

LICENSING SUB-COMMITTEE C

A meeting of the Licensing Sub-Committee C was held on 11 May 2012.

PRESENT: Councillors B E Taylor, J A Walker and M B Williams

ALSO IN ATTENDANCE: S A Khan – Applicant
Mr Azim – Friend of the Applicant
J Smith – Cleveland Police Legal Representative
PC J Bryan – Cleveland Police

OFFICERS: B Carr, C Cunningham, T Hodgkinson and J Hodgson.

DECLARATIONS OF INTERESTS

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

11/1019 **LICENSING ACT 2003 - APPLICATION FOR PREMISES LICENCE:
MARIO'S, 205 LINTHORPE ROAD, MIDDLESBROUGH
REF NO: MBRO/PRO294**

A report of the Assistant Director Community Protection had been circulated outlining an application for a Premises Licence in relation to Mario's, 205 Linthorpe Road, Middlesbrough, Ref No. MBRO/PRO294.

Summary of Proposed Licensable Activities

Provision of Late Night Refreshment Daily 11.00pm – 4.00am

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.

Details of the Application

The Senior Licensing Officer presented the report with regard to an application, received on 19 March 2012, for a Premises Licence in relation to Mario's, 205 Linthorpe Road, Middlesbrough, Ref No. MBRO/PRO294 as outlined above.

It was highlighted that a copy of an additional witness statement from Cleveland Police had also been circulated to Members of the Committee prior to the meeting. The Police legal representative advised that the additional information had been delivered by hand to the applicant on 10 May 2012. The applicant confirmed that he had received the additional information and consequently Members agreed that the additional information could be considered.

The report provided background information in relation to the premises situated on Linthorpe Road within an area designated by the Council as a cumulative impact zone which, operated as a hot food takeaway. A premises licence had been granted on 9 March 2007 to allow the sale of hot food to take away between the hours of 11pm to 3am Sunday to Thursday and 11pm to 4am Friday and Saturday. On 19 January 2011 an application for a review of the premises licence was submitted by Cleveland Police. The review application was considered by Members on 11 March 2011 and a decision was made to revoke the premises licence.

Applicant in Attendance

The applicant presented his case in support of the application. The applicant advised that he had a copy of the lease for the premises but had decided not to sign the lease unless he received a positive response in relation to his application for a premises licence.

Members were advised that the applicant had successfully operated premises based at 60-64 Kings Road for a six year period and during that time he had not received any complaints against the premises or him personally. The applicant advised that he had regularly cleaned the footpaths and the side road outside the premises at Kings Road. He advised that he was a businessman and he did not disobey the law. The applicant advised that he had recently become the landlord of 33 Beaumont Road two months previously. Members were advised that the applicant had nothing to do with Mario's and would not do so until he obtained a licence for the premises.

In response to a query from a Member with regard to who currently owned the premises at 205 Linthorpe Road, the applicant advised that he didn't know. He reiterated that he had a copy of the lease but that he hadn't signed it. The applicant advised that thought that Mr Hussain owned the property and that Mr Hussain also owned a cash and carry on Cannon Park.

In response to a query about where the current owner lived and how the applicant contacted him, the applicant advised that he did not know where Mr Hussain lived only that he owned the cash and carry on Cannon Park.

In response to a query regarding the applicant's current involvement in the premises, the applicant advised that he had no involvement only that he had a copy of an unsigned lease.

In response to a query regarding who was currently working at the premises, the applicant advised that he had no idea who was working there. The people working there could be the same people that were employed by the previous tenant.

The Police legal representative asked the applicant if he thought that he should have made some kind of commitment to the premises before submitting an application given he had no control over the premises, he had not signed a lease, he didn't know who was currently working at the premises and he had made no commitment to the premises. The applicant advised that in order to make a commitment to the business he would have had to pay £25k for the lease. He had asked the owner to guarantee that if the applicant did not obtain a licence for the premises the £25k would be refunded however the owner had refused.

