

**LICENSING SUB COMMITTEE C**

A meeting of Licensing Sub Committee C was held on 27 January 2012.

**PRESENT:** Councillor Taylor (Chair); Councillors Hudson and Williams.

**OFFICERS:** B Carr, S Morris, T Hodgkinson and S Vickers.

**ALSO IN ATTENDANCE:** S Hatfield – Operations Director/DPS - Blu & Basement  
K Scott – Head Door Supervisor - Blu & Basement  
P Douglas – Director - Blu & Basement  
M Foster – Applicant's Legal Representative  
J Smith – Cleveland Police Legal Representative  
Sgt P Higgins – Cleveland Police Licensing Unit  
PC E Price – Cleveland Police

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

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

**LICENSING ACT 2003: APPLICATION FOR VARIATION OF PREMISES LICENCE – BLU AND BASEMENT, CENTRE NORTH EAST, ALBERT ROAD, MIDDLESBROUGH - REF. NO. MBRO/PRO286**

A report of the Assistant Director Community Protection had been circulated outlining an application for a Variation of Premises Licence in relation to Blu and Basement, Centre North East, Albert Road, Middlesbrough, Ref No: MBRO/PRO286.

Summary of proposed Licensable Activities and Licensing HoursFilms

Monday – Thursday	9.00am – 3.30am
Friday – Sunday	9.00am – 5.30am

All Other Licensable Activities

Monday – Thursday	9.00am – 3.30am
Friday – Sunday	9.00am – 5.00am

Full details of the application were reproduced at Appendix 1 and a copy of the current premises licence was attached at Appendix 2 to the submitted report.

The Chair introduced those present and outlined the procedure to be followed at the meeting. The applicant's legal representative 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 respect of an application for a Variation of Premises Licence, received on 2 December 2011, in relation to Blu and Basement, Centre North East, Albert Road, Middlesbrough, Ref No: MBRO/PRO286 as outlined above.

Details of representations on the grounds of the prevention of crime and disorder and public safety received from Cleveland Police on 16 December 2011 (attached at Appendix 3), were circulated with the submitted report. Copies of the Police reports in respect of the incidents referred to in the Police evidence, a copy of a mission statement from HD Leisure together with two additional letters in support of the application were also circulated to Members of the Committee.

Members were advised that the Police did not have any objections to the part of the variation in respect of the licensing activity in relation to the showing of films.

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### **Applicant in Attendance**

The applicant's legal representative presented the case in support of the application. The legal representative advised that Section 4(3) of the Licensing Act 2003 required the Licensing Authority to have regard to its licensing statement published under section 5 and any guidance issued by the Secretary of State under section 182 when considering licensing applications. However, he emphasised that the guidance was not legislation and as long as Members had considered the guidance in determining an application, they could depart from it if they had reason to do so. Reference was made to the Thwaites - High Court Decision (March 2008).

The legal representative also made reference to the fact that the Police had referred to the decision in respect of JD Wetherspoon v Guildford 2006 with regard to the cumulative impact of the application. The legal representative advised Members that the Cumulative Impact Policy could become a preventative policy by stifling diversity in the town centre, discouraging investment and disenfranchising people.

The legal representative requested Members that when considering the application in terms of the authority's Cumulative Impact Policy, to consider the type of the premises in terms of its style and characteristics and the fact that the premises catered predominantly for the LGBT. Members were requested to consider paragraph 9.16 of the Council's licensing statement and whether the policy applied to these premises when determining the application.

The Committee heard evidence from Simon Hatfield, the Operations Director and DPS regarding his qualifications and licensing experience. Mr Hatfield gave Members an overview of the types and frequency of licensing training for staff and Managers carried out at the premises. Mr Hatfield advised Members of the types of risk assessments carried out for temporary events and outlined the procedures put in place to facilitate such events including the provision of taxi marshals to ensure customers dispersed from the premises in a safe manner.

The legal representative referred to the additional list of conditions proposed by the applicant appended to the application form. He advised that Condition 5 and Condition 6 had been suggested to alleviate any concerns that the Police or Members of the Committee might have with regard to the operation of the premises. Members were also advised that in addition to the suggested additional conditions, the premises intended to operate a last customer entry policy which would specify that no new customers would be admitted to the premises after 2.30am.

