

Licensing Sub Committee

A meeting of Licensing Sub Committee was held on Thursday, 27th July, 2006.

Present: Cllr K Leonard, Cllr R Rix, Cllr B Woodhead.

Officers: J Nertney(LD), C Asadi, G Jardine, D Jobson, C Llewellyn(DNS)

Also in attendance: C Harvard(Solicitor representing Dale Plus Limited), PC Hodgson,PC Iceton and PC Middleton (Represented by Miss Smith, Barrister),Mr David Martin Wilson (Represented by Mr Grunert, Solicitor), Mr Richard Barker, Lockett & Co (Licensing Agent), Mr & Mrs Wiberg, Mr McKinley, Mr Harbron(Representing Norton Heritage and also appeared on behalf of Mrs Wynn).

Apologies: None

390 Appointment of Chairman

RESOLVED that Councillor Leonard be appointed Chairman for this meeting only.

391 Wilsons Newsagents, 71 The Green, Norton, Stockton on Tees - Application for a Premise Licence under Schedule 8 of the Licensing Act 2003

Members initially considered and noted some preliminary matters. It was noted that a late representation had been received from a Mr Buttery of Falcon Lane in Norton which was received by the Council on the 25 July 2006. The Committee did not consider this representation or accept that it should be put before them as it was received outside the consultation period. The Committee also noted that Mrs Wynn a resident of Norton Hall who had made a representation had submitted her apologies as she was unable to attend the meeting. Mr Harbron represented her and would speak on her behalf if there were any matters which were felt relevant that needed to be put before the Committee.

The Committee also noted that a person who had made a representation had contacted the Council to raise an additional issue namely that on page 4 of the application form there was a box which asked for a general description of the premises. In this box the applicants agent had stated that the premise was a "recently refurbished convenience store" and that the shop was "located on Norton High Street". A person had contacted the Council taking exception to the fact that these references had been included on the application form as in their view the premise was not a convenience store but a newsagents and furthermore was not located on Norton High Street but on The Green. The Committee noted that the front page of the application form for the premises licence gave the name and address of the premises as Wilsons Newsagents, 71 The Green, Norton therefore there was no confusion as to the nature of the application. It was also noted that the premise did not sell only newspapers but did actually sell other products such as tinned foods, sweets etc which could reasonably fall within the description of a convenience store. In addition to this the person who raised this issue had been consulted on the application and had submitted a representation. The Committee noted the persons comments but were of the view that this had little or no relevance to the application and the matters which were before the Committee. The members of the Committee

were aware of the location of the premises and had also been provided with a map detailing the location.

The Chair introduced all persons who were present and explained the procedure that would be followed during the hearing.

The Licensing Officer presented the report to the Committee. Consideration was given to the application as outlined in the report by the Licensing Officer. Members noted and gave consideration to the representations that had been received from twenty-one persons living within the vicinity of the premises. The Committee also heard submissions from Mr & Mrs Wiberg, who lived next door to the premise, Mr McKinley, a resident of the High Street, Norton and Mr Harbron who was a representative of Norton Heritage and who also spoke on behalf of Mrs Wynn, a resident of Norton Hall, The Green, Norton. The Committee heard submissions from PC Iceton and PC Middleton on behalf of Cleveland Police. Representations were not received from any other responsible authorities/statutory consultees.

Miss Smith, Barrister, appeared on behalf of Cleveland Police and noted that the Local Authority had a duty under Section 17 of the Crime and Disorder Act to take such steps as were necessary to deal with issues of crime and disorder within the Borough. Miss Smith confirmed that the basis of the Polices representation and objection was that there would be potential for further anti social behaviour and that youths could be attracted to hang around Norton Green. It was noted that there were already a number of problems concerning anti social behaviour and youths within the area.

Miss Smith then called PC Iceton to give evidence of the problems which were currently being experienced in the Norton area. PC Iceton had submitted a witness statement dated 17 July 2006 which gave details of her views on the application. PC Iceton also produced in evidence details of incidents which had been reported within 100 metres of 71 The Green, Norton and also graphs of reported incidents showing the time of day and peak times when most incidents are reported. In summary PC Iceton stated that there were a lot of problems with youths hanging around in the area which took up a lot of police time. A number of these youths would also be drinking alcohol although it was not clear where they were obtaining this from. PC Iceton noted that within 100 metres of 71 The Green Norton between the 1 July 2005 and the 4 July 2006 there had been reports of 118 incidents which she felt was quite high for an area such as this. PC Iceton stated that the statistics did not give a wholly accurate picture of the problems or incidents which may be occurring in that area as if an officer was driving through the area and noted an incident then he would deal with that problem or incident at the time and it would not be necessarily recorded as a statistic. PC Iceton also referred to the statistics which gave a specific breakdown into the nature of each incident and stated that in her view approximately 56 of the 188 could be attributed to the presence of alcohol. PC Iceton stated that the day when they receive most calls/incidents is on Fridays and Saturdays and they get most calls at approximately eight in the evening. PC Iceton stated that in her view if the application was granted then there would be more chance of children getting access to alcohol. These children could then discard rubbish perhaps into the duck pond which was a popular meeting place. PC Iceton stated that there was a high concentration of licensed premises on Norton High Street there were seven public houses, four licensed

restaurants, and three off licences on the high street.

