

LICENSING SUB COMMITTEE C

A meeting of Licensing Sub Committee C was held on 26 January 2011.

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

OFFICERS: B Carr, A Gray and J Hodgson.

ALSO IN ATTENDANCE: P.C. Bryan – Cleveland Police, Licensing Unit
Liam O'Brien – Legal Representative - Cleveland Police
P.C. Price – Cleveland Police, Licensing Unit

**** DECLARATIONS OF MEMBERS' INTERESTS**

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

LICENSING ACT 2003: TRANSFER OF PREMISES LICENCE - MARIO'S – 205 LINTHORPE ROAD, MIDDLESBROUGH - REF. NO. MBRO/PR0435/020502

A report of the Head of Community Protection had been circulated outlining an application to Transfer the Premises Licence in relation to Mario's, 205 Linthorpe Road, Middlesbrough, Ref No. MBRO/PR0435, as follows:-

Summary of Current Licensable Activities

Late Night Refreshment.

Summary of Current Hours of Licensable Activities

11.00pm - 3.00am Sunday to Thursday.

11.00pm – 4.00am Friday and Saturday.

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

The Senior Licensing Officer confirmed that prior to the meeting the applicant had been notified of the date and time of the Licensing Sub Committee. The Committee was advised that the applicant was not in attendance and had made no contact with the Licensing Office nor offered any apology for his absence prior to the meeting.

Subsequently, in accordance with Regulation 20(2)(b) of the Licensing Act 2003 (Hearings) Regulations 2005, the Committee decided to proceed and the application was heard in the applicant's absence.

Details of the Application

The Senior Licensing Officer presented the report in relation to an application, received on 18 November 2010, to Transfer the Premises Licence in relation to Mario's, 205 Linthorpe Road, as outlined above. Cleveland Police had however, not received the application until 14 December 2010, therefore the date of the application was 14 December 2010.

The premises consisted of a late night takeaway situated in Middlesbrough town centre. The applicant had applied to Transfer the Premises Licence with immediate effect from Asif Chamadiya to himself.

It was explained that the Licensing Act 2003 allowed for the transfer of a Premises Licence between parties and also allowed for representations by the Police providing that they were satisfied that the exceptional circumstances of the case were such that the granting of the application would undermine the prevention of crime and disorder objective.

Where a request was made for a transfer with immediate effect, the applicant was allowed to carry out licensable activities at the premises as if they were the holder of the Premises Licence

until the application was determined.

On 14 December 2010, a representation was received from Cleveland Police objecting to the application to transfer on the basis that granting the application would undermine the licensing objectives, the prevention of crime and disorder and public safety. A copy of the representation was attached at Appendix 1 to the submitted report.

Relevant Representations

Cleveland Police

The Police legal representative referred to the Licensing Act 2003 (c.17) Part 3 – Premises Licences, Section 44, sub section 5(b) Where a notice is given under section (42(6) (and not withdrawn), and subsection (3) above does not apply, the authority must having regard to the notice, reject the application, if it considers it necessary for the promotion of the crime prevention objective to do so.

The legal representative stated that the Police objected to the application to Transfer the Premises licence for the following reasons:

- (i) Asylum seekers who had been granted asylum but had not been granted permission to work in the country and asylum seekers who had not been granted asylum, had been allowed to work at the premises, under the management of the applicant.
- (ii) The illegal immigrants working at the premises would be reluctant to draw attention to themselves and as a consequence would be unlikely to draw any incidents of crime and disorder to the attention of the Police or provide any statements regarding incidents of crime and disorder.
- (iii) There was no overall control and management of the premises.

The Police legal representative advised that a visit to the premises had been conducted by Police Officers on 8 October 2010 as part of a routine licensing check. Staff had advised officers that the applicant was the manager of the premises, however the applicant was not present during the visit.

Following information received regarding the fact that illegal immigrants were working at the premises, a joint operation was carried out by Cleveland Police and the UK Border Agency Police. The premises were visited on 12 November 2010 and two illegal workers were found to be working at the premises. One of the workers was issued with a notification of potential liability because although he had been granted asylum, he had not been granted permission to work in the country and the other worker who had not been granted asylum, had been arrested by the UK Border Police.

The Police legal representative advised that the Police had applied to have the Premises Licence reviewed, however, the Review was the subject of separate proceedings as it had been instigated against Mr Chamadiya, the current Premises Licence Holder.

In summing up the Police legal representative advised Members that the applicant was not a fit and proper person to hold the Premises Licence. He requested Members to reject the application, as the Police were of the opinion that the circumstances of the case were exceptional and if the application was to be granted, it would seriously undermine the crime and disorder objective.

Questions to the Police

Members of the Committee were afforded the opportunity to ask questions of the Police and a query was raised regarding the involvement in the premises of Mr Abdul Malik Hashemi. Members were advised that Mr Hashemi had previously applied to be the Premises Licence Holder, however his application had been refused at a Licensing Sub Committee on 9 February 2009.

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

Subsequently all the parties returned and the Council's Legal Representative announced the Committee's decision.

DECISION

ORDERED that the application to Transfer the Premises Licence in relation to Marios's, 205 Linthorpe Road, Middlesbrough, to Mr Imran Butt, Ref No: MBRO/PR0435 be refused because based on the evidence that Members had heard, to grant the licence would undermine the crime prevention objective, for the following reasons:-

1. That Asylum seekers who had been granted asylum but had not been granted permission to work in the country and asylum seekers who had not been granted asylum, had been allowed to work at the premises, under the management of the applicant.
2. That the illegal immigrants working at the premises would be reluctant to draw attention to themselves and as a consequence would be unlikely to draw any incidents of crime and disorder to the attention of the Police or provide any statements regarding incidents of crime and disorder.
3. That there was no overall control and management of the premises.

In making its decision the Committee had considered the following:-

1. The application.
2. The representations made by Cleveland Police, both in writing and verbally at the meeting.
3. Relevant Government Guidance in relation to the Licensing Act 2003, particularly:-
 - Prevention of Crime and Disorder, starting at paragraph 2.1, Annex D (Pool of Conditions)
 - Public Safety, starting at paragraph 2.19, Annex D (Pool of Conditions)
 - Transfer of Premises Licence, starting at paragraph 8.108
 - Relevant sections of Middlesbrough Council's Licensing Policy, particularly:-
Prevention of Crime and Disorder, pages 17 and 18.

The Chair advised that the applicant would receive the decision in writing, reminding him of his right to appeal to the Magistrates Court within 21 days of the date of the decision.