Members were advised of the premises involvement in a wide variety of community events and with other organisations such as Teesside University and Pubwatch. A representative from the premises also regularly attended the PSG5 meetings.

A copy of the CV of the Head Door Supervisor was appended to the application and Members were provided with an outline of his experience as a Door Supervisor and his experience of working at the premises.

Mr Douglas, a Director of Blu and Basement advised Members that the company had applied for a variation to the premises for the following reasons:-

- a) For reasons of safety because it was envisaged that the staggered closing times would reduce conflict with customers leaving other premises in the vicinity of Blu and Basement;
- b) To create a better balance in the night time economy;
- c) To increase the offer of the LGBT community to prevent them from travelling outside the town to other venues.

The applicant's legal adviser advised Members that the Police needed to satisfy the Committee that to grant the variation would be detrimental to the licensing objectives.

Members viewed a copy of the CCTV footage in relation to the incident which occurred at the premises on 23 January 2012 and the Operations Director provided Members with an explanation of the sequence of events in relation to that particular incident and the incidents

which occurred on 7 September 2011, 12 September 2011, 16 October 2011, 13 November 2011, 29 December 2011 and 15 January 2012 respectively.

### **Questions from Cleveland Police**

The Police legal representative referred to the incident contained within the statement of PC Price which occurred on 16 October 2011 and asked why the premises were unaware of the incident.

The Operations Director advised that the CCTV footage had been reviewed and there was no record of the incident on the footage. The incident had occurred after the premises had closed and the male had been detained by members of the public. The Operations Director confirmed that the male involved in the incident was not a regular customer of the premises. The Police representative asked that if one of the door staff had been involved in the incident, whether they would be expected to log the incident the following day and the Operations Director confirmed that this would be the case.

The Operations Director was also asked that should the variation in hours be granted, if he was concerned that the premises would attract more clientele who were not as accepting of the customers of Blu and Basement and who might only be attending the premises for the late night drinking. The Operations Director confirmed that door staff always made customers aware that the clientele of Blu and Basement were predominantly from the LGBT community. He confirmed that the premises had no interest in attracting customers from other venues.

In response to a query from a Member regarding how the premises ensured that the clientele at the venue were predominantly LGBT, the Operations Director advised that customers were advised that the premises was an open minded venue.

IN response to a query from a member the Operations Director confirmed that the premises had not received any complaints from customers regarding the proposed last customer entry policy.

The legal representative from the police advised that the Police had concerns regarding the impact on crime and disorder public safety if an extension to the licensing hours was granted until 5.30a.m. Members were advised that the premises were situated in a cumulative impact zone and the local authority was required by law to have a cumulative impact policy.

The legal representative pointed out that the premises were prone to instances of crime and disorder and Members were advised that it was up to the applicant to demonstrate that the application would not undermine the licensing objectives. Members were advised that the proposed extension was considerable in terms of the number of days and times requested.

The legal representative pointed out that the premises were situated in an area where a large number of premises were located which made it difficult to police. The legal representative gave details of the incidents at the premises contained within the statement of PC Price.

The Police acknowledged that the premises were well run but pointed out that the proposed extension of hours would still provide a window for further anti social behaviour incidents.

The applicant's legal representative pointed out that some of the incidents that had occurred at the premises were domestic incidents.

Sgt Higgins pointed out that the Police take instances of domestic violence very seriously. The incidents that had occurred at the premises had occurred because the people involved were often intoxicated.

In response to a query as to whether any incidents that were not proved would be removed from Police records, the applicant's legal representative was advised that every incident would remain on the Police database until they time expired.

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In response to how the premises compared to other venues in terms of incidents recorded, Sgt Higgins advised that of the 271 premises 19 premises had more than 1 incident in November, 21 premises had 1 incident and the remainder did not have any incidents.

In response to a query regarding the amount of police officers on duty from 3am, Members were advised that after 3am the number of officers on duty halved. Sgt Higgins advised that the more additional time that people were allowed to drink alcohol, the more intoxicated they would become. The applicant's legal representative commented on the Police evidence with regard to hotspots and advised that other premises appeared to be the problem.

In response to a query regarding whether the premises had exterior CCTV, Members were advised that CCTV had recently been fitted to the exterior of the premises. It was highlighted that the area where people congregated to smoke was covered by the Centre North East CCTV.