Miss Smith then called evidence from PC Middleton. PC Middleton confirmed that his role was to deal with local problems and that on most evenings he was aware that in or around Norton Green area there were numbers of youths who often congregate on the grassed areas. PC Middleton confirmed that if the application was granted he did not believe that the owners would sell to underage children but that youths had been known to hang around outside licensed premises asking other customers to buy alcohol for them. PC Middleton stated that in his experience it had been a "real eye opener" as to how many youths roam the streets drinking alcohol.

The Chairman then invited questions of the Police Officers.

The members were then invited to ask any questions they may have of the Police representatives.

The Committee noted that twenty one representations had been received and copies of these had been provided to members of the Committee prior to the hearing.

The Committee then invited the persons living within the vicinity of the premises who had attended the meeting to present their submissions.

Mr McKinley stated that he lived on the High Street overlooking the duck pond and he had gradually seen a decline in behaviour around the area. Mr McKinley was fully supportive of the Police as about three years ago there was a problem with cars parking around The Green area and the Police dealt with this. Mr McKinley's concern was that cars would again start to congregate in the area and may take on alcohol if a premises licence was granted at Wilson's newsagents and that there was therefore the potential for drink driving to increase. Mr McKinley stated that there was a lot of graffiti around the area and that provision of alcohol may well add to that as he had personally seen youths standing around with bottles of alcohol and graffitiing at the same time.

Mrs Wiberg stated that she resided in a property attached to Wilson's newsagents and that they had experienced nuisance and disturbance connected with the premise and in particular the flat which was attached to the premises and owned by the applicants. Mrs Wiberg stated that on the 7 June 2006 at 1.40 am in the morning there was a problem with youths who had exited from the flat attached to the premise. The Police were called and the youths who were causing a disturbance near to the duck pond were asked to return to the flat. Mrs Wiberg confirmed that the problems which they experienced with regard to the flat had now stopped. Mrs Wiberg stated that it had been confirmed that the shop currently opened until 8 pm on a Wednesday and Saturday because of the National Lottery. Up until recently the premise was a newsagents and there were plenty of convenience stores within walking distance. Mrs Wiberg was concerned that there would be problems with parking as there were not enough parking places in the area as it is. Mrs Wiberg was also concerned at the applicants proposal for installing external CCTV as she felt that this could potentially be an invasion of her privacy if it covered the entrance to her property.

Mr Wiberg stated that he did not have anything further to add to his wife's submission apart from the fact that in the past the flat attached to the shop had been used for band practices and that this had caused some nuisance.

Mr Harbron who represented an organisation called Norton Heritage and was also in attendance to speak on behalf of Mrs Wynn stated that The Green was a conservation area and he was concerned over harassment which could develop if youths hang around outside the premise pressuring people into purchasing alcohol for them. Mr Harbron was concerned that this would put more pressure on Police resources and also could lead to an increase in litter which would have an effect on the Councils resources and their cleansing department. Mr Harbron was concerned that the application would affect the quality of life of people living in the village and in his view there was adequate provision for obtaining alcohol in Norton High Street.

There were no questions of the objectors from the Applicants representative, the Police or members of the Committee.

Mr Grunert on behalf of the Applicant stated that the premises currently operated from 5 am to 6 pm and they were also open until 8 pm on Wednesdays and Saturdays because of their commitments for the National Lottery as they had a National Lottery ticket machine. The Applicant Mr Wilson had owned the premises for approximately 20 months and had invested a lot of time and money in redeveloping this shop. Mr Wilson was president of the Local Branch of the National Association of Retail Newsagents. Mr Wilson had redeveloped the shop and it now operated as a newsagents and small convenience store whereby local residents can call into the shop and get small items of food, tinned products or similar convenience items. Mr Wilson initially intended to concentrate on selling bottles of wine but would not wish to limit the scope of his licence as he could sell other alcoholic products in the future. It was not Mr Wilson's intention to create an off licence but he wanted to provide a whole range of products to the local community. Mr Wilson had very good due diligence systems and Mr Grunert referred the Committee to the training manual and aid memoir which would be given to all staff.

Mr Grunert referred to two letters from Camelot (National Lottery) regarding test purchases which they had carried out and also a test purchase which had been carried out by Stockton Council's Trading Standards section with regard to cigarette sales. In each of these test purchases Mr Wilson or his staff had refused to sell to the underage volunteers and had received written confirmation of this. Mr Wilson also operated a refusal book where he recorded when sales had been refused. This all demonstrated that Mr Wilson was a responsible person.

Mr Grunert then invited Mr Wilson to add anything further which he wished to regarding the application.

