

LICENSING SUB-COMMITTEE C

A meeting of the Licensing Sub-Committee C was held on 13 December 2012.

PRESENT: Councillors Taylor (Chair); Councillors Arundale and P Sharrocks.

ALSO IN ATTENDANCE: Mr Kadir - Applicant
Mr I Baker - Applicant's Legal Representative
Sgt P Higgins - Cleveland Police Licensing Unit
PC J Bryan - Cleveland Police Licensing Unit
L Lewis - Chair of Middlehaven Community Council and St Aidan's Residents Association

OFFICERS: B Carr, J Hodgson and B Roberts

DECLARATIONS OF INTERESTS

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

12/9 **APPLICATION FOR A PREMISES LICENCE - 7 BOROUGH ROAD, MIDDLESBROUGH: PRO/407**

A report of the Assistant Director Community Protection had been circulated outlining an application for a Premises Licence in relation to 7 Borough Road, Middlesbrough, Ref No: PR0/407.

Summary of Proposed Licensable Activities

Sale of Alcohol (Off Sales) 9.00am to 9.00pm Monday to Sunday

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 in relation to an application for a Premises Licence, received on 8 October 2012, in relation to European Foods, 7 Borough Road, Middlesbrough, Ref. No. MBRO/PRO407 as outlined above.

The report provided background information in relation to the premises which, operated as a general store selling a wide variety of grocery products including Polish goods. The premises were located on Borough Road between Diamond Road and Pearl Street in a mixed retail and residential area.

A representation was received on 16 October 2012 from Middlehaven Community Council and St Aidan's Residents Association, objecting to the proposal on the grounds of the prevention of crime and disorder and the prevention of public nuisance. A copy of the representation was attached at Appendix 3 to the report.

On 25 October 2012, a representation was received from Cleveland Police objecting to the proposal on the grounds of the prevention of crime and disorder and the prevention of public nuisance. On 12 November 2012, additional information was circulated by Cleveland Police in support of the above representation. A copy of the representation was attached at Appendix 4 to the report.

Applicant in Attendance

The applicant's legal representative advised Members that the applicant was 27 years old. He did not have any convictions or cautions and at the present time did not hold a Premises

Licence or have any experience of selling alcohol.

The applicant had been running the premises since May 2012 and if successful in obtaining a Premises Licence, he intended to appoint a DPS to authorise the sale of alcohol. The applicant also intended to obtain a Personal Licence if his application was successful.

Members were advised that Mr Kadir had agreed to purchase the business from Mrs Salarska and Mr A Hussein. The applicant's legal representative advised that his client understood that the business was owned by Mrs Salarska and her name was on the lease. The applicant had been advised that Mr Hussein was working for Mrs Salarska as a paid employee and DPS for the premises. Mr Kadir had an agreement with Mrs Salarska that if the application for the Premises Licence was not approved, he would relinquish his interest in the business.

The applicant's legal representative advised that the applicant had initially employed D & B Licensing to represent him at the hearing. They had completed the application form on his behalf which indicated at page 4, that the previous owner no longer had anything to do with the business. Members were advised that the statement in relation to the previous owner related to Mrs Salarska rather than Mr Hussein.

The applicant's legal representative advised Members that Mr Hussein was an undergraduate at Teesside University studying for an engineering degree. He advised that Mr Hussein had been working part time at the premises but he was no longer working there. When Mr Hussein had been working at the premises, Members were advised that he had taken the applicant to and from the Polish cash and carry and he worked for nothing. Members were advised that the applicant disputed the fact that Mr Hussein was still involved in the business.

The applicant's legal representative advised that the evidence provided in respect of Mrs Salarska and Mr Hussein was anecdotal hearsay which could not be attributed to Mrs Salarska or Mr Hussein. Members were advised that Mr Kadir had not had the opportunity to examine the Premises Licence. The applicant's legal representative advised that Members could if they wished place a condition on the licence to ensure that Mr Hussein did not have any future involvement in the business.

Members were advised that Mr P Roulston owned the business and a lease had been granted in March 2008 to Monica Salarska. Members were advised that Mr Kadir had bought the business and stock worth £5k.

In response to a query from Sgt Higgins, the applicant advised that he worked at the premises with Monica Salarska and a lady called Claudia. He advised that Claudia worked for 16 hours a week, for £6 per hour, cash in hand. The applicant advised that Claudia was already working at the premises when he assumed responsibility for them. He advised that Monica Salarska and Mr Hussein worked 21 hours a week and he paid them both £6 per hour, cash in hand.

