

**LICENSING SUB-COMMITTEE C**

A meeting of the Licensing Sub-Committee C was held on 25 April 2014.

**PRESENT:** Councillors Taylor (Chair), J A Walker and M B Williams

**OFFICERS:** B Carr, T Hodgkinson and J Nertney

**DECLARATIONS OF INTERESTS**

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

13/13 **APPLICATION TO TRANSFER PREMISES LICENCE: SASSARI'S, 193 - 195 LINTHORPE ROAD, MIDDLESBROUGH TS1 4AG - REF. NO: PR 0145**

A report of the Assistant Director of Development and Planning Services had been circulated outlining an application to Transfer a Premises Licence, in respect of Sassari's, 193 - 195 Linthorpe Road, Middlesbrough TS1 4AG - Ref: PRO145, where circumstances had arisen which required special consideration by the Committee.

Summary of Current Licensable Activities

Live Music, Recorded Music, Facilities for Dancing, Late Night Refreshment, Sale of Alcohol, Performance of Dance

Hours of Licensable Activities

Monday to Saturday: 11.00am to 2.00am  
Sunday: 12 noon to 1.00am

Full details of the application and a copy of the current Premises licence were attached at Appendix 1 to the report.

The Chair introduced those present and outlined the procedure to be followed. The Chair explained that there was a change to the membership that had originally been notified and Councillor Williams was now substituting for Councillor M Thompson. The applicant, who was in attendance at the meeting, verified his name and address and confirmed that he had received a copy of the report.

The Legal Representative for the applicant advised, that part of the information that had been submitted by Cleveland Police raised allegations in respect of his client that had not been proven. These allegations could be published in the press if the hearing was to be heard in public and the applicant's legal representative therefore requested that the hearing be heard in private. The Police legal representative stated that he recognised the applicant's right to privacy and advised that he would adopt a neutral stance in relation to the decision whether the hearing should be heard in private.

Following consultation with Members of the Committee, the Chair announced, that in accordance with paragraph 14(2) of the Licensing Act 2003 (Hearings) Regulations 2005, the Committee had decided that it was in the public interest that the Sub Committee would be heard in private.

**EXCLUSION OF PRESS AND PUBLIC**

**ORDERED** that the press and public be excluded from the meeting for the following items on the grounds that, if present, there would be disclosure to them of confidential information by Cleveland Police and the public interest in hearing the confidential information outweighed the public interest in disclosing the information in the hearing being held in public under Paragraph 14 (2), of the Licensing Act 2003 (Hearings) Regulations 2005.

Details of the Application

The Principal Licensing Officer presented the report in relation to an application to transfer the Premises Licence in respect of Sassari's, 193 - 195 Linthorpe Road, Middlesbrough TS1 4AG, received on 13 March 2014, as outlined above.

It was highlighted that the premises were located in a commercial area of Linthorpe Road and consisted of a restaurant with additional facilities for music and dancing.

On 24 March 2014, a representation was received from Cleveland Police objecting to the transfer of the Premises Licence on the grounds of the Prevention of Crime and Disorder. A copy of the representation was attached at Appendix 2 to the report.

Additional information in support of the application had been submitted by the applicant following the distribution of the Committee papers. A copy of a Consent Order dated 4 February 2008, between the Director of the Assets Recovery Agency and the applicant was also circulated to Members of the Committee.

### **The Applicant**

The legal representative acting on behalf of the applicant presented the case in support of the transfer of the premises licence. The Committee was advised that the applicant had over twenty years of experience of working as a promoter and had worked with the various representatives of the licensing trade during this time. A number of prominent licensees in the area had submitted references in support of the applicant and reference was made to the applicant's extensive charity work.

The legal representative advised that the Committee should not seek to look behind what had occurred at the Crown Court and the High Court. He stated that the standard of proof for the Crown Court was "beyond reasonable doubt" whereas the High Court standard was "on the balance of probabilities". The Crown Court had found the applicant not guilty. The Committee should also look at whether they should consider spent convictions when making their decision. The applicant had been convicted of a minor offence in 2012 which was now spent. Members were advised that the applicant had been granted a Personal Licence on 3 April 2014 by Middlesbrough Council.

The legal representative pointed out that if the application was to be approved, the Council still retained the right to review the licence should they have any concerns with regard to the operation of the premises. Members were reminded that they should only refuse the application to transfer the licence if they considered that there were exceptional circumstances for the refusal and only if the Committee was satisfied that should the licence be granted, it would undermine the crime and disorder licensing objective.

The applicant responded to questions from the Police legal representative and Members of the Committee.

### **Cleveland Police**

The Police legal representative led Sergeant Higgins through his statement dated 15 April 2014, in relation to the applicant's previous history of court appearances involving alleged unlawful activity. The Committee was advised that the applicant had a conviction for possession of cocaine in 2012. The legal representative advised that the Police had concerns regarding the fact that licensed premises could provide the owners with a potential outlet to launder money.

The Committee was advised that the Police also had concerns regarding the fact that the applicant appeared to have substantial assets which he could not account for. The legal representative asked questions of the applicant in relation to the applicant's financial transactions over a particular period of time.

Sergeant Higgins responded to questions from the applicant's legal representative and Members of the Committee.

The Chair invited the interested parties to sum up.

### **Cleveland Police**

The Police legal representative pointed out that the applicant had agreed to hand over to the Assets Recovery Agency, by consent, several assets to the value of nearly £500k. The Committee was advised that the Recovery Order dated 4 February 2008, was made under section (266(1) of the Proceeds of Crime Act 2002. The Police were also of the view that the applicant had failed to declare all of his tax liabilities to the Inland Revenue.

The legal representative also referred to the fact that two people had been stopped by the Police for possession of drugs following a meeting with the applicant. The Police legal representative pointed out that the premises were 'cash rich' and they were susceptible to being used as a means of laundering money.

The Committee was advised that the applicant's legal representative would likely refer to Case Law, namely *Adamson v Waveney* 1997. The Police legal adviser stated that the Committee should however be circumspect when dealing with historic evidence and he advised that they should look at the totality of the evidence in respect of this case.

The Committee was advised that in the opinion of Cleveland Police, if the Transfer of the Premises Licence was to be granted, it was likely that the crime and disorder objective would be undermined.

### **The Applicant**

The applicant's legal adviser stated that none of the Police evidence had been proven. The applicant had appeared before the Crown Court and was found "not guilty". The Committee was advised that the decision by the applicant to sign the Consent Order rather than go back to court was a commercial decision.

The legal representative referred Members to the Licensing Act 2003 - Sections 42 - 44, The Licensing Act 2003 and amended Government Guidance issued under Section 182 of the Act and the Council's own Licensing Statement of Principles. In terms of Section 42 of the Licensing Act 2003, it was pointed out that the subject to the Police objection, the Committee must be satisfied that there were exceptional circumstances to refuse the application and that they must be satisfied that to grant the application would undermine the crime and disorder objective.

The legal representative clarified that the decision to move the trial to Durham Crown Court was not because there was an issue in respect of the jurors. The Committee was advised that they should consider the Rehabilitation of Offenders Act and look at what the applicant was doing now, in terms of his charity work rather than what he did 10 - 12 years ago.

The legal representative referred to the *Adamson v Waveney* 1997 Case Law and advised Members that they should consider whether it was appropriate to consider spent convictions given that the applicant had been granted a Personal Licence by Middlesbrough Council in April 2014.

Members were advised that it would have been impossible for them to consider the full evidence relating to the applicant and his history of court appearances as the evidence consisted of 350 - 400 pages.

The Police had referred to Paragraph 11.27 of the Amended Guidance issued under Section 182 of the Licensing Act 2003. The legal representative for the applicant emphasised that if the Police were concerned regarding the operation of the premises, they had a number of options available to them. The Police could call for a Review of the Premises Licence; they could initiate a Summary Review or apply for a Closure Order. The premises could also be inspected by any of the responsible authorities at any time.

It was pointed out that any decision made in respect of the Transfer of the Premises Licence should be appropriate and proportionate.

Reference was also made to Paragraphs 8.94 and 8.95 of the above Guidance which stated that in exceptional circumstances where the chief officer of police believes the transfer may undermine the crime prevention objective, the police may object to the transfer. Such objections are expected to be rare and arise because the police have evidence that the business or individuals seeking to hold the licence or business or individuals linked to such persons are involved in crime (or disorder). The legal representative pointed out that the guidance stated "such persons are involved in crime and disorder", not were, but are now involved.

The legal representative urged Members to grant the Transfer of the Premises Licence as the one minor conviction of the applicant did not prove that there was an unbroken trend to offending.

It was confirmed that there were no further questions and all interested parties other than the officers of Legal Services and Members Office, withdrew whilst the Committee determined the application.

All interested parties were called back into the room and the Chair announced that as Members had received a vast amount of information in relation to the case, they would like further time to consider the information. The Chair announced that the Committee would convey their decision to all parties within five days.

In reaching the decision Members 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 case presented by the police.
5. The character references presented by the applicant.
6. Case law provided by the applicant's representative, namely *Adamson v Waveney* 1997 EWHC Admin 62.

## **DECISION**

That the application to Transfer Premises Licence : Sassari's, 193 - 195 Linthorpe Road, Middlesbrough TS1 4AG - Ref: PR 0145 be refused for the following reasons:-

The Committee were mindful that a refusal of an application for a transfer of a premises licence should only take place where there were exceptional circumstances and the Committee were satisfied that if the licence were to be granted the crime and disorder objective would be undermined.

The Police objections were based on two main issues:-

1. The fact that the applicant was subject to proceedings under the Proceeds of Crime Act 2002 and by consent handed over assets in the region of £500,000.
2. The applicant had a conviction for possession of cocaine in 2012.

The Committee were mindful that their role was not to re-hear the allegation that the applicant conspired to supply cocaine. The applicant was acquitted of that charge after an 8 day trial at Durham Crown Court. The Police and the applicant did not call evidence in relation to the alleged conspiracy to supply cocaine.

The main evidence on which the Police relied was the financial investigator's report which clearly showed that the applicant had substantial assets which he could not account for. The basis of any POCA Order is that the individual was involved in unlawful conduct and it was

therefore a matter of record that the applicant had been involved in unlawful conduct. The POCA proceedings took place in 2008 and followed the applicant's acquittal for conspiracy to supply cocaine.

In 2012 the applicant was convicted of possession of cocaine. The Committee noted that the conviction was spent under the Rehabilitation of Offenders Act but were of the view that it was a relevant issue in their consideration of the application.

The Committee had regard to the Section 182 guidance and noted that there should be evidence that the individual seeking to hold the licence was involved in crime. The Committee were satisfied that the applicant had been involved in crime and felt that there were exceptional circumstances for this application to be refused.