Mr Wilson stated that the shop had to expand into other areas of provision in order for it to benefit the local community and allow the shop to remain in business. Mr Wilson confirmed that he would be sympathetic to Mr & Mrs Wiberg's property and their concerns over the location of the CCTV cameras. Mr Wilson confirmed that he would be more than happy to show Mr & Mrs Wiberg the proposed location/view of the CCTV cameras. Mr Wilson stated

that he was aware that his son did previously practice with his band in the flat but that he had received an anonymous letter of complaint regarding the noise from the band practice and he now no longer allowed his son to undertake band practice there. Mr Wilson referred to the incident involving the youths in the early hours of the morning and stated that when this had been brought to his attention which had only been since receiving the Committee papers he made some enquiries and found that there had been some youths congregating outside the property who had been throwing and/or drinking from cans. After these youths had left Mr Wilson's son and his friends had gone outside and it was sometime later when the Police arrived and asked his son and his friends to go back to the flat. It was not Mr Wilson's son and his friends who had caused the initial disturbance. Mr Wilson stated that he was very supportive of the alcohol free zone within the Norton area and would not put his business at risk by selling to underage youths. If there were an occasion when youths were hanging around outside the shop and trying to get customers to buy age restricted products he would not tolerate that. Mr Wilson stated that if he ever sold spirits it would be his intention to keep these behind the counter.

Mr Grunert summarised the application by stating that Mr Wilson took his responsibility seriously and he would do all in his power to make sure that incidents do not happen. There were a number of sources for alcohol which may be having an affect on the current problems on The Green.

The Committee were invited to differentiate between the representations which addressed the licensing objections and those who had taken the opportunity to air general grievances in the area.

There had been reference in the representations to issues such as parking which were planning matters and in Mr Grunert's view parking was not a licensing objective.

Mr Wilson could not and should not be held responsible for the current problems and all the Committee had before them was the evidence of Mr Wilson's good character. None of the parties had criticised Mr Wilson's business and in Mr Gruent's view the application should be granted.

The Chair then invited questions of Mr Wilson, the Applicant.

In considering their decision members were mindful that they needed evidence on which to base their decision.

The members had regard to the evidence and statistics which had been provided by Cleveland Police. Although the Police had submitted that a large number of the statistics were concerned with alcohol this, in the view of the members, was not supported by the breakdown of the incidents and statistics provided by the Police. From the statistics provided it did not appear that there was an overwhelming number of incidents connected with alcohol. Even if the Police's statistics were taken into consideration there was no evidence put before the Committee that Mr Wilson's character or operation of the premises would in any way lead to an increase in disorder or incidents of drunkenness. The Committee accepted that there were incidents and current problems involving youths hanging around Norton Green but were of the view that such ongoing and current problems should not prejudice or be held against a

responsible business person such as Mr Wilson.

The Committee also had regard to all of the written representations which had been received and noted that twenty one had been received in relation to this application. It was noted however that only four of these persons had attended at the Committee meeting. Although the Panel had regard to the remaining seventeen objections it was noted that the Committee, the Applicant or his representative could not challenge or question any of the seventeen persons who had not attended.

The Committee gave full consideration to each of the representations and noted their comments. However it was noted that a large number of the representations raised issues which were not specifically linked to the licensing objectives. The Committee noted and agreed with the applicant that a number of these representations raised general issues of concern to local residents but which were not specifically relevant to this application. It was commonly accepted that there currently were problems around The Green area with youths drinking alcohol and the Committee had to consider whether Mr Wilson's application would add to this problem. The Committee were of the view that if the application was granted it would not lead to an increase in issues which would undermine the licensing objectives. The Committee were of the view that the existing problems should not prejudice Mr Wilson's application. There was no evidence to suggest that a responsible retailer such as Mr Wilson would contribute to the existing problems in the area.

A number of representations had made reference to the fact that there was a "no alcohol zone" around Norton Green. This was a slight misrepresentation and was not strictly correct. Norton Green area was an area designated under the Local Authorities (Alcohol Consumption in Designated Public Places) Regulations 2001. However this did not mean that no-one was permitted to drink alcohol in that area. The Designation grants the Police powers under Section 12 of the Criminal Justice and Police Act 2001 which allowed them to require persons not to consume alcohol in such a place and to surrender alcohol or containers for alcohol for disposal. A person who failed without reasonable excuse to comply with an Officers request was guilty of an offence and liable to prosecution.

A number of representations had also made reference to the fact that there were sufficient premises within the Norton High Street area supplying alcohol. Such matters were irrelevant to this application as there were no cumulative impact areas in force. Furthermore it was a commercial consideration whether the Applicant wished to supply alcohol under a premises licence and the fact that there were already similar premises in the vicinity would not be a valid ground to refuse the application.

The issues which had been raised involving Mr Wilson's character were not relevant to this application as Mr Wilson already had a personal licence and this application was to consider the premises licence. However the Committee noted that should there be any evidence that Mr Wilson's operation of the premises was undermining the licensing objectives then his licence would be liable to review.

When considering their decision the Committee had regard to the statutory

Guidance issued under Section 182 of the Licensing Act 2003 and the Council's Licensing Policy.

