

LICENSING SUB-COMMITTEE C

A meeting of the Licensing Sub-Committee C was held on 27 November 2012.

PRESENT: Councillors B E Taylor (Chair) and M Hudson and J A Walker.

ALSO IN ATTENDANCE:

- N Ekert, DPS Walkabout; Intertain (Bars) Limited (Applicant).
- N McCann - Applicant's Legal Representative.
- Sergeant Higgins, PC Price – Cleveland Police.
- M Nevison – Police Legal Representative.

OFFICERS: C Cunningham, J Dixon and J Hodgson.

DECLARATIONS OF INTERESTS

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

12/7 **LICENSING ACT 2003 - APPLICATION TO VARY PREMISES LICENCE - WALKABOUT, 28-32 CORPORATION ROAD, MIDDLESBROUGH, TS1 2RX, REF NO: PRO103.**

A report of the Assistant Director Community Protection had been circulated outlining an application to vary the Premises Licence in relation to Walkabout, 28-32 Corporation Road, Middlesbrough, Ref No. PR0103, as follows:-

Summary of Existing Licensable Activities and Hours for Existing Licensable Activities

Sale of alcohol (on and off sales), Regulated Entertainment and Late Night Refreshment:-

Monday to Saturday - 11.00am to 2.00am, Sundays 12.00 noon to 12.30am (including Easter Sunday), Sundays preceding a Bank Holiday (excluding Easter Sunday) 12.00 noon to 2.00am.

Seasonal variations – Sunday before May Day Bank Holiday, Spring Bank Holiday and August Bank Holiday 12.00 noon to 3.00am, Easter Saturday, Friday and Saturday of August Bank Holiday, Christmas Eve and Boxing Day (except Sunday) 11.00am to 3.00am, Christmas Eve and Boxing Day (Sunday) 12.00 noon to 3.00am.

Non-standard Timings – If fall on a Sunday 12.00 noon to 3.00am, days other than Sunday 11.00am to 3.00am, Australia Day 26 January, Waitangi Day 6 February, St Patricks Day 17 March, Anzac Day 25 April, Freedom Day 27 April, Queen's Official Birthday 9 June.

Opening Hours – as above plus 30 minutes.

A copy of the existing Premises Licence was attached at Appendix 1.

Summary of Proposed Licensable Activities and Proposed Hours for Licensable Activities

To extend all licensable activities on Wednesday to Saturday until 3.00am and the terminal hour to 3.30am and to extend all licensable activities on Sundays until 2.00am and the terminal hour to 2.30am.

Full details of the application and accompanying Operating Schedule were 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 Senior Licensing Officer presented the report in relation to an application to vary the premises licence in respect of Walkabout, 28-32 Corporation Road, received on 5 October 2012, as outlined above. The applicant had advertised the application, as required by the Licensing Act 2003, in the Evening Gazette on 12 October 2012, which was confirmed as being an accurate reflection of the facts by the applicant.

It was highlighted that the premises consisted of a late night bar/nightclub situated in Middlesbrough town centre, within an area designated by the Council as a Cumulative Impact Zone. A location plan was attached at Appendix 3.

It was noted that prior to the introduction on the Licensing Act 2003, the premises benefitted from a Justices 'On' Licence and a Public Entertainment Licence. On 30 June 2005 an application was made to convert and vary those licences and, following agreement with Cleveland Police, a Premises Licence was granted on 24 November 2005 to permit the sale of alcohol, regulated entertainment and late night refreshment from 11.00am to 2.00am Monday to Saturday and 12.00 noon to 2.00am Sundays, with an additional hour on selected dates.

On 12 March 2009 an application for review of the Premises Licence was received from Cleveland Police following a significant amount of incidents at the premises, violence involving door supervisors and test purchase operations which had resulted in underage persons being sold alcohol. A Licensing Sub Committee was held on 5 May 2009 to consider this matter. During the meeting a compromise was made between the Premises Licence Holder and Cleveland Police and this was agreed by the Committee. This agreement modified the conditions of the Premises Licence and reduced the trading hours of the premises for a three-month period.