The Police legal representative asked the applicant if it was correct that if the licence was to be granted then it would be in name only given that the applicant had not made any commitment to the premises. The applicant advised that if he did not obtain a licence he would not have anything to do with the premises.

In response to a query whether the applicant had made any inquiries with regard to who was currently working at the premises the applicant advised Members that he had not made any inquiries.

A Member of the Committee highlighted Point 1.3 of the applicant's application for the premises licence which stated:

"Mr Khan the new leaseholder ("the applicant") has recently revamped the premise and restructured the overall business objective, to provide an efficient and economic business in accordance with the Council's main licensing objectives. Mr Khan is a well known respected business man and currently owns and operates a hot food takeaway in North Ormesby, on Kings Road known as Tony's Parmesan House, which the Licensing department and other bodies are aware of his good reputation".

The applicant confirmed that he was going to sign the lease if the licence was granted however at the current time he was not the leaseholder of the premises and he had not revamped the premises.

In response to a query regarding who was currently involved in the premises, the applicant advised it could be the landlord or it could be the previous premises licence holder.

Mr Azim advised that the applicant would be good for the premises and stated that Mr Khan was a very experienced businessman and that he had not had any problems in the past.

The Council's Principal Legal Officer asked the applicant if he knew the full name of the landlord and whose name was currently on the lease. The applicant advised that he didn't know and couldn't remember. The applicant was asked how he envisaged the business being transferred to him. The applicant's friend advised that providing the applicant obtained a licence, the applicant would run the premises.

The Council's Principal Legal Officer asked the applicant who currently ran the business. The applicant advised that he had direct contact with the landlord. The applicant was asked if the landlord actually ran the premises as it was difficult for the Committee to understand how the transfer of the lease would work without knowing the name of the landlord or the owner.

The applicant was asked if he understood that because the premises were located in a cumulative impact zone that there should be very good reasons for the Council to depart from the requirements of that policy. The applicant was advised that he would need to demonstrate that he would not make the situation worse and he was asked what procedures he had in place to demonstrate this fact.

The applicant advised that he would notify the Police if an incident occurred outside the premises. He advised that he did not currently have a policy in place. The applicant's friend advised that if Mr Khan obtained the licence he would pay £25k for the lease but that he didn't want to commit himself until he obtained the licence. The applicant advised that he believed he was very good with staff and that he was a very good businessman.

In response to a query from a Member of the Committee in relation to what involvement the applicant had with Mario's and whether the applicant had seen a copy of the business plan or accounts or visited the premises to see how they worked, the applicant advised that according to the landlord the business was doing well.

The applicant advised that he was looking to improve the business so that people would see how clean the premises were and how professional the staff would be before trying the food. He advised that under his management customers would return. The applicant advised that he wanted to change all the plans and the equipment and the look of the premises. He would operate two different shift patterns for staff and he would work 2pm until 10.00pm. The applicant also advised that there could be a new manager of the premises appointed or the same manager could be retained if he obeyed the applicant's rules.

Reference was made to the fact that the applicant appeared to be serious about taking the business over but that he had not had sight of a business plan or any details of the takings of the premises.

Reference was made to the Police witness statement which referred to a routine licensing check carried out on 11 April 2012 to Tony's Parmesan House on 33 Beaumont Road when two breaches of the licensing conditions were identified. The applicant advised that he had been a tenant of 33 Beaumont Road twelve years ago and had taken over as landlord two months previously.

Reference was made to the information contained in the applicant's application form at 1.3 which referred to the applicant owning a hot food takeaway on Kings Road known as Tony's Parmesan House. Members were advised that the shop at Kings Road was called North Ormesby Parmesan House. The applicant confirmed that he had recently sold the Kings Road shop. He advised Members of the Committee that he apologised if the application form contained errors, it was not his intention to mislead Members. The applicant advised that it was likely that the errors had occurred because a Mr Fahim had completed the application form on his behalf.