The Committee appreciated the objectors concerns but felt that these related to existing problems and that these did not outweigh the merits of the application and that accordingly the licensing objectives would not in the view of the Committee be undermined if the application was granted.

RESOLVED that the application for a premises licence be granted as detailed in the application form and which was summarised as follows:-

- Supply of alcohol as detailed in the application form
Monday – Sunday 05.00 – 20.00

- The Committee imposed the conditions as detailed below, namely:-

1. The Applicant shall install CCTV cameras providing an external view to the satisfaction of Cleveland Police. (It was noted by the Committee that Mr Wilson was happy to show Mr & Mrs Wiberg the view of the CCTV camera in order to alleviate any of their concerns).

2. All alcoholic products on display in the premise shall be marked with a stamp or sticker showing the name of the premise.

As well as the conditions placed on the licence by Committee it was noted that mandatory conditions would also be placed on the Licence as detailed under the Licensing Act 2003. In addition the steps set out in the Applicants operating schedule at Section P of his application would also be converted into conditions to be placed on the licence where it was reasonably practicable for them to be converted into conditions.

**392 The River Lounge and Restaurant, 661 Yarm Road, Stockton on Tees -
Application for a Premise Licence under Schedule 8 of the Licensing Act
2003**

The Chair introduced all persons who were present and explained the procedure that would be followed during the hearing.

Mr Harvard on behalf of the Applicant stated that he had three preliminary applications to make before the meeting proceeded:-

1. Mr Harvard stated that he objected to the representations which had been received from residents after the consultation period. Mr Harvard stated that there were six additional representations which had been forwarded to the Council. Mr Harvard stated that when he initially made the application he gave instructions for a statutory Notice to be placed in the Herald & Post but when he came to check the application noted that there was no copy of the Notice. Mr Harvard checked with the Herald & Post and was informed that the statutory Notice had not been published. Mr Harvard then spoke to Mr Vaines, the Manager of the Licensing Section who advised him that the Council would

accept the application but that he would be required to publish the consultation notice in the press and that any representations received in regard to this notice would be put before the Committee. Mr Harvard stated that he then arranged for the advert to be placed in the Herald & Post and that this was advertised on the 21 June 2006. Representations were received in relation to this Notice as an unknown individual had circulated a letter within the Yarm area referring to the application and inviting people who wished to object to forward their objections to PC Hodgson of Cleveland Police or the local Ward Councillor. PC Hodgson had received objections and representations which were forwarded to the Council. Mr Harvard stated that he had then discovered on the 28 June after the advert was published that the original advert had actually been advertised on the 17 May 2006. Mr Harvard therefore submitted that as the original advert had been placed in the press then any representations received in relation to the second advertisement should not be received or considered by the Licensing Committee.

2. Mr Harvard's second application was that the Committee should not consider the evidence of Miss Lyons which was contained in a witness statement included in the Police bundle of evidence. Miss Lyons was not in attendance at the Committee Meeting and therefore Mr Harvard was not in a position to ask questions of her or challenge her evidence.

3. Mr Harvard had a third issue which he wanted to initially raise with the Committee namely whether the Committee would be minded to undertake a site visit at the premise as the Police and some of the objectors had expressed the view that the premise was a nightclub whereas the Applicant and Mr Harvard would argue that this was a misconception and the premise was not a nightclub therefore in the Applicants opinion it would be of the benefit to the Committee to undertake a site visit at their convenience.

All parties withdrew from the meeting while the members considered these three preliminary applications.

The parties were invited back in and the members gave their decision on the applications:-

1. The members were of the view that the issue and confusion over the advertisement was solely the fault of the Applicant's representative and as additional representations had been received in relation to the second consultation period then the Committee were minded to accept these though they did note that none of these persons were in attendance at the meeting and therefore they would attach whatever weight to these which they felt appropriate.

2. Again the Committee noted that Miss Lyons was not in attendance at the meeting but that the Police had confirmed that she was out of the country on holiday. Notwithstanding this the Committee were minded to treat the witness statement the same as they would the representations namely, they would attach whatever weight they felt appropriate to the witness statement but were conscious of the fact that Mr Harvard was not in a position to ask questions but would challenge the contents of Miss Lyons statement. The Committee were therefore minded to allow the statement to be tended in evidence.

3. The Committee did not feel it appropriate or necessary for them to carry out a site visit at the premise. The Committee were of the view that any issues regarding the scale of the operation at the premises or the nature of the premises could be dealt with by way of the parties representations.

The Licensing Officer presented the report to the Committee. Consideration was given to the application as outlined in the report by Licensing Officer. Members noted and gave consideration to the representations that had been received from seven persons living within the vicinity of the premises and they noted that none of these persons were in attendance. The Committee noted that representations had been received from Planning, Environmental Health and Cleveland Police and they heard submissions from their representatives. Representations were not received from any other responsible authorities/statutory consultees.