### **Summing Up**

#### Cleveland Police

The Police legal representative advised that the premises were based within a saturation zone and the Police had clear concerns regarding the incidents of crime and disorder at the premises and the connection to the availability of alcohol. It was highlighted that people had been ejected from the premises because they were intoxicated. The Police were concerned that the longer the hours that the premises were allowed to operate, the more alcohol fuelled crime and disorder would occur.

Members were advised that the premises would not be able to prevent heterosexuals from entering the premises and the opportunity to drink until 5.30am would be available to everyone. The legal representative pointed out that the Police had concerns regarding proposed condition 6. Members were advised that once the condition was placed upon the licence it could not be removed even when the premises were sold.

In summing up, the legal representative advised that additional hours would mean further crime and disorder and the requirement for additional policing in the area.

#### The Applicant's Legal Representative

The applicant's legal representative requested Members that when considering the application in terms of the authority's Cumulative Impact Policy, to consider the type of the premises in terms of its style and characteristics and the fact that the premises catered predominantly for the LGBT.

Members were advised that the premises did not have a major crime and disorder problem and that there were robust policies in place to deal with any incidents that might occur. The premises had been the winner of Best Bar None and all of the licensing objectives had been addressed in the application.

The applicant's legal representative also referred to the letters submitted in support of the application and he pointed to the diversity of the premises and advised that was why the variation had been requested and required.

The Council's legal representative confirmed that Members would be advised that the letters of support did not reflect the opinions of Middlesbrough Council as a whole and as such must be given the same weight as those from members of the public.

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

That the Application for a Variation to the Premises Licence in respect of Blu and Basement, Centre North East, Albert Road, Middlesbrough, Ref No: MBRO/PR0286 be granted in part subject to the following conditions:-

1. That the agreed hours for licensing activities to be as follows:-

Films:

Monday – Sunday                      9.00am – 3.30am

All Other Activities

Monday – Thursday                      9.00am – 3.00am

Friday – Sunday                      9.00am – 4.00am

2. That the Applicant shall ensure that at all times when the premises are open for any licensable activity that there are sufficient competent staff on duty at the premises for the purpose of fulfilling the terms and conditions of the licence and for preventing crime and disorder.
3. That the Applicant and the Designated Premises Supervisor shall conduct a risk assessment for the general operation of the premises and in the case of individual bespoke events.
4. The premises licence holder shall implement a Social Responsibility Policy which shall be an analysis of potential risk and reasonable steps to be taken to minimise such. The policy shall address the following:-
  - a. The risk to customers of being victims of crime when in discrete areas of the premises such as the toilets;
  - b. The risk to customers of being victims of crime when intoxicated;
  - c. The risk to customers of injuries sustained from broken glass and whether polycarbonate receptacles are appropriate;
  - d. The risk to customers of harm and injury caused to themselves as a consequence of irresponsible drinking;
  - e. The risk of nuisance being caused to residents and nearby businesses.
5. The premises licence holder will implement a Dispersals Policy. This shall include the provision of a nominated taxi service and taxi marshal to monitor and control queues for taxis outside of the premises.
6. The premises will not change its operating style predominantly serving the LGBT community.
7. If the premises are sold to a company, individual or other body which has no association or connection to HD Leisure Ltd, then the premises licence shall revert to that which had affect immediately prior to the variation granted in part on 27 January 2012.
8. That a policy in relation to last customer entry time be adopted and that no new customers will be permitted to enter the premises after 2:00am.

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

1. Members considered that the premises were a very different type of premises in relation to the other premises located in the town;
2. The nature of the clientele of the premises;
3. The evidence Members heard with regard to the application.

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

1. The application was considered on its own merits, taking into account the licensing objectives of public safety and the prevention of crime & disorder.

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2. Consideration was given to the Government Guidance, in particular paragraph 2.19 onwards relating to public safety and paragraph 2.1 in relation to the prevention of crime and disorder.
  3. Consideration was also given to Middlesbrough Council's Licensing Policy, in particular pages 30 and 31 in relation to public safety and pages 32 to 42 in relation to the prevention of crime and disorder.
  4. Consideration was given to the case made by the Applicant and the Police.

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