousness of the convictions obtained by Mr Gulbhar who would be working at the premises.
- Local residents had expressed concerns regarding problems experienced in the past relating to the premises. Residents did not wish to suffer due to an increase in anti social behaviour should the licence be granted.
- Sergeant Higgins had stated that he considered the four licensing objectives would be undermined if the licence were granted, based on the previous history of the premises, the calibre of the staff previously proposed by the applicant and the concerns outlined by the Community Council/Residents Association representatives.

#### Applicant

The applicant's legal representative summed up by stating that the premises had been an 'off-licence' since 1989. The applicant had owned the premises since 2000 and he and his brother

had operated the premises until 2006. During that time no underage sales were made by the applicant or his brother and the only difficulty experienced by the Police was that Part A of the Premises Licence was not present at the premises during a routine inspection in July 2006.

The applicant's legal representative stated that problems had only occurred at the premises following the involvement of Mr Singh, when the licence was revoked in 2008 due to underage sales being made, and further involvement from Mr Ghafoor whose own premises licence had been revoked previously due to underage sales being made.

Reference was made to Mr Gulbhar whose application for a Personal Licence was refused by the Licensing Sub Committee on 12 January 2010 due to his convictions for drug offences which would never become spent. The decision had been appealed to the Court.

The applicant's legal representative stated that Boro Wines had operated satisfactorily for the majority of time since 1989 and considered that with the correct management, the four licensing objectives would be promoted.

It was highlighted that Cleveland Police was the only responsible authority to make representations in relation to the application and the applicant's legal representative considered it surprising that, given that there had been underage sales from the premises, Trading Standards had not made representations. Likewise, no representations had been made by Children Families and Learning and the Committee was asked to take this into account when determining the application.

Reference was made to the allegations made by Ms Lewis in relation to the applicant and the running of the premises and the Committee was asked to note that no complaints were made by the Police whilst the applicant and his brother had been managing the premises. A general point made by residents was that since the premises licence was revoked there had been a substantial improvement in the area, however, Sergeant Higgins had stated that there had been a gradual improvement in crime figures in Middlesbrough which was as a result of a number of factors.

The applicant's legal representative referred to Sergeant Higgins' statement and highlighted the key points outlining the history of the premises. He pointed out that Daljeet Singh remained the DPS at a nearby premises in Diamond Road and considered that the Police were not objecting to the premises licence but rather to the applicant's ability to select people who would promote the licensing objectives. He considered that the applicant should not be held to account for leasing the premises to the Singhs as he had no reason to doubt them. They had both completed the required licensing training, had clear CRB checks and no representations had been made in relation to the transfer of the premises licence to the Singhs. Mr Singh very much wanted to relinquish liability as a tenant, however, he continued to have commercial liability until new tenants were found to assume the remainder of the lease.

It was pointed out that the business agreement between Mr Singh and Mr Ghafoor was made without the applicant's knowledge and that the applicant took exception to the assumption that he had chosen Mr Ghafoor as a tenant. The Police had expressed concern in the length of time taken by the applicant to remove Mr Ghafoor from involvement in the premises, however, the applicant had explained that this was due to him being advised that Mr Ghafoor's daughter was proposed as the DPS. During visits on 4 and 7 August 2008, Licensing Officers had witnessed Mrs Ghafoor working at the premises not Mr Ghafoor. At the time Police witnessed Mr Ghafoor working at the premises, the licence had already been revoked.

The applicant had made an application for a premises licence on 22 April 2009 but due to the situation with Mr Ghafoor he decided to withdraw the application at the Licensing Sub Committee Hearing in June 2009 until the situation had been resolved.

The present position was that the business was still for sale and Mr Singh was still trying to find a replacement tenant. Mr Gulbhar and Mr Majid had become aware that new tenants were being sought and had taken over the operation of the business, however, the applicant had no knowledge of Mr Gulbhar's convictions prior to him working in the shop. At the time the applicant made his application for a Premises Licence, no decision had been made as to whether Mr Gulbhar would be granted a Personal Licence and the outcome of his appeal was also unknown

at this stage and it might be that he would not be able to remain at the premises. The legal representative had advised the applicant to make the application for the premises licence as he was the owner of the premises and had been out of control but was trying to take control again.

The applicant's legal representative concluded that the applicant was in a difficult position and was anxious to be able to have a premises licence for commercial reasons and that tenants acted responsibly. He added that the applicant was willing to agree to additional conditions to satisfy concerns of local residents, and that the application was modest in that it sought trading hours of 8.00am to 9.00pm and did not wish to open late at night.

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 relation to Boro Wines, 22 Borough Road, Middlesbrough, Ref MBRO/PR0025, be refused. The Committee considered that, if granted, it would undermine the four licensing objectives for the following reasons:-

1. The Singhs remained the legal tenants of the premises and were in control of the business in 2008 when the previous premises licence was revoked following under-age sales being made from the premises.
2. It was not clear, by the applicant's own admission, who would be the legal tenant and in control of the premises if the licence was granted.
3. The applicant's evidence was contradictory. In his written statement submitted to the Committee, the applicant stated that he would not be involved in the day to day running of the business. However, in summing up, his legal representative indicated that the applicant wished to resume control of the premises.
4. Residents had voiced their concerns should the licence be granted and did not want anti-social behaviour to return to the area. Residents pointed out that there had been a substantial improvement in their quality of life since the revocation of the previous premises licence at 22 Borough Road.
5. The Police had expressed concern at the problems experienced with the previous tenants and employees at the premises and, in their view, the imposition of conditions to prevent particular persons working at the premises would not work because they did not believe that the people running the business were responsible enough to enforce them.

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:-
  - Public nuisance, starting at paragraph 2.32.
  - Crime and Disorder, starting at paragraph 2.1.
  - Protection of Children from Harm starting at paragraph 2.41, Annex D (pool of conditions)
3. Middlesbrough Council's Licensing Policy, particularly in relation to:-
  - Prevention of nuisance pages 10 to 15.
  - Crime and Disorder pages 17 and 18.
  - Protection of Children from Harm pages 19 and 21.



4. The case presented by the applicant.
5. Representations made in writing and verbally at the meeting by Cleveland Police.
6. Representations made in writing and verbally at the meeting by St. Aidan's Residents Association.
7. Representations made in writing and verbally at the meeting by Middlehaven Community Council.
8. Representations made in writing and verbally at the meeting by Portman Street Residents.

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