Mr Jardine, on behalf of the Planning Department stated that they had submitted a representation as they noted the Applicants proposed opening hours of the premise were 11 am till 2.30 am the following day on a Monday - Sunday and that at the present time the premises only had a 12 month temporary consent to open during these times. Furthermore, the application for the external drinking area shown on the plans were part of the car park and therefore required planning permission for a change of use. Mr Jardine confirmed that the Applicant had submitted a planning application to cover these issues but that it was still out for consultation and the process had not yet been completed.

Mrs Llewellyn on behalf of the Environmental Health Section confirmed that they had made a representation as they had concerns over the use of the outdoor drinking area causing noise disturbance to local residents. It was noted that the Applicant had agreed to withdraw the application for music to be played outdoors. Mrs Llewellyn also stated that since a noise limiter had been installed within the premises the Applicant had only recently complied with the condition that the noise limiting device be set at a level agreed with the Environmental Health Section. Mrs Llewellyn also stated that the Environmental Health Section were of the view that the suggested closing time of 02.30 am was inappropriate given the location of the premises as there are residential properties on Yarm Road and to the rear in Egglecliffe village and that local residents may be disturbed by noise from customers leaving the premises at this time.

Mrs Llewellyn stated that it was her submission that the extension of hours and the application for the outside drinking area should be refused.

Mrs Llewellyn stated that the Environmental Health Section were continuing to work with the Applicant to ensure compliance with current conditions therefore in her view this application was premature. The premises had only been operating with a later licence until 1 am, with the premises closing at 01:30 a.m. since November 2005 when the new Licensing Act came into force.

Mrs Llewellyn confirmed that the Environmental Health Section had four recent complaints regarding loud music until late at night. These complaints had included the playing of amplified music at the premises until 1 am which had caused sleep disturbance to a local resident and also that the premise had been

playing amplified music till approximately 1 am with the windows being left open. The Police had also received a further anonymous complaint which alleged that the River Lounge had caused disturbance on the 5 July 2006 till approximately 02.16 am in the morning. Mrs Llewellyn confirmed that the complainants had been issued with noise complaint diaries and had been asked to keep a log of any occasions when they are caused disturbance by the premise or from customers leaving the premise.

Mrs Llewellyn confirmed that when the Licence was granted the application for conversion to the new regime was initially considered at a Licensing Sub Committee Meeting in September 2005 when the premise was granted a later hour of 1 am for the supply of alcohol and provision of regulated entertainment with an additional 30 minutes as drinking up time/wind down period. The additional hours came into force in November 2005 when the Licensing Act 2003 became fully operational. At the time this licence was granted there were a number of conditions which were agreed between the Applicant and the responsible authorities which were placed on the Licence. Mrs Llewellyn stated that there had been a number of breaches of these conditions or alleged breaches of the conditions:-

1. The premise was required to keep external doors and windows closed. It was noted that a complaint had been received alleging that doors and windows had been left open at the premises while the premises was open for business. Mrs Llewellyn confirmed that Mr Emadi had assured her that the doors and windows had not been left open.

2. It was a requirement for the applicant or designated premises supervisor to carry out periodic assessments of potential noise nuisance from the premise and to keep a written record of this. Mrs Llewellyn confirmed that when she carried out a visit at the premises there was no written record of periodic assessments but that Mr Emadi had stated he had carried out such assessments.

3. Management controls were supposed to have taken place at the premise such as the erection of notices requiring customers to leave in a quiet manner. Mrs Llewellyn confirmed that on the 6 July 2006 she had visited the premise and no such signs were in place although Mr Emadi had assured her that he would attend to this.

4. The issue regarding the noise limiter - the noise limiter only been set yesterday on the 26 July 2006 even though the condition had been agreed in September 2005 and the additional hours had become operative in November 2005. Mrs Llewellyn stated that should an extension of time be granted with regard to this application then the noise limiting device may have to be reduced further.

Mrs Llewellyn stated that she had also been consulted on the planning application and had recommended refusal of that application. Mrs Llewellyn confirmed that she noted the Applicant had agreed to withdraw the request for music in an outdoor drinking area. Mrs Llewellyn stated that she had concerns over the creation of a new outdoor drinking area at the premises as outdoor drinking areas in general and in Yarm do cause problems and complaints to the Environmental Health Section.

Mrs Llewellyn stated that should the members be minded to approve the application then she would suggest the following conditions be applied to deal with potential nuisance from the outdoor drinking area:-

1. The external drinking area shall only be opened to customers during daylight hours and there should be no external lighting or heating appliances.
2. A lobby with a self closing device shall be installed to the rear of the premises.

Mr Harvard on behalf of the Applicant was then given the opportunity to ask questions of Mrs Llewellyn and Mr Asadi.

Miss Smith, Barrister on behalf of Cleveland Police stated that the extension to the opening hours was opposed as was the outdoor drinking area though if the members of the Committee were minded to agree with the proposal for the outdoor drinking area then she would ask that consideration was given to the conditions as set out in the Police's representation.