The Premises Licence was transferred to Intertain (Bars) Limited on 20 October 2009.

On 23 October 2012, a representation was received from Cleveland Police objecting to the application on the grounds of the prevention of crime and disorder and public safety. A copy was attached at Appendix 4.

All parties confirmed that they had received the following items:-

- Evidence bundle from Cleveland Police, circulated on 20 November 2012.
- Supporting documents from the applicant, circulated on 23 November 2012.
- Additional Police evidence in relation to a further incident, circulated on 26 November 2012.

Applicant in Attendance

The applicant, accompanied by his legal representative, was in attendance at the meeting and confirmed the report as being a correct representation of the facts.

The applicant's legal representative presented the case in support of the application to vary the premises licence.

The Panel was advised that Walkabout was an Australian themed bar, showing televised sport from Australia, New Zealand and South Africa. There were 30 Walkabout bars around the country offering a varied food menu and chart music from the decades in the evenings. It was highlighted that the Middlesbrough venue had been accredited with the 'Best Bar None' accolade on an annual basis and that approximately 65% of its patrons were female.

The applicant's legal representative explained that the venue was attracting more family trade during lunchtime periods and 'after work' trade with its food menu and that the current DPS/Manager had built up trade since taking over 12 months ago. It was pointed out that modifications to the conditions on the licence had been made with the co-operation of the Council and Police and that this had been helpful. Whilst trade had improved during the daytime, the late night market had suffered as the venue currently had a terminal hour of 2.30am and other venues in the town were open later, hence patrons left to go to other later opening venues.

The Committee was advised that the venue wanted to offer customers better value for money and a better experience when visiting the premises and, therefore, proposed to invest approximately £300,000 in refurbishing the premises and to employ an additional 15 staff.

Reference was made to the evidence bundle submitted by the applicant. Pages two to four showed photographs of the existing premises and pages five to eight showed an artist's impression of the proposed refurbishment. It was emphasised that the investment for the proposed refurbishment would only be made if the variation to the licence was granted as additional revenue would need to be raised to fund the investment. The applicant's legal representative offered to add a condition to the licence stating that the premises would not use the additional hours (should the application be granted) until the refurbishment had been completed (February 2013).

With regard to the representation made by Cleveland Police, the applicant's legal representative wished to point out that the applicant had an excellent working relationship with the Police, holding regular meetings/telephone calls, on a monthly basis. The applicant's legal representative considered that the bulk of the submitted Police evidence concentrated on serious incidents that had occurred at the premises in 2009 and highlighted that this had culminated in a review of the licence where appropriate action was taken at that time. The premises now had a different management team in place and different door staff. The applicant's legal representative considered only incidents that had occurred in the last year to be relevant.

The Committee was advised that the premises hosted approximately 2,000 patrons after 10.00pm every week and that any incidents that occurred were dealt with appropriately and reported to the Police. It was highlighted that during 2012, the premises had held 26 Temporary Event Notices with a terminal hour of 3.30am without any problems.

The applicant's legal representative accepted that the premises was situated within a Cumulative Impact Zone, as set out in the Council's Licensing Policy, however, considered that extending the terminal hour at the premises would assist in maintaining patrons at the premises rather than leaving to go to other later venues or to takeaway establishments which were identified by the Police as 'flashpoints' causing disturbance. The applicant did not wish to cause any difficulties to the Police by opening later and would have a last entry time to the premises of 2.00am and believed that the better the environment provided for customers, the better people were likely to behave.

In relation to the prevention of crime and disorder, the premises had trialed the later opening hours on 26 occasions through Temporary Event Notices without any problems. The applicant's legal representative urged the Committee to grant the application to vary and reiterated that the investment in refurbishing the premises could not go ahead without the additional hours.

Questions to the Applicant

Cleveland Police confirmed that there were no questions for the applicant.

