

LICENSING SUB COMMITTEE C

A meeting of the Licensing Sub Committee C was held on 7 October 2008.

****PRESENT:** Councillor Taylor (Chair), Councillors Morby and J Walker.

****OFFICIALS:** S Harker, T Hodgkinson, L Cloney, S Vickers.

**** ALSO IN ATTENDANCE:** A Gray – Applicant’s Legal Representative.
P McGregor – Principal Environmental Officer.
V Lamb-Allen – Police Legal Representative.
Sgt Higgins – Licensing Unit, Cleveland Police.
S Gavin – Premises Licence Holder.
A Ross – Solicitor.
Councillor F McIntyre – Ward Councillor.
Twelve local residents including S Riley, W Aspland,
S Martin and N Martin.

****PRESENT AS OBSERVERS:** Councillor McPartland, Councillor Purvis, PC Allen,
PC Harrison, M Kearns, C Pitcher.

**** DECLARATION OF INTERESTS**

No declarations of interest were made at this point of the meeting.

LICENSING ACT 2003 – APPLICATION FOR REVIEW OF PREMISES LICENCE: THE RED ROSE PUBLIC HOUSE, CUMBERLAND ROAD, MIDDLESBROUGH, TS5 6JB – REF: MBRO/PR076

A report of the Head of Community Protection had been circulated outlining an application for a Review of Premises Licence for The Red Rose Public House, Cumberland Road, Middlesbrough, TS5 6JB – Ref No MBRO/PR076.

Summary of proposed Licensable Activities

Sale of alcohol.
Live Music.
Recorded Music.
Facilities for dancing.
Facilities like music/dancing.

Summary of proposed hours for Licensable Activities

All licensable activities	11 am – 11.00 pm	Monday to Thursday
	11 am – 12 midnight	Friday and Saturday
	12 noon – 10.30 pm	Sunday
	11 am – 12 midnight on:-	every Friday, Saturday, Sunday and Monday for each Easter Bank Holiday weekend, May Bank Holiday, Spring/Whitsun Bank Holiday and every August Bank Holiday weekend Christmas Eve Boxing Day.

Premises to close 30 minutes after the end of licensable activities.

A copy of the current Premises Licence was attached at Appendix 1 to the submitted report.

The Chair introduced those present and outlined the procedure to be followed at the meeting.

Background Information

The Principal Licensing Officer presented the report, which was confirmed as being an accurate reflection of the facts by the Applicant's Legal Representative.

The premises consisted of a public house situated in close proximity to residential premises, the nearest being less than 10 metres away. A map showing the location of the premises was attached at Appendix 2 to the submitted report. Prior to the introduction of the Licensing Act 2003 the premises had the benefit of a Justices On Licence and Public Entertainment Licence covering the following hours:-

11 am – 11 pm	Monday to Friday
12 noon – 10.30 pm	Sundays.

The previous Public Entertainment Licence contained a number of conditions which were imposed by the Licensing Committee with the aim of reducing noise disturbance to nearby residents. Those conditions were:-

- Prior to commencement of public entertainment at the premises, the applicant shall install and operate a suitable noise-limiting device incorporating a noise cut-off device, which shall be set at a level to be agreed with Middlesbrough Council. The noise-limiting device shall be used to control noise from all public entertainment events held thereafter at the premises.
- All external doors (including fire exit) of the areas within the premises used for entertainment shall be kept closed during times of entertainment, except for emergency egress.
- All windows in the areas within the premises used for public entertainment shall be kept closed at all times during such events to prevent noise nuisance to neighbours.
- A noise cut-off device shall be installed by the applicant, which will become active if the fire exit doors in the lounge are opened during public entertainment.

On 26 June 2005 the previous licence holder applied to convert the Justices On Licence and Public Entertainment Licence into a Premises Licence under the Licensing Act 2003. At the same time an application was made to vary the licence to increase the hours for all licensable activities from 11 am to 12 midnight daily with a 1 am terminal hour on Bank Holiday weekends.

On the 22 August 2005 the matter was heard by Members of the Licensing Committee, who after considering representations from local residents, the Community Council and the Environmental Health (Noise) Officer granted the variation in part to allow an extension to the hours for licensable activities until 12 midnight on Fridays and Saturdays only with a 12 midnight terminal hour on Bank Holiday weