

## Licensing Sub Committee

A meeting of Licensing Sub Committee was held on Friday, 8th June, 2007.

**Present:** Cllr Colin Leckonby, Cllr Fred Salt, Cllr William Woodhead.

**Officers:** C Snowdon, M Vaines (DNS); J Nertney (LD).

**Also in attendance:** For The Keys item:-

Mistell Limited (represented by Mr Heron, Solicitor) Miss Victoria Powell (Manager) Miss Jacqui Prest (Designated Premises Supervisor), Mr Reay, Councillor Mrs Beaumont, Mr Earl and Mrs Robinson who reside on High Church Wynd.

For Grange Post Office:-

Miss D K Atwal (Applicant); Mr Taylor, a resident of Stanhope Road. Mrs Buckle, Mrs Mclean, Mrs Lambert and Mr Wigham, residents of Grange Avenue. Two residents of Grange Avenue who had not made a representation were also in attendance. Mrs Wade and Mrs McCarthy residents of Grays Road.

For The Wobbly Goblin item:-

Night Hawk Limited - Mr D F Paleschi (Designated Premises Supervisor).

**Apologies:** None.

### **LSC 1/07** Appointment of Chairman

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

### **LSC 2/07** Declarations of Interest

There were no interests declared at the meeting.

### **LSC 3/07** The Keys, High Street, Yarm - Application for Variation of a Premise Licence under the Licensing Act 2003

A copy of the application detailing the hours and entertainment applied for was circulated to all persons who had made a representation prior to the meeting. The application was summarised as:-

- To permit the sale of alcohol and the provision of regulated entertainment and late night refreshment between the hours of 09:30 and 03:00 on Sundays immediately preceding a bank holiday, Good Friday and Boxing Day.
- To extend the closing time of the terraced area from 10.00 p.m. to 11.00 p.m.

At the time of this meeting the premise was licensed till 02:00 for the sale of alcohol and provision of regulated entertainment. It was noted that a previous application had been made by the premise licence holder in May 2006 when an application for an extension to 03:00 on Friday and Saturday nights was made. This application was refused by the Licensing Sub Committee.

The Committee had regard to this application and the nine representations that had been made by persons living within the vicinity of the premises. The Committee also had regard to the representation made by Mr Colin Snowdon (EHO) on behalf of the Environmental Health Section.

Mr Reay was in attendance at the meeting to represent himself and his mother, a resident of High Church Wynd. Councillor Beaumont, the Ward Councillor was

also in attendance and represented three of the persons who had made a representation.

The EHO then presented their submission to the Committee and explained that they had submitted a representation as they believed there would be a greater likelihood of public nuisance associated with entertainment noise, and noise from clients leaving the premises. The application proposes that clients will leave the premises at up to 03:30 which is a particularly noise sensitive time of the morning. The EHO also objected to the application for an extra hour in the terraced area as presently noise disturbance effecting local residents is minimised and residents reluctantly accept a little disturbance until 22:00 knowing that there will be no customers using the outside area after 22:00.

With regard the extension of the terminal hour on Bank Holidays the EHO stated that they had the same concerns and argument when the application for an extra hour was last before the Committee in May 2006. Yarm is a bustling town and background levels of noise are generally quite high during the day and evening. However between 01:00 and 02:00 background levels fall. There are no other premises in Yarm that are licensed after 02:00. If this application is granted clients would be leaving the premise between 03:00 and 03:30 with a potential further delay while they waited outside for public transport. This is a large premise with a lot of people leaving which will obviously cause some noise disturbance.

The EHO confirmed that the management of the Keys had co-operated fully in their efforts to address noise nuisance. Extensive works had been carried out to soundproof the premises. However the limits of protection had been reached. At 02:00 noise from the premises was still audible and bass noises can be heard. This was a difficult situation for the EHO to deal with as they had to assess whether the audible noise was sufficient to cause disturbance. There was a very fine balance at 02:00 and if there was to be an extension to 03:00 when background levels were less it is more than likely to cause a disturbance. The Applicant may argue that as this application is only for bank holidays then there would only be occasional nuisance. However the EHO has three concerns over this argument:-

1. If the licence was extended to 03:00 on Bank Holidays this will be a time when most local residents would expect to be able to relax in their own homes.
2. There had been a history of creeping applications with this premise and from the premise licence holder which has had the effect of gradually increasing capacity and the terminal hour. On average there was an application (either planning or licensing) submitted every six months.
3. In the past some local residents have had a tolerance of some level of disturbance. However there have been a number of new residential developments in the vicinity of the premises which means that new residents will be moving in who will have little tolerance for disturbance. The EHO stated that he anticipated an increased number of complaints about the premise.

With regard the extension of the terminal hour in the Terrace Area (Beer Garden) The EHO stated that the problem with the terrace was that it was right next door to residential properties and that Mr Reay who was in attendance was the nearest resident. The Committee should consider the scenario that Mr Reay lives next door to a property that had friends round in their garden almost every night of the week which obviously caused nuisance and disturbance.

The EHO stated that they had been able to control the noise with the premise/nightclub by use of insulation etc but it was very difficult to control noise nuisance outside the premises in the terrace/beer garden.

Traditionally beer gardens would be used on a sunny afternoon for customers to have a quiet drink but in recent years, particularly in Yarm, the beer garden was used as an extension of the pub/licensed premise which were often used late at night. In Yarm there was a tendency for people to start drinking from late afternoon/early evening. Yarm also attracts a more exuberant younger clientele who can and do get boisterous. It would be very difficult to control this noise nuisance in the terraced area/beer garden.

The EHO stated that The Keys had never had a history of having a beer garden at the premises. When the application was made for planning it was noted that the area would only be used as a ornamental/decorative area however at a later date they started using it as a drinking area. The EHO had initially requested that the use of the area be restricted to 18:00 but after discussions with the management and introduction of controls and a restriction on numbers (believed to be 60 persons) it was agreed that the area could be used till 22:00.

A recent application was made to the Planning Committee for extensions to the beer garden. This was refused by the Planning Committee but an appeal was made to a Planning Inspector. The Planning Inspector allowed the appeal and stated that licensing conditions were the most appropriate way of controlling the area.

The EHO had concerns over the introduction of the smoke free legislation as this will inevitably lead to more people wanting to use the outside area. The EHO stated that they did not have a major issue with smokers going outside for a cigarette but there would inevitably be a number of people who stand outside and drink.

Mr Heron, the Applicants representative, was then invited to ask questions of Mr Snowdon, he indicated that he had no questions.

With regard the Submission from Interested Parties (persons within the vicinity of the premise) Councillor Beaumont stated that she appeared on behalf of local residents who had objected namely Mrs Earl of the High Street and Mr Earl and Mrs Robinson who reside in High Church Wynd. The concerns of residents were summarised as follows:-

- Lots of nuisance is caused by clients of the premises, the noise nuisance is consistent with the Keys current closing time.

- There are numerous complaints of urinating, vomiting and sexual activity in High Church Wynd.
- An extra hour in the middle of the night is unacceptable and will lead to further disturbance.
- High Church Wynd is a closely confined area and acts as a tunnel therefore exacerbating the noise nuisance.

Mr Reay stated that he represents his mother who had submitted a representation and that the beer garden was within three yards of his mothers bedroom window. Customers had thrown beer glasses over the dividing wall. Mr Reay stated that he used to phone the manager of the premises with problems but the manger was often unavailable so he now doesn't bother. Mr Reay stated that he was a father and his fifteen year old daughter had had to move her bedroom because of the noise. Mr Reay stated that 36 flats had recently been built close to the premise and he had been led to believe that the owner of The Keys had enquired about purchasing the four flats that overlook the beer garden. The beer garden had been there for approximately three years whereas his house had been there for 250 years and had been in his family for 50 years.

The Committee also had regard to the written representations that had been received from the interested parties who were not in attendance at the meeting.

Mr Heron, the Applicants representative, was then invited to ask questions of Councillor Mrs Beaumont or Mr Reay, he indicated that he had no questions.

With regard the Applicants submission Mr Heron stated that residents objections were grossly unfair and it was not right for their complaints to all be related and linked to the Keys. The complaints of urinating, vomiting and sexual activity cannot be linked to customers of the Keys, there was no evidence that was the case.

There were a number of other premises which open on the High Street till 01:00 and their customers could be responsible for some of the issues which caused residents concern. The position of the Keys and the fact that it had a late night licence made it a "whipping boy".

Mr Heron said that he appreciates Mr Reays complaints but that Mr Reays own parents used to have an interest in the Keys.

Mr Reay responded to this point and stated that the Keys public house did belong to his parents but it was always a pub. The function room at the back of the premise was licensed for 100 people and had a licence till 00:00 on a Friday and Saturday night.

Mr Heron stated that it was not fair to say that anything which happens in the Wynd and causes nuisance to the residents is the sole responsibility of the Keys.

A smoking area was effectively what it would come about in the beer garden. Similar alterations would be taking place all over the country in order to provide smoking facilities when the law changed. Anyone who wished to smoke would have to use a designated smoking area. A planning application had been made for awnings to the front of the premise to allow customers to stand outside in the

High Street and smoke. Mr Heron stated that his clients were prepared to give an undertaking that there would be no further increase in the beer garden area. If The Committee had doubts about the application his client was prepared to limit the extra hour in the beer garden to a Friday and Saturday night. Any visitors the nightclub which is currently licensed till 02:00 would not be permitted into the beer garden/smoking area. The premises employed door staff and Police Officers under the Tranquility Scheme who remain at the premise until the club closes.

The premises had done all they could and co-operated with all requirements on them. Following a previous Committee meeting they installed a CCTV camera to cover High Church Wynd, at no time had any authorities or the residents asked to see the tapes.

The Police had not objected to the extra hour. If granted the Applicant would pay for an extra hour under the Tranquility scheme. The extra hour was only for bank holidays which worked out at about six nights per year. Mr Heron stated that he heard the residents concerns but this issue should be put into perspective. The Applicant was a responsible operator who had done all within its power to fulfill its objectives.

Other premises in Yarm had beer gardens and the Black Bull had a beer garden till 00:30 and this premise had residents nearby. All the Applicant was asking for is a level playing field.

Mr Heron invited the Committee to grant the application.

The Committee then invited any interested party to ask questions of the Applicant.

Mr Reay noted that the camera in High Church Wynd was not ideally located.

Mr Heron stated that his client is quite happy to move the camera if required.

Councillor Beaumont referred to the fact that a Police helicopter had been hovering over the premise causing a nuisance to local residents.

Mr Heron stated that this incident was not connected to the Keys and was actually connected to an incident at Hide Bar.

Councillor Beaumont enquired why the beer garden should be open later as Miss Powell, the manager had indicated that she was disturbed by noise from the Black Bull beer garden.

Mr Heron stated that it would be used as a facility for customers who want to go outside and have a cigarette. He did not accept that it would cause any further nuisance as we are only talking about one hour. The Applicant would provide additional security to ensure that customers conduct themselves in an appropriate manner.

Mr Snowdon responded to the Applicants offer to reduce the operation of the beer garden for an additional hour to Fridays and Saturdays only. Mr Snowdon stated that these were the busiest times for the premise and there would be

nuisance caused. Mr Snowdon stated that these premises cannot be compared with other premises such as the Black Bull as that premise had a long history of having a beer garden. This premises application should be considered on its own merits.

Councillor Leckonby asked for clarification as to how many customers the premise/nightclub attracted.

Mr Heron stated that the night club had an occupancy level of 600.

In considering their decision members were mindful that they needed evidence on which to base their decision. When considering their decision the Committee had regard to the Statutory guidance issued under Section 182 of the Licensing Act 2003 and the Councils Licensing Policy.

The Committee had regard to the evidence submitted and detailed by Mr Snowdon, the Environmental Health Officer. It was noted that the Applicant did not call any specific expert evidence to challenge the EHO's submissions that nuisance would be caused if the application was granted. The Committee noted that the location of the premise was fairly unique in that the Keys was a nightclub located in and/or very close to a residential area. The Committee felt that on the balance of probabilities the evidence given by the EHO's persuaded them that local residents would be at risk of suffering an increase in public nuisance if the variation application was granted. There was the potential for up to 600 customers leaving the premise at between 03:00 and 03:30. It was noted that this application was for bank holidays only however the Committee concluded that nuisance would be caused to local residents and therefore it would be unreasonable for residents to be subjected to this nuisance on bank holidays or other occasions. Bank holidays were precisely occasions when residents would wish to relax and not be disturbed.

The Committee also noted the representations made by local residents who gave evidence that they were currently experiencing nuisance and anti social behaviour connected with the operation of the premises. This evidence was in relation to when the premises closed and customers were leaving at the current closing time of between 02:00 and 02:30. In addition Mr Reay also gave evidence on the specific problems he experiences from the operation of the beer garden. The Committee noted Mr Reay's submission and that of the Ward Councillor who represented three local residents the Committee. The Committee also noted the written representations of those local residents who were not in attendance. The Committee were of the view that if the application was granted local residents would experience further nuisance and disturbance at a later hour which was deemed to be unacceptable and undermined the licensing objectives. The Committee were also of the view that to extend the operation of the beer garden by one hour would also lead to an increase in public nuisance for local residents.

Although the Committee accepted that the residents were caused public nuisance by customers of the Keys they accepted in part the Applicants submission that not all incidents of nuisance could be attributed to the premise. For example the fact that a Police helicopter was hovering over the High Street could not reasonably be attributed to the operation of the Keys. The Committee also did not take into account the planning policies quoted in one of the

representations as these are deemed not relevant when considering a licensing application. The licensing and planning regimes are two totally separate issues.

The Committee considered each aspect of the application to decide whether any of them should be granted i.e. they considered the application for an increase in licensed activities for an extra hour from 02:00 to 03:00 on Bank Holidays and for the use of the beer garden for an extra hour from 22:00 to 23:00 which was amended by the Applicants representative to apply on a Friday and Saturday only. The Committee were of the view that none of these variations should be granted as they would lead to an increase in public nuisance and therefore undermine the licensing objectives.

The Committee were of the view that there were no specific conditions which could be placed on the licence which would address their concerns over the issues raised by the local residents and the Environmental Health Officer. The Committee had regard to the concession made during the hearing by the Applicants representative, namely that the extra hour would only be utilised on Friday and Saturday nights. However the same argument applied to this as for the Bank Holiday issue i.e. was it acceptable that local residents should be subjected to public nuisance on a Friday and Saturday, the answer to that is no and therefore this concession was not deemed appropriate by the Committee.

RESOLVED that the application for a variation to the premises licence be refused as detailed in the application form in relation to the extension on bank holidays and the extension for an extra hour in the beer garden which the Applicant indicated would be amended to a Friday and Saturday only.

**LSC 4/07 Talpor, Teesside Retail Park, Teesdale, Stockton on Tees - Application for Variation of a Premise Licence under the Licensing Act 2003**

Members were informed that as the representations from Environmental Health and Cleveland Police had been withdrawn the item had been withdrawn from the agenda.

**LSC 5/07 Grange Post Office, 28/30 Grange Avenue, Stockton on Tees - Application for the grant a Premise Licence under the Licensing Act 2003**

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. Representations had not been received from any statutory consultees including the Police, Trading Standards or Planning Section. The Licensing Officer explained the consultation process that takes place in relation to this application. Representations had been received from forty four persons living within the vicinity of the premises. It was noted that seven of these persons were in attendance at the Committee meeting to state their objection. Two further local residents who had not made a representation were also in attendance.

With regard the Submission from Interested Parties (persons within the vicinity of the premise) Mr Taylor indicated that he had been appointed as the spokesperson on behalf of the objectors who were in attendance at the meeting.

Mr Taylor indicated that local residents were concerned at the cumulative impact in the area if there was another licensed premise. There was already an off licence at Grays Road and this was already troubled by gangs of youths. In the past local residents had been asked by the youths to buy alcohol for them. The licence holder of Grays Road off licence was in attendance at the meeting and she explained the problems that she had experienced in the vicinity of her premise.

Mr Taylor summarised the residents objections under each of the licensing objectives, namely:-

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

The objections were summarised by Mr Taylor as:-

- The potential for increased traffic in the area
- The potential danger to children
- It was a quiet residential area
- Parking is limited
- Numerous residents do not want the licence granted

Members of the Committee also had regard to the written representations that had been received from persons living within the vicinity of the premises who were not in attendance at the meeting.

With regard the Applicants submission Miss Atwal stated that she was the personal licence holder and that she had gone into partnership with Mr and Mrs Nagra who had run the premises for some time. The premises had been there for over 50 years and currently operated as a post office and general store. The store served the local community and took its responsibilities seriously. Miss Atwal noted that no objections had been received from the Police or Trading Standards. The Police obviously felt that there would be no increase in crime and disorder. Miss Atwal stated that they took their responsibilities very seriously and had never sold to under age persons. Miss Atwal produced documentary evidence from Stockton Trading Standards who indicated that the premise had successfully passed a test purchase exercise involving under age volunteers. They currently operate a post office and lottery outlet and also sell cigarettes, these were all responsibilities equal to that of serving alcohol. The premise would not be operated as an off licence, it was a general store that can also sell small quantities of alcohol should their customers require it.

The management of the premises would ensure that appropriate diligence systems were in place to ensure there were no problems with youths in the vicinity of the premises. Sales would be refused and the premise had a refusals register. Furthermore the premise operates a challenge 21 policy and is very strict on requiring identification.

Some objectors had complained about traffic issues, Miss Atwal stated that this was something that should be addressed with Highways but that to the best of her knowledge there had been no accidents in the area in the last seventeen



years. The shop was not on a main road, its in a quiet residential street.

The opening hours would remain the same and the premise would close at 19:00. The only reason the application had been made for sale of alcohol till 19:00 is so that persons who come home from work had the option of purchasing alcohol if they so wish.

Mr and Mrs Nagra live above the premises and would therefore have an interest in ensuring the premises run appropriately and did not cause any problems.

Although Miss Atwal was confident that the premise will not cause any problems to local residents should this be the case then all residents had the option of requesting a review of the premises licence.

Miss Atwal noted that a misleading leaflet had been delivered to residents in the locality and that this could have been the reason for the large number of objections received. Miss Atwal indicated that she had listened to the objections but wished to assure them that their concerns would not materialise. Miss Atwal hoped that she had put a lot of their concerns to rest.

The Chairman then invited questions from the objectors.

A resident asked why the premise was up for sale as residents were concerned that the Applicant wanted to obtain a licence to serve alcohol in order to make the premise easier to sell.

Mr Nagra stated that the premise was no longer for sale and had been taken off the market.

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

The Committee noted that many of the Objectors concerns were general in nature and were concerned about what may happen rather than having any evidence that the premise would cause a problem. Many residents made reference to the fact that there were currently other licensed premises in the area but sufficiency of premises was not a valid ground for refusing an application such as this. Residents concerns were over the activities taking place at other premises. Problems at other premises could not, in the opinion of the Committee, be a valid ground for refusing an application. Each application had to be considered on its merits and a responsible operator should not be prejudiced by problems caused by other premises. The Committee wished to remind residents that if they were experiencing problems that can be linked to a specific premise then they had the option to request a review of that premise licence.

The Committee noted that seven of the persons who had made a representation were in attendance at the Committee meeting and they noted their concerns but felt that there was no evidence that the running of the premises would undermine the licensing objectives. It was noted that no representations had been received from the statutory consultees. In particular the Police had not raised any objection to the application and were therefore satisfied that the crime and disorder objective would not be undermined.

The Committee noted that some residents were concerned that this would be the “thin edge of the wedge”. Such concerns were not relevant considerations as this application had to be considered on its own merits. Should the Applicant require longer opening hours then they would have to make a formal request via the licensing process and comply with advertising and consultation requirements to allow objections to be made.

The Committee appreciate the concerns of residents but there was no evidence that they will experience problems if this application was granted. The Committee noted the stringent efforts made by the applicant and were satisfied that it would be a well run premise and would not undermine the licensing objectives. Furthermore the Committee felt that the hours applied for were not excessive.

When considering their decision the Committee had regard to the Statutory guidance issued under Section 182 of the Licensing Act 2003 and the Councils Licensing Policy. The main concern of residents was over the potential for public nuisance.

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

- Supply of alcohol between the following hours:-

Monday to Tuesday: 06:00 to 19:00  
Wednesday: 06:00 to 19:30  
Thursday to Friday: 06:00 to 19:00  
Saturday: 06:00 to 19:30  
Sunday: 06:00 to 12:30

It was noted that mandatory conditions would be placed on the Licence as detailed under the Licensing Act 2003 and the steps set out in the Applicants operating schedule would be converted into conditions.

**LSC 6/07 Ropner Park, Richmond Road, Stockton on Tees - Application for the grant of a Premise Licence under the Licensing Act 2003.**

Members were informed that as the representations from Cleveland Police had been withdrawn the item had been withdrawn from the agenda.

**LSC 7/07 The Wobbly Goblin, Park Terrace, Stockton on Tees - Application for variation of a Premise Licence under the Licensing Act 2003.**

A copy of the application detailing the hours and entertainment applied for was circulated to all persons who had made a representation prior to the meeting.

The Committee had regard to the application and the representation that had been made by one person with an interest in the vicinity of the premises. The Committee also noted that the Environmental Health Section had agreed conditions with the Applicant which addressed their concerns over public nuisance.

It was noted that the EHO had agreed the following conditions to be placed on the Licence which addressed their concerns and their representation had therefore been withdrawn.

1. All sound systems shall pass through the noise limiting device which at all times shall operate at the decibel level set by the Environmental Health Unit and shall be maintained in good working order.
2. All external doors and windows shall be kept closed when regulated entertainment is being provided except in the event of an emergency. Any music played within the premises shall not cause a disturbance at the nearest residential/business premises.
3. Any music played within the undercroft (external) area shall be background music only.
4. The licence holder or his representative shall conduct periodic assessments of the noise coming from the premises when used for regulated entertainment and shall take steps to reduce the level of noise where it is likely to cause a disturbance to local residents/businesses. A written record shall be made of those assessments and shall include, the time and date of the checks, the person making them and the results including any remedial action. All records shall be retained for one year.
5. Use appropriate management controls to reduce the likelihood of customers causing noise disturbance to local premises when vacating the premises. This should include placing at all exits from the premises, in a place where they can be seen and easily read by the public, notices requiring customers to leave the premises and the area quietly. (Note, this may also include a reference to vehicles).
6. The bar to the ground floor serving the external area shall close at 00:00.
7. Food shall not be consumed in the external seating/ smoking area after 00:00 (midnight). There shall be no use of flood lighting likely to cause a nuisance to local premises.

With regard to the Submission from Interested Parties (persons within the vicinity of the premise) the Committee members had regard to the representation that had been received from Mr Davidson, District Manager, Job Centre Plus.

With regard to the Applicants submission Mr Paleschi presented his submission to the Committee members.

In considering their decision members were mindful that they needed evidence on which to base their decision. When considering their decision the Committee had regard to the Statutory guidance issued under Section 182 of the Licensing Act 2003 and the Councils Licensing Policy.

The members noted that the representation from Job Centre Plus was based on a concern over what may happen rather than based on any evidence of problems caused by the premise. The members were not swayed by that argument and noted that the Police had not objected to the application and therefore were not concerned that the crime and disorder objective would be undermined.

RESOLVED that the application as detailed in report be granted:-

- To extend the premises to create an enclosed beer garden, undercroft, ground floor lounge bar area and extra sanitary facilities
- Removal of embedded restrictions