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

- Reference was made to five incidents that had occurred at the premises since April 2012 and it was queried what action had been taken to reduce the possibility of further incidents occurring. The applicant's legal representative responded that the persons involved in the incidents were barred from the premises and that the matters were reported to the Police. Information was provided in relation to the ID scanner and door scans at the premises which identified any persons underage, fake ID or persons banned through Pubwatch. The DPS added that since taking over at the premises 12 months ago, he regularly liaised with the Police to discuss any issues and tried to ensure that incidents did not reoccur.
- In response to queries regarding the provision of food, it was confirmed that the premises currently stopped serving food at 9.00pm, however, they would be looking to

- offer the full food menu until closing time if the additional hours were granted. It was estimated that approximately 10% of the current trade was food and the applicant wished to increase that percentage by offering the full menu until closing time and encouraging day time family trade. It was not intended to increase prices. The DPS added that he intended to offer additional food products in the evenings, such as a hot dog stand, and they would be priced to reflect similar takeaway prices.
- The applicant's legal representative was asked to explain his earlier comment in relation to later opening hours at Walkabout assisting matters in the town centre and why he thought this would be the case. The legal representative stated that when patrons left the premises, they were sometimes unsure of where to go next and would join queues to enter other venues and these could often be flashpoints for disturbance, therefore, by keeping patrons at the premises in a safe, well-run environment, and offering food and takeaway-style options negating the need for patrons to seek out takeaway establishments, this assisted in reducing disturbance in the town centre.
 - It was queried whether it was a fact that patrons leaving Walkabout went on to other venues. The applicant's legal representative responded that the majority of customers interviewed at Walkabout stated that they were leaving to go on to other venues.
 - In response to a query, the Committee was advised that the venue attracted approximately 700 patrons on Saturday nights and that this figure would reduce to approximately 300-400 at 3.00am.
 - A Member highlighted that a last entry time of 2.00am had been offered by the applicant, however, there was a possibility that customers would come from other venues at 1.45am, thus potentially creating queues and other problems. The applicant's legal representative responded that the premises was trying to maintain its current loyal customer base and would, therefore, be happy to agree to a last entry time of 1.30am if that would allay any concerns. There would also be a £5.00 entry fee which would encourage customers to remain at the venue.
 - A Member asked how many door staff were employed after 10.00pm on Fridays and Saturdays. The DPS responded that there were currently five door staff employed on Friday nights and nine on Saturdays. Door staff were kept on until 30 minutes after the last customer had left the premises.
 - It was queried whether there was a specific dining area for customers to consume food. The DPS advised that there was not a specific area currently, however, there would be a specific area built into the refurbishment specifications and this would also be monitored by door staff.
 - Reference was made to the relationship between the Police and the premises and it was queried whether the management team relied upon the Police as backup for the management of the premises. The applicant's legal representative clarified that the Police telephoned the premises on a monthly basis and more often than not a meeting was not required as there were no issues of concern. It was highlighted that six months ago a positive meeting was held with the Police to discuss several incidents that had occurred at the premises and stated that the applicant preferred to be open and honest about any incidents.

Relevant Representations

Cleveland Police

The Police legal representative presented the representations on behalf of Cleveland Police and stated that, if granted, the variation to the licence would undermine the crime and disorder and public safety objectives in the opinion of Cleveland Police. Reference was made to the bundle of evidence submitted by the Police which set out the history of the premises together with the history and concerns in relation to the premises.

It was highlighted that the premises were situated in an area that had been declared a saturation zone by Middlesbrough Council and that the Council had adopted a special policy in relation to that zone. Cleveland Police believed that granting the variation in hours was likely to add to the cumulative impact and should, therefore, be refused.

Sergeant Higgins was in attendance at the meeting and confirmed the contents of his

submitted witness statement, dated 15 November 2012. The Police legal representative led Sergeant Higgins through his statement and the following issues were highlighted:-

- The history of the premises had been included in Sergeant Higgins statement as he considered it relevant due to the problems with crime and disorder experienced in the past at the premises which had resulted in a review of the premises licence. Sergeant Higgins stated that crime and disorder tended to occur at late night premises and that each premises would experience periods of incidents.
- Sergeant Higgins stated that generally the later a premises opening hours, the more problems were associated with them. Sergeant Higgins confirmed that the reduction in hours following the review of the licence at Walkabout was a significant factor in helping to get crime and disorder at the premises under control.
- Pages 11–22 – contained copies of minutes of meetings held between Police and premises management. In response to a query it was confirmed that, at the time of the review, the premises had a different licence holder. The premises was still named Walkabout but the licence holder was Regents Inns. The licence holder was now Intertain Bars but had the same address as the previous licence holder, Regent Inns.
- It was confirmed that 15 months after the review of the licence problems at the premises with crime and disorder again deteriorated. The operating hours at the premises had reverted back to a terminal hour of 2.00am and by January 2011 the number of incidents had significantly increased.
- Reference was made to minutes of the meeting held on 17 January 2011 (pages 23-29) and it was queried whether the incidents referred to was a high number of incidents to occur at a premises. Sergeant Higgins responded that it was a high number but more significantly was the seriousness of some of those incidents, which included an eye injury and a broken jaw.
- Reference was made to the current DPS, Mr Ekert, who assumed his role approximately 12 months ago. A meeting had been held in April 2012 (pages 31-34) when a total of nine incidents had occurred at the premises in a seven week period and it was queried whether Sergeant Higgins had been concerned. Sergeant Higgins responded that the purpose of that meeting was to discuss those incidents, some of which were less serious than those that had occurred the previous January.
- It was queried what Sergeant Higgins response had been to the proposal of opening until 3.00am. Sergeant Higgins had stated that he would be opposed to it but would assist where possible with the other proposals discussed at that meeting which included various amendments to the conditions on the licence.
- Page 43 – copy of Safer Middlesbrough Partnership document. It was explained that this document had been prepared by the SMP and was used by the Council when determining its latest version of its Licensing Policy. Various statistics and hotspots were included in the document and the junction of Albert Road/Corporation Road, outside of Walkabout, was identified as a hotspot. The Council had determined that a Cumulative Impact Zone was still required.
- Sergeant Higgins was asked whether, if the extended hours were granted, crime and disorder may increase or would increase. Sergeant Higgins responded that, in his experience, crime and disorder would increase, based on evidence from other venues.
- In response to a question, Sergeant Higgins stated that he did not believe any conditions could be placed on the licence to stop the licensing objectives being undermined. He added that the condition of a 'last entry time' referred to earlier by the applicant would not be acceptable as there would still be patrons at the venue who had been drinking since the early evening.
- In relation to offering food until the terminal hour and providing a hot dog stand at the venue, Sergeant Higgins stated that he did not object to food being sold, however, the provision of food at late night venues had been a condition of the old licensing regime and whilst some patrons would consume food at the venues, generally patrons wanted to purchase food from takeaways. He believed that the provision of food would not prevent crime and disorder.
- Reference was made to the non-seasonal variations and it was confirmed that there had been no reported incidents of crime and disorder at the premises on those dates. Sergeant Higgins added that the Police had not objected to the Temporary Event Notices applied for by the premises as he did not consider 'one-off' occasions to be a

problem but considered that the later opening hours on a regular basis, ie every Friday and Saturday, would change the dynamics of the venue and that there would be an increased number of incidents.

- The Police legal representative referred to the applicant's earlier comments in relation to the premises wishing to attract more families and after work patrons and asked Sergeant Higgins whether he envisaged that happening. He responded that this was commendable but irrelevant in relation to the hours the applicant had applied for.

PC Price was also in attendance at the meeting and confirmed the contents of her submitted witness statement, dated 10 November 2012. The Police legal representative led PC Price through her statement and the following issues were highlighted:-

- PC Price confirmed that in addition to the meetings held between the Premises Licence Holder and Sergeant Higgins, further informal meetings were held with PC Price's supervision of the premises. Sergeant Higgins added that the current DPS tended to telephone him on a monthly basis and a meeting was not usually required.
- Reference was made to the Cumulative Impact Zone and PC Price confirmed that there were more incidents of crime within the zone than outside it. Hotspot zones had been identified, including outside the premises, and PC Price believed that the additional hours requested would add to incidents of crime and disorder in that area.
- Reference was made to the Local Alcohol Profiles for England (LAPE) document attached to PC Price's statement. PC Price advised that the document had been produced by the North West Public Health Observatory (NWPHO) and had been attached to demonstrate that, of 326 authorities in England, Middlesbrough was ranked 297 in relation to alcohol-related crime.
- Pages 37 to 40 of PC Price's statement provided details of 14 separate incidents that had occurred at the premises. In addition a further incident had occurred at the premises at the weekend (25 November 2012) and a further statement in relation to the incident, involving an assault on a male, had been produced and circulated prior to the meeting.
- Each of the 14 incidents were referred to separately and PC Price summarised that the Police were concerned that some of the incidents involved highly intoxicated customers who had no regard for members of staff or door staff at the premises. Also, the incidents were occurring during the premises current trading hours and it was considered that the number of incidents would increase should the hours be extended.
- In response to a question, PC Price stated that she did not believe any measures suggested by the applicant, ie last entry time and food being served until closing time, would prevent the licensing objectives being undermined.

Questions to Cleveland Police

The applicant confirmed that there were no questions for Cleveland Police.

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

- In response to a query regarding the number of incidents that had occurred at the premises since January 2012 to date, Sergeant Higgins advised that those incidents contained within the report were attributable to the premises, however, there had been other incidents that had occurred outside the premises where it had not been possible to ascertain whether individuals involved had been customers at the premises.
- A Member of the Committee asked whether, based on the evidence presented at the meeting, Cleveland Police would have been looking to seek a review of the premises licence for Walkabout had the applicant not applied to vary the operating hours. Sergeant Higgins stated that Cleveland Police would not have been considering an application to review the licence at this stage as it considered the level of incidents occurring at the premises to be manageable with regular liaison between the applicant and Police.
- In response to a query, Sergeant Higgins clarified that only some (not all) of the incidents referred to within the SMP report related to the premises. It was highlighted that 371 crimes had occurred within the Cumulative Impact Zone and 247 crimes had

occurred outside the zone and that the majority of premises located within the CIZ had later opening hours than those outside the zone which tended to close at 11.00pm or 12.00am.

- A Member of the Committee asked Sergeant Higgins what impact there would be on policing within the town centre and on a town-wide basis should the application be granted. Sergeant Higgins responded that the incidents of crime and disorder had to be dealt with by officers on duty and that should the application be granted those incidents were likely to increase but would still have to be dealt with by the officers on duty.
- A Committee Member queried how the premise's management could be proactive in reducing the number of incidents at the premises. Sergeant Higgins stated that he accepted there would be incidents at licensed premises but it was important to strike the right balance. He considered there to be good dialogue between the Police and the applicant at the present time and that this was sufficient to contain incidents to an acceptable level. He added that the severity of the incidents that had occurred over the Christmas period had now reduced sufficiently so that the Police did not consider an application for a review of the licence to be necessary at this stage.
- In relation to the door staff at the premises, Sergeant Higgins confirmed that he also had regular meetings with the security company that employed the door staff at the premises. Whilst the Police would encourage door staff to deal with troublesome incidents, they would also encourage door staff to make statements to the Police in order to prosecute individuals.
- The Committee noted that the number of incidents at the premises had dramatically reduced during the period that the premises had its operating hours reduced, following review of its licence. Sergeant Higgins confirmed that he believed increasing the hours would have a detrimental impact.

Summing Up

Cleveland Police

The Police legal representative summed up by stating that Cleveland Police strongly believed that, if granted, the variation in hours at the premises would undermine the crime and disorder and public safety objectives and would add to the negative impact in the area.

