

TEESSIDE MAGISTRATES' COURT

LICENSING APPEAL REASONS FORM

Date: 25-27 June 2007

Appellant: Riaz Hameed

Respondent(s):

Appeal against the decision of Middlesbrough Council Licensing Authority to refuse to vary as applied for, a Premises Licence in respect of The Arena, 208 Newport Road, Middlesbrough

Before: Mr A J Phelps, Mr J S Meredith, Mr W Millar

Assistant Justices' Clerk: Mr D Towell

1) The following facts were agreed:

1. The Arena was purchased by Mr Hameed during the course of 2006
2. Prior to the application to vary being made to Middlesbrough Council in the autumn of 2006, the hours of licensable activity were: -
 - Live music, recorded music and facilities for dancing: -
 - 7pm to 2am Monday to Saturday
 - 12noon to 12.30am Sundays
 - 12noon to 2am – all Sundays preceding a bank holiday (except Easter Sunday)
 - Sale of Alcohol: -
 - 11am to 11pm Monday to Saturday
 - 12noon to 12.30am Sundays
 - 12noon to 2am all Sundays preceding a bank holiday (except Easter Sunday)
3. The proposed variation of licensable activities: -

Plays, films, indoor sporting events, live music, recorded music, performance of dance, provision of facilities for dancing, supply of alcohol and late night refreshment.

Removal of all embedded restrictions transferred to the licence during the previous conversion of the licence

4. The proposed variation of hours for licensable activities: -
11am to 7am daily – supply of alcohol
11am to 7.30am daily – all other licensable activities.
5. On 13th November 2006 Middlesbrough Council Licensing Sub Committee granted in part the application to vary by: -
 - a. removing the embedded restrictions
 - b. varying the hours of licensable activities as follows: -
sale of alcohol - 11am to 2.30am daily
all other licensable activities – 11am to 3am daily
 - c. inserting modified conditions
6. Mr Hameed has an excellent background in the licensing trade and local community. His work has included implementing a Pub Watch organisation in Middlesbrough and an Apex radio system. He has also been a director of the Middlesbrough Town Centre Company and successfully managed a couple of licensed premises in the Middlesbrough town centre area and his visionary aims have been applauded.
7. The premises have never opened under Mr Hameed's management.
8. The premises are located in an area of light commercial premises with residential properties situated approximately 100 metres away.
9. The premises are located approximately 15-20 minutes walk from the bus station which forms the boundary of Middlesbrough's 'saturation zone'.
10. One of the two main routes from Middlesbrough town centre is via Union Street, which is largely residential.

2) Disputed facts and findings (including assessment of witnesses where appropriate):

Very few of the facts were in dispute in this case, however, the local authority raised concerns that at the relevant period (2.30am to 7.30am)

the premises would operate as an old fashioned nightclub and not provide much in the way of cultural and alternative activities described by Mr Hameed.

It seems to us that the purpose of this appeal was outlined correctly by Mr Hameed's counsel Mr Phillips in his summing up. He indicated that Mr Hameed was not confident that his proposed venture would be profitable without the option of the additional licensed hours. This may be because Mr Hameed told us that many of his proposed day time cultural activities would not be profitable and would be subsidised by other activities. We do share Middlesbrough Council's concern that in operating as an old fashioned nightclub there would be an increased risk of crime and disorder and public nuisance, however, we believe the measures and assumptions outlined in paragraphs 3a and 6 below give us sufficient reassurance to counter-balance this concern.

3) We have had regard to the promotion of the Licensing Objectives and make the following findings:

a) The prevention of crime and disorder

The main concern in this case surrounds the movement of people from the town centre area to the premises during the night whilst in drink. However, because of the distance involved at night (15-20 minutes walking time) it is likely that the majority would travel by private or public transport. We have noted that Mr Hameed is considering the provision of a free shuttle bus. Statistics produced by Sgt Higgins indicate the highest number of incidents of crime and disorder are between the hours of 11pm and midnight and the lowest are between 4am and 8am. These facts, together with a condition restricting entry to members after 3am as put forward by Mr Hameed, will minimise the risk of an increase in crime and disorder in the area.

b) Public safety

We were not given any cause for concern in the evidence in relation to this point and it was not raised as an issue by either party.

c) The prevention of public nuisance

Noise and disturbance to local residents is the main area of concern. Noise emanating from the building can be adequately controlled by conditions already agreed with the council subject to an agreed amendment to condition (i) 8. These conditions were clearly considered to be adequate by the Council in granting a licence until 3am daily. Noise from people arriving and leaving the premises is currently untested as the premises have not opened. Clearly, the Council considered that the conditions attached to the licence were adequate to minimise the risk of any nuisance until 3am and we would expect the licence to be reviewed in the event of complaints from local residents.

d) The protection of children from harm

We were not given any cause for concern in the evidence on this point and it was not raised as an issue by either party.

4) We have considered Middlesbrough Council's Policy Document and we are satisfied that the Licensing Committee's decision was made in accordance with this policy

Reasons:

The Council do appear to have followed their policy in granting a licence to 3am but we do not understand the logic of restricting the hours applied for to that time.

5) We have had regard to the guidance issued by the Department for Culture, Media and Sport under Section 182 Licensing Act 2003.

We have noted in particular paragraph 3.58 and recognize that Mr Hameed's project will encourage and promote a broad range of entertainment for the wider cultural benefit of the community and we have balanced the need to prevent disturbance with wider cultural benefits. We have also had regard to 5.99 which reminds us of the legislative review procedure should problems arise in the future.

6) Decision:

We substitute the decision of the Licensing Authority by extending the hours of licensable activity as follows: -

Sale of alcohol – 11.00am to 7.00am daily

All other licensable activities – 11.00am to 7.30am daily

Subject to the conditions imposed by the Licensing Authority with condition (i) 3 amended to read as follows: -

Entertainment noise shall not be audible nor raise the ambient noise levels inside residential premises located on Lees Road, Carey Close or Victoria Street after 11.00pm

And the insertion of the following additional conditions: -

- (V)
1. Entry to the premises after 3.00am daily shall be restricted to members.
 2. All members are to be issued with a photographic identification membership card prior to entry.
 3. A register of members is to include details of the full name, address, date and place of birth of each member.

4. All membership cards are to be scanned using 'clubscan' or equivalent software before entry to the premises.