In response to a query from Sgt Higgins, the applicant confirmed that he did not have any involvement in the premises prior to May 2012. Sgt Higgins also reminded the applicant that on Page 4 of the applicant's application form for a premises licence it stated that the previous owner was no longer connected to the business in any way.

Sgt Higgins stated that as Mr Hussein and Mrs Salarska were both working at the premises, the information contained in the application form was incorrect and he asked the applicant why the information was included in the application form. The applicant advised that he didn't know why the information had been included in the application form.

In response to a query from a Member, the applicant confirmed that he paid the staff cash in hand and the accountant for the business, Mr M Hussain from Peterlee, whom he inherited when he assumed responsibility for the premises provided him with payslips for his staff. The applicant's legal representative advised Mr Kadir that cash in hand usually meant that the person did not pay tax and national insurance. The applicant advised that his staff did pay tax and national insurance.

In response to a query from Sgt Higgins regarding Mr Ohmed Hussain, the applicant advised that Mr Hussain was the premises DPS. He advised that he knew Mr Hussain through his involvement with the premises. He confirmed that Mr Hussein had advised him that Mr Hussain was a good worker and that he would be a suitable DPS. Sgt Higgins advised that Mr Hussain's BMW had been observed parked outside the premises on a daily basis.

Cleveland Police

Sgt Higgins advised that earlier in 2012, the Police had applied to review the licence for the premises following the employment of illegal workers, the sale of counterfeit cigarettes and illegally imported alcohol. However, prior to the hearing, the previous owner and DPS, Mr Aram Hussein had surrendered the premises licence.

The applicant had stated on his application form that the previous owner was no longer connected to the premises however he had confirmed to the Committee that both Mr Hussein and Mrs Salarska were currently working at the premises and the Police had observed Mr Hussein working at the premises.

PC Bryan advised that in November 2009, HMRC had visited the premises after receiving intelligence that the premises were selling imported alcohol. HMRC had seized the illegal alcohol during that visit. The premises were visited by HMRC on 5 May 2010, 11 October 2011 and 23 October 2011 and each time they discovered and seized imported alcohol from the premises. The alcohol seized, amounted to over £10k in monetary terms.

Cleveland Police had also been aware of intelligence suggesting that counterfeit cigarettes were being sold from the premises and that illegal workers were being employed at the premises. A visit was subsequently carried out by the UK Border Agency on 19 January 2012. During that visit, although an illegal immigrant was present at the shop, there was no evidence to suggest that he was actually working at the premises.

In relation to the allegation with regard to the sale of counterfeit tobacco, Members were advised that at the time of the visit, the tobacco stand was completely empty despite the fact that the store purported to sell cigarettes. The UKBA also found alcohol stacked up on the stairs and in the storage room at the rear of the premises. The UKBA had reported the presence of the alcohol at the premises to the police and advised that the alcohol appeared to have been imported from Poland however the UKBA did not have the authority to seize alcohol.

Members were advised that Cleveland Police had concerns regarding the honesty of the applicant because of the incorrect information contained on the application form with regard to who was working at the premises. The Police had concerns that if the previous owner continued to be involved in the business, then the issues with regard to the sale of imported alcohol, counterfeit cigarettes and the employment of illegal workers would continue.

PC Bryan advised Members that she had visited the premises on 8 October and 15 October and on both occasions, Mr Hussein was working at the premises.

In response to a query from the applicant's legal representative as to whether PC Bryan had observed Mr Hussein selling the imported alcohol, PC Bryan advised that she had not seen him selling the imported alcohol and as a consequence, the Police were unable to do anything in licensing enforcement terms about the alcohol being stored at the premises.

In response to a query from the applicant's legal representative, the Council's legal officer clarified what had been found at the premises following the four visits from HMRC.

The applicant's legal representative pointed out that the Police had failed to provide evidence to support the information contained in PC Bryan's statement to the Committee. Sgt Higgins pointed out that the Police were objecting to Mr Kadir running the premises because of his connections with Mr Hussein. The Police pointed out that in their view, putting conditions on the licence would not alleviate their concerns about Mr Kadir running the business because of the contradictory evidence contained on his application form and the fact that Mr Hussein was

still employed at the premises.

Middlehaven Community Council and St Aidan's Residents Association

The Chair of Middlehaven Community Council and St Aidan's Residents Association advised that residents had often seen alcohol being delivered to the premises despite the Premises Licence being surrendered in April 2012. Mrs Lewis advised that she believed that alcohol was being kept in a store room at the premises.

Members were advised that residents had real concerns about Mr Hussein's continued connection to the premises and feared that if the licence to sell alcohol was granted, the problems with anti social behaviour and prostitution that the area already currently experienced would increase. The residents believed that Mr Kadir was just a front man for the business.

The applicant's legal representative queried whether the anti social behaviour had stayed the same or got worse since the initial licence was surrendered. Mrs Lewis advised that anti social behaviour orders had been used in the area so the problems had not got any worse.

The applicant's legal representative queried when the delivery of alcohol had occurred and Mrs Lewis confirmed that alcohol was still being delivered to the premises up to July 2012. Mrs Lewis outlined the issues currently experienced in the area with regard to anti social behaviour and prostitution.

Mrs Lewis summed up by advising the Committee that residents did not require another retail unit in the area selling alcohol. Members were advised that residents felt that if the licence was granted anti social behaviour would escalate as the area was already a hotspot for crime and she urged the Committee to refuse the application.

Summing up -The Applicant

The applicant's legal representative advised that the concerns of Middlehaven Community Council regarding another retail unit in the vicinity were not grounds for refusing the licence. The legal representative acknowledged residents concerns regarding anti social behaviour and prostitution but advised that these issues had been going on for some time however they were not directly connected to these premises.

Mrs Lewis had advised that the surrender of the licence had not affected the level of anti social behaviour. The fact that there were a number of empty houses was causing problems, but there was no evidence to suggest that the sale of alcohol from the premises would add to problems with anti social behaviour.

The legal representative acknowledged that there had been visits from Customs and Excise and evidence that alcohol had been removed from the premises however no enforcement action had been taken. He advised that he didn't seek to diminish the seriousness of the non paid duty alcohol however there was no evidence to suggest that the alcohol was being offered for sale to the public. Similarly, there was no evidence connected to the premises in relation to prostitutes or the sale of illegal cigarettes and there was insufficient evidence regarding the employment of illegal immigrants at the premises. The legal representative pointed out that that there was also no evidence to suggest that the premises or Mr Hussein were a risk to anti social behaviour or criminal activity.

The legal representative circulated a copy of draft conditions in relation to CCTV and the sale of alcohol which could be included on the licence if Members chose to grant the Premises Licence. He pointed out that Members could also place a condition on the licence if they wished to stipulate that Mr Hussein and Mr Hussain must not have any involvement, management control or be employed at the premises. The premises could if required have a list of people employed at the premises available for inspection by the police and other relevant authorities. He pointed out that the Police would have to agree the suitability of any DPS appointed at the premises.

The legal representative pointed out that in relation to the storage of alcohol at the premises, Mr Hussein could have had the alcohol stored at the premises ready for delivery to one of the other premises that he was involved in. He advised that there was already CCTV at the premises however Members could include further conditions on the licence in relation to CCTV. He suggested that if the Police had concerns about the premises they might wish to visit the premises more regularly than they had previously.

The legal representative urged Members to grant the licence.

Summing up - Cleveland Police

Sgt Higgins advised Members that there had been issues with the employment of illegal workers, the sale of counterfeit cigarettes and illegally imported alcohol when Mr Hussein was in charge of the premises.

The Police were concerned that Mr Kadir was just a front man for the premises and Mr Hussein was still employed at the premises and involved in the running of the business. He advised that Mr Kadir had stated in his application that the previous owner was no longer connected to the premises however he had advised Members that both Mrs Salarska and Mr Hussein were employed at the premises.

The view of the Police was that if the application was granted the licensing objectives of the prevention of crime and disorder and public nuisance would be undermined.

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.

The Chair advised that the case was considered on its own merits taking into account the four licensing objectives of The Licensing Act 2003.

DECISION

ORDERED that the application for a Premises License in respect of 7 Borough Road, Middlesbrough, Ref No: PR0/407, be refused for the following reasons:-

1. The Committee were concerned that the people who were involved in the premises when crime and disorder had occurred, were still involved in the premises;
2. The Committee did not consider that they could impose conditions that would prevent the same people becoming involved in the running of the premises and the applicant had not demonstrated to the Committee that he had the necessary experience to run the premises without the assistance of the current employees;
3. There was a lack of clarity with regard to the proposed Designated Premises Supervisor;
4. The applicant had provided contradictory evidence regarding the continuing involvement in the premises of the previous licensees;
5. The Committee considered that for the above reasons, granting the licence would not assist in the prevention of crime and disorder and would undermine the licensing objective.

In reaching the decision Members had considered the following:-

1. The Licensing Act 2003 and amended Government Guidance issued under Section 182 of the Act.
2. Middlesbrough Council's Licensing Policy.
3. The case presented by the Applicant.
4. The representations received from the Police, Middlehaven Community Council and St Aidan's Residents Association.

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