Sergeant Higgins had provided information on the history of the premises, leading to a review of the premises licence in May 2009. Following that review, the operating hours of the premises were reduced and there had been a significant reduction in the numbers of incidents occurring at the premises. Earlier in 2012, Mr Ekert had become the DPS at the premises and on 1 May 2012 a meeting was held with the Police whereby the Police agreed it had no objections to several minor variations to the conditions on the premises licence. The Police had, however, confirmed that it would object to an application for additional hours at the premises.

It was reiterated that the premises was situated in an area declared a Saturation Zone and reference was made to the appropriate Government Guidance and the Council's Licensing Policy in relation to such designated areas.

Both Sergeant Higgins and PC Price had stated that they did not believe any additional conditions could be placed on the licence, if the application to vary was granted, that would prevent an increase in crime and disorder at the premises.

In summary, Cleveland Police believed that the licensing objectives would be undermined if the application to vary was granted.

Applicant

The applicant's legal representative summed up by first referring to the incident that had occurred at the weekend and explaining the circumstances of the incident and how the premises had dealt with it.

The applicant's legal representative stated that the premise's management had been

proactive in reporting incidents to the Police and believed it had a good relationship with the Police and pointed out that the Police had indicated that the premises had handled incidents well.

The applicant wished to improve things in Middlesbrough by not reducing prices and offering a better night out to customers. This could only be achieved through investment to refurbish the premises and the investment was only possible by extending the operating hours. The premises had successfully operated later hours on 26 occasions through Temporary Event Notices, with no incidents on those nights.

The applicant's legal representative requested that the Committee grant the variation to the premises licence and stated that the licence could be reviewed if necessary.

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 to vary the Premises License in respect of Walkabout, 28-32 Corporation Road, Middlesbrough, Ref No: PR0103, be refused for the following reasons:-

1. The premises was situated within Middlesbrough Council's special policy area introduced because of the saturation of licensed premises in that area which give rise to a negative cumulative impact on the licensing objectives.
2. Walkabout and the immediate area was identified as a hotspot for crime and disorder and nuisance in the Safer Middlesbrough Partnership Report which was the basis for the Council's cumulative impact policy.
3. The Committee considered the applicant failed to show that the extended hours applied for would not add to the cumulative impact on the prevention of crime and disorder and the prevention of public nuisance in the area.
4. The Police informed the Committee that, following a review of the Premises Licence in May 2009, the premise's operational hours were reduced to 1.00am for a period of three months until August 2009. This resulted in a significant reduction of incidents occurring at the premises. The situation continued to improve in September 2009 when the hours reverted back to 2.00am, however, by January 2011 the situation had deteriorated and there were 24 recorded incidents which occurred over the preceding six months.
5. More recently, there had been 15 incidents from December 2011 to date. The majority of these incidents involved the clientele at Walkabout and two of those incidents involved door staff. Some of the incidents recorded had resulted in serious injuries.
6. The Police informed the Committee that incidents would increase at the premises if the hours were extended, undermining the prevention of crime and disorder objective.
7. The Committee did not consider that the conditions proposed by the applicant would prevent clientele having a negative cumulative impact on the area if the hours were extended. Although there have been a number of temporary events held at the premises, the Committee believed that extending the hours on a permanent basis would have a negative impact on the prevention of crime and disorder and public nuisance. The extension would create further late hours drinking, in a drink led establishment in an area suffering crime and disorder because of a concentration of such establishments in the area.
8. The Committee believed that after 9.00pm until late, the premises was recognised as a drinking establishment by its clientele and the extension of hours even with the proposed refurbishment was unlikely to change this.

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

1. The case was considered on its own merits taking into account the four licensing objectives of The Licensing Act 2003.
2. The Licensing Act 2003 and Amended Government Guidance issued under Section 182 of the Act.
3. Middlesbrough Council's Licensing Policy.
4. The case presented by the Applicant.
5. The representations made by Cleveland Police, in writing and verbally at the Hearing.

All parties were reminded of the right to appeal to the Magistrates Court within 21 days of the date of the decision.