Miss Smith stated that it was the Police's view that longer opening hours of premises would lead to more crime and disorder and that if this application was granted the licensing objectives would be undermined. In the Police's view the applicant had continually chipped away and obtained gradual extensions to the activities and hours at the premise and now was the time for the Police and the Committee to say enough is enough.

Miss Smith then invited PC Hodgson to explain the history of the premises which was detailed in PC Hodgson's witness statement dated 6 July 2006. PC Hodgson went on to state that when this application was submitted the premise had only been operating at the later hour for approximately 6 months and therefore the Police had not had sufficient time to monitor the impact of the additional hours in the premise. This application was therefore deemed to be premature especially as the premise had not yet operated during the summer months. PC Hodgson stated that although the applicant took the view that the premise was not a night club it was still a premise that advertised music and drinking until 1 am in the morning. PC Hodgson then went on to refer to statistics which he had produced and put before the Committee which in his view showed that before the new licence was granted in November 2005 there was one incident and that since November 2005 there had been seven incidents connected with the premise although PC Hodgson accepted that two of these concerned escaped sheep in the car park.

However the matter of most concern to PC Hodgson was the fact that there was an incident on the 5 July 2006 which was when the premise was opened later under the provision of a Temporary Event Notice ('TEN'). PC Hodgson explained that the Police are the only consultee who is consulted on and who may object to a TEN. The TEN's had been submitted to allow the premises to open an extra hour until 2 am. The first temporary event notice application had been granted on the 6 June 2006 when there were no reports of any problems at the premise. However on the 5 July 2006 the date of the second TEN the Police received an anonymous complaint from a private resident on Aislaby Road/Bridge Street which alleged that there was noise and nuisance being

caused which was connected with the River Lounge. The complainant had stated that even though he had his windows closed he could still not sleep for the noise. This matter was also referred to the Environmental Health Section of the Council for them to investigate.

PC Hodgson also confirmed that another complaint of noise had been received from a nearby resident on Tuesday 12 July 2006 which alleged that there was loud singing from the area of the River Lounge.

PC Hodgson also referred to visits which the Police had carried out at the premises initially on the 28 April 2006 when the CCTV was not switched on even though this was a condition on the licence. In addition to this there wasn't a drugs safe or drugs register which again were conditions of the licence and which should have been implemented on or before 24 November 2005 when the new licence became operational. In the Polices view this brought the management of the premises into question.

PC Hodgson also referred to Miss Lyons statement and confirmed that she was currently on holiday and therefore was not in attendance at the Committee meeting. In PC Hodgson's view such promotions and large banners advertising happy hours at the premise encourage binge drinking as customers would be more inclined to drink as much as possible during that happy hour and even more so should cocktails be given away for free.

PC Hodgson stated that it was also within his knowledge that the premise had undertaken publicity via the way of flyers which had been distributed by River Lounge staff in Yarm High Street resulting in a large amount of flyers littering the high street. PC Hodgson stated that he had received a complaint about this activity albeit that it was from a competitor namely Hide Bar in the High Street.

PC Hodgson also referred the Committee to a further visit which took place at the licensed premises on the 6 July 2006 when it was visited by his colleague PC Icton and Claire Llewellyn from the Councils Environmental Health section. PC Hodgson referred the Panel to the written details of this visit which again detailed a number of breaches of conditions of the premise including:-

1. No drugs safe
2. No incidents in the incident book
3. No CCTV was in operation and in any event it was only programmed for 14 days whereas the condition required that images should be stored for 28 days.
4. The premises licence was not displayed at the premise. Mr Armadi's explanation for this was that he had never received it even though investigations showed that it had been issued in April 2006 by the Council to Mr Harvard, Mr Armadi's Solicitor.
5. There were no notices erected at the premise advising who the designated premises supervisor was.

PC Hodgson stated that in his view it is the Designated Premises Supervisors' responsibility to know what had been volunteered and agreed at the premise

with regard to conditions which should have been adhered to since the 24 November 2005.

In summary PC Hodgson summarised the Police objections by stating that he believed later hours would cause additional problems for policing in Yarm and for local residents and that the TEN's which had been applied for in relation to the premises had resulted in a complaint from one of the two events held so far.

Mr Harvard on behalf of the Applicant was then given the opportunity to ask questions of PC Hodgson.

Mr Harvard on behalf of the Applicant stated that Mr Emadi wanted to make a decking area outside which would be fenced in accordance with the request of Cleveland Police. Mr Emadi had withdrawn his application for recorded music outside and wanted to use it for customers to eat and drink. A form of wording for a sign had been agreed with Cleveland Police which would be displayed outside so customers know whether they are permitted to eat and drink.

Mr Harvard noted that Mrs Llewellyn had requested consideration for a lobby at the rear but this would involve Mr Emadi in some expense and at this stage there was no evidence that it would be required. Mr Harvard stated that his client would be more than willing to give consideration to such a suggestion should it be found necessary in the future.

Mr Harvard stated that the premises was rather small and had a limit of 160 persons on the ground floor. The door staff at the premise do try and restrict the numbers at the ground floor to approximately 120 - 125 persons. Mr Harvard stated that his client took the view that his premise was very different to those which operate in Yarm High Street and that this premise should be considered on their own and not as an extension of the High Street.