The Police legal representative stated that nearly all the information provided to the Police was incorrect and was very different to the information that the applicant was providing to the Committee. The applicant advised that the information he was providing to the Committee was correct.

The Police legal representative pointed out that the information in relation to revamping of the

premises, the ownership of the lease and information in relation to the ownership of the lease was incorrect.

The Council's legal representative clarified for Members of the Committee that it stated on the application form for the licence that it was an offence to provide incorrect information in relation to any licensing application.

The Chair of the Committee advised that the statement from the applicant in support of his application stated that he owned and operated 60 – 64 Kings Road. The applicant confirmed that he had completed on the sale of the above premises two weeks previously and that he no longer had anything to do with the premises.

The applicant was asked whether he had informed anybody about the fact that following the sale of the premises, the statement he had submitted in support of his application was now incorrect. The applicant advised that he had not informed the Licensing section however he had informed the gas and electric suppliers and the council tax about the sale of the premises.

A Member referred to page 20 of the applicant's application and pointed out that when the applicant had signed the application form he had written underneath Manager and Leaseholder.

The applicant confirmed that he had signed the application and he fully intended to become the Manager and Leaseholder but only if he obtained the licence. He confirmed that at the time of signing the application he was not the owner or the leaseholder.

Cleveland Police

The Police legal representative advised that the Police already had concerns based on the information submitted within the applicant's licensing application however following the information presented by the applicant at this meeting the concerns of the Police had heightened given the difference between the information contained in the application and the facts presented at Committee by the applicant.

The Police legal representative advised that the premises had already previously had the licence revoked because of the way that they were managed. The premises still had no identifiable landlord, owner or manager and the applicant was not willing to make any commitment to the premises. No lease had been signed and there was no guarantee that a lease would be signed which had magnified the concerns that the Police held.

The Police legal representative requested PC Bryan to outline what concerns the Police had in relation to the application. PC Bryan advised that the Police had major concerns with regard to the history of incidents at the premises. The premises were also situated in a cumulative zone and previously incidents at the premises had not been reported and the Police were concerned that the situation could get worse.

The Police also had issues regarding the applicant's statement and the fact that a great deal of the information contained within it was incorrect. It was highlighted that at a recent routine enforcement visit on 11 April 2012, the Police discovered that the same staff as those that were working when the premises had employed illegal workers were still employed by the manager. PC Bryan advised that she had been involved for a long period of time with the premises as part of the Police enforcement team however she was still unable to ascertain who actually owned the premises.

It was highlighted that the information given by the applicant to a colleague of PC Bryan and in his statement stated that the address of Tony's Parmesan House was 33 Beaumont Road. PC Bryan confirmed that Tony's Parmesan House had previously breached its licensing conditions. When questioned whether PC Bryan considered if there was any conditions which could be placed on the licence to alleviate the problems with the premises, PC Bryan confirmed that she did not think that any conditions would be suitable.

The applicant advised that any crime in the vicinity of the premises was already prevalent and

the granting of the licence would not bring about an increase in crime. The applicant advised that he wasn't paying attention when he spoke to PC Bryan's colleagues. He stated that he was an honest responsible person who obeyed all the rules and regulations in particular to 60 – 64 Kings Road. He advised that the Police would find that all the certificates, licences and signage in relation to children were in place.

The Council's legal representative clarified that it was up to the applicant to show that there would not be an increase in crime if the application was to be granted. PC Bryan advised that when premises were located in a cumulative impact zone, much of the crime and disorder was alcohol related and statistics proved that disorder is increased because people who have had alcohol visited the premises. The area also suffered from anti social behaviour associated with underage sales.