Mr Harvard stated that the drinks served at the premise were quite expensive and at the top end of the market. He had personally spoken to the bar staff and the trend towards the weekend was that they didn't start to get busy until 10.30 - 11.00 pm.

Mr Harvard referred to the concern that had been expressed over his client not complying with licence conditions. Mr Harvard stated that although his client had a copy of the proposed licence when it was submitted it was easy to lose sight of the details and when he received the Licence from the Council he sent a copy to Mr Emadi. However, Mr Emadi's admin staff merely filed the Licence as they did not appreciate the importance of the document. Mr Emadi did not know that the Licence had been received at the premise. He now holds his hands up to that and apologises to the Committee.

Mr Emadi also accepted that he did not have a drugs safe, the erection of the appropriate notices but that they had now been attended to and were in situ at the premise. Mr Harvard stated that he hoped the Committee would take the view that his client had now remedied the breaches as and when he had been required to do so.

Mr Harvard stated that he had previously been present at Committee when they had considered the application for The Keys in High Street, Yarm when PC

Hodgson had objected to a 3 am licence. It was noted that The Keys currently had a 2 am licence and Mr Emadi would requested that he be dealt with in the same way as The Keys. Mr Harvard stated that if you compare Mr Armadi's premise which currently had a 1 am licence and The Keys with a 2 am licence it would not be unreasonable for Mr Emadi to have a licence till 2 am.

Mr Harvard stated that the representations which had been received in relation to the flyer which had been circulated were all received as a result of the flyer which contained certain inaccuracies. Mr Harvard stated that in his view the representations were general in nature and don't specifically name the premise.

Mr Harvard stated that the noise limiting device at the premise had now been set with the agreement of the Environmental Health Officers and that in his view it was reasonable to grant this application.

Mr Harvard also referred to the seven incidents which had been put forward in the Polices evidence and stated that in his view the majority of these are irrelevant as incidents 2 and 3 related to sheep, incident number 5 related to the two a set of keys and that only one of the seven incidents could possibly be related to his clients running of the premises.

Mr Harvard also referred the Committee's attention to a letter which he had sent to Cleveland Police dated 21 June 2006 which addressed some of the concerns put forward by the Police.

The representatives of the Environmental Health Section and Cleveland Police were then given an opportunity to ask any questions they had of the applicant. They did not have any questions.

The Committee initially gave consideration to the part of the application asking for the external drinking area which the applicant had applied to be limited from 10 till 23.30 hours. The Committee noted that of the seven representations which had been received none of these objected specifically to the outdoor drinking area and these objections had mainly concentrated on the application for the additional hour until 2 am. However the Committee did note that the objections from Planning, Environmental Health and the Police all maintained an objection to the outdoor drinking area. It was reasonable to assume that on the balance of probabilities there would potentially be an increase in the amount of noise if an outside drinking area was granted. It was the opinion of the members of the Licensing Committee that there would not be such an impact if the hours of operation of the outside drinking area were restricted. The Environmental Health representatives had proposed that such restrictions should apply to daylight hours but such a condition was felt to be unclear and potentially unworkable. The Committee did feel that because of the potential impact on the licensing objectives of an additional outside drinking area that the grant of this part of the application should be restricted to a terminal hour so that the impact on the area could be monitored and assessed and should such an area be successful the Applicant would have the option of applying to extend the hours for the outside drinking area.

Accordingly the Committee agreed to the licensing of the external drinking area but with the following conditions:-

1. The use of the external drinking and eating area shall be limited from 10.00 - 22.00 hours. There shall be no music played in the external area and no use of artificial lighting likely to cause a nuisance to local residential properties.
2. The outside drinking area should be monitored by digital CCTV which shall be installed to the reasonable satisfaction of Cleveland Police.
3. The outdoor drinking area should be bound by fencing which shall be installed to the reasonable satisfaction of Cleveland Police and the Council.
4. Signs shall be clearly displayed in the outdoor drinking area clearly notifying customers not to leave the designated drinking area with open vessels.

The Committee then went on to consider the part of the application relating to the extension of regulated entertainment and supply of alcohol for an additional hour till 02.00 hours with 30 minutes drinking up time/wind down period meaning the premises would be open to the public until 02.30 hours.

The Committee had regard to all of the evidence which they had heard with regard to this application and were minded to agree with the Environmental Health and Police representatives that this application was somewhat premature as the potential impact of late night opening of this premise had not had sufficient time to be monitored. It was noted that there had been a gradual increase in the operation of the premises and the times in which it opened as was detailed by PC Hodgson. The operation of the premises till 1 am with a closing time of 01.30 hours had been in operation since 24 November 2005. It was noted that although the Police had submitted statistics relating to the premise these did not show that the premise was a particular problem from the point of view of crime and disorder. However there were a number of complaints of noise nuisance related to the premise which had been received by either the Police or Environmental Health and which were occurring at the closing time of 01.00/01.30 hours. It was also of concern that on one of the occasions when a TEN was held until 02.00 hours a complaint had been received regarding noise nuisance from the premise.

The Applicants representative had argued that this premise should be considered on its own merits and not as an extension of Yarm High Street which had a large concentration of licensed premises. The Committee were minded to agree with this rationale but rather than assisting the application they were of the view that this was somewhat of a hindrance to the operation of the premises. Rather than being in a busy concentration of licensed premises or near to The Keys Public House which was in the middle of Yarm High Street and was very busy around closing time this premise was situated away from the High Street and was in a relatively quiet area of the town. In the view of the Committee there would therefore be a greater impact should additional hours be granted and if the application was granted until 2 am with a closing time of 02.30 hours then there was greater potential for there to be noise nuisance to local residents. It was also noted that the premises in the High Street were very well served by taxi ranks whereas the applicants premise did not have a taxi rank nearby and therefore any persons leaving the premise would either have to walk into Yarm High Street which could cause further nuisance and disturbance or would have to call taxi's to the premise itself which again could have the potential for a large number of taxis arriving at the premise. There

was the potential for up to 160 persons to be leaving this premise at closing time and the Committee were of the view that for such numbers of people to leave the premise at 02.30 in the morning was unacceptable and would be likely to undermine the licensing objectives.

The Committee were also concerned by the number of breaches of the licensing conditions which had already occurred since the operation of the premises from the 24 November 2005. On two separate police visits the CCTV was not working, a drugs safe was not installed and there were a number of other issues concerning erection of notices, use of monitoring records and the incident book all of which had not been complied with by the Applicant. It was noted that the majority of these issues had been addressed by the Applicant and remedied wherever possible but that this still was a cause for concern that such issues were only remedied as this matter had come before the Licensing Committee. A number of explanations had been put forward by the Applicant and his representative as to why there had been so many potential breaches of conditions and issues concerning the operation of the premises. The Committee did not feel it was acceptable for these serious issues to be dismissed or minimised by the Applicant.

Another issue of concern concerned the use of the temporary event notices. During the consideration of this application it was apparent that the applicant did not have a licence to carry out activities such as performances of dance or facilities for dancing at the premise. It was noted that the Applicant intended to submit a further application applying for dancing. However on the anniversary of the premises late night opening on the 6 June 2006 a TEN notice had been applied for which advertised break dancing at the premise, an activity which was unlicensed and not covered by the terms of the TEN. This was another example of the premise operation not complying with the law.

The Committee also had regard to the representations which had been received in relation to this application. The Committee noted that none of the persons who made a representation were in attendance at the meeting and the majority of these were general in nature and were opposed to the general extension of hours at a premise rather than being specifically targeted at this premise. However the representation from Mr Rafferty of the Cleveland Bay was considered to be relevant. The Committee did not feel that this representation was based on economic grounds as Mr Rafferty's public house closed before the applicants premise. However it was noted that Mr Rafferty did reside at the premise and that he was concerned at the disturbance which he had been caused by customers of the River Lounge. Mr Rafferty was as entitled as any person not to be disturbed by the activities of such premises. Mr Rafferty had also expressed the view that he was concerned that the persons leaving the applicants premise and causing noise disturbance or nuisance may be assumed to have been related to Mr Rafferty's premise.

The Committee also gave consideration to the witness statement of Miss Lyons and again did not put as much weight on this as she was not in attendance at the meeting. It was a matter of dispute between the Police and the applicant's representative as to the amount of alcohol which was supplied in the free cocktails. However the Police had expressed the view that they were concerned in any event when a licensee would provide free alcohol regardless of the content as customers could still consume to excess. The Police had

also been concerned at the promotion of a happy hour at the premise which again was deemed to be irresponsible and had the potential to promote binge drinking.

After giving consideration to all of the evidence the Committee were of the view that the application for the extension of opening hours would undermine the licensing objectives and accordingly this part of the application was refused.

RESOLVED that:-

1. The licensing of the external drinking area be approved with the following conditions:-

(a) The use of the external drinking and eating area shall be limited from 10.00 - 22.00 hours. There shall be no music played in the external area and no use of artificial lighting likely to cause a nuisance to local residential properties.

(b) The outside drinking area should be monitored by digital CCTV which shall be installed to the reasonable satisfaction of Cleveland Police.

(c) The outdoor drinking area should be bound by fencing which shall be installed to the reasonable satisfaction of Cleveland Police and the Council.

(d) Signs shall be clearly displayed in the outdoor drinking area clearly notifying customers not to leave the designated drinking area with open vessels.

As well as the conditions placed on the license by Committee it was noted that mandatory conditions would also be placed on the licence as detailed under the Licensing Act 2003 and the steps as set out in the applicants operating schedule would be converted into conditions.

2. The application relating to the extension of regulated entertainment and supply of alcohol for an additional hour till 02.00 hours with 30 minutes drinking up time/wind down period meaning the premises would be open to the public until 02.30 hours be refused.