The applicant advised that the premises were not predominantly in a residential area. The only residential properties were located behind the premises. The Council's legal officer clarified whether the Police had actually spoken to the applicant during the visit to 33 Beaumont Road on 11 April. PC Bryan confirmed that the Police only spoke to Mr Al Miaan on 11 April, the incorrect information given to PC Bryan's colleague had been provided when the Police had visited the applicant at his home.

Summing Up

Cleveland Police

The Police legal representative advised that the premises were located within a cumulative impact zone and Members had not heard anything to suggest that the applicant had demonstrated that the grant of an additional licence in the saturation zone would not add to the existing cumulative impact. Members were advised that the premises had a history of a lack of control and management.

The Police legal representative advised that the applicant had provided incorrect and misleading information, although there was no disrespect towards the applicant, as the application had been completed by a third party. The applicant had not demonstrated any commitment to the premises, there had been no staff changes and the premises had not been revamped as stated in the applicant's application.

Members were advised that the risks of granting the licence were significant and Members had not heard anything to demonstrate any changes because the applicant had not signed the lease or offered any commitment to the premises.

The Police legal representative referred Members to the revised guidance issued on 25 April 2012 in particular section 2.12 in relation to the management competency of the premises. Section 9.12 was also highlighted and Members were requested to place weight on the evidence submitted by the Police which provided clear evidence of incidents at these premises and other premises linked with the applicant. The Police legal representative advised that the Police considered that 12pm was an appropriate closing time for the premises.

The Applicant

The Applicant advised Members that he would be ready to commit himself to the premises if the licence was to be granted. He advised that he had plans for the premises and with his experience he would sort the premises out. He advised that he did not believe that there was a problem with underage drinkers in the area and highlighted that the busiest time for the premises was after 12pm. The applicant advised that if he was not granted the licence he would be pleased that he hadn't made the financial commitment.

The applicant apologised for giving misleading and incorrect information and advised that he didn't always understand the questions and that he was not a dishonest person. The applicant advised that if he was granted the licence, he would be the manager. The applicant's friend advised that English was the applicant's second language and the applicant had difficulty in

reading English. He advised that the applicant did not intend to mislead the Police or the Committee and he stated that if had filled in the forms on the applicant's behalf, the problems would not have arisen.

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 the Premises Licence in respect of Mario', 205 Linthorpe Road, Ref No: MBRO/PR0294 be refused for the following reasons:-

1. The Premises are situated in a cumulative impact zone as described in the Council's Licensing Policy and the Policy states that the Committee will not normally grant a new licence unless it was satisfied that the activities would not add to the problems in the area. The applicant failed to demonstrate this.
2. The applicant did not know who the Landlord of the premises was or who was actually running the business or even who he would acquire the business from.
3. The statements made in the applicant's application which were signed by the applicant, were incorrect and misleading even though it clearly states on the application form that it is an offence to make a false statement in or in connection with this application.
4. It appeared from Police evidence that there had been problems at other premises that the applicant had been involved in which lead the Committee to have no confidence in the applicant's ability to run the premises in line with the licensing objectives.
- 5 The history of the premises demonstrated a lack of control and good management with no one been identified as being in charge of the premises which resulted in breaches of the Licensing Act.
6. The applicant had displayed a lack of commitment to the business by failing to secure any ownership of the premises. If the Committee had been minded to grant the licence the Committee could not be certain who would actually be running the premises.
7. The applicant's application and the representations to the Committee raised even further concerns that the premises would not be run properly and the licensing objectives would not be met and the activities would add to the crime and disorder in the area.

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

1. The application was considered on its own merits, taking into account the three licensing objectives of public safety, the prevention of crime & disorder the protection of children from harm.
2. Consideration was given to the Government Amended Guidance issued in April 2012 under Section 182 of the Licensing Act 2003,
3. Consideration was also given to Middlesbrough Council's Licensing Policy
4. Consideration was given to the case made by the Applicant the Licensing authority and the Police.

The Chair advised that the applicant would be reminded of the right to appeal to the Magistrates Court within 21 days of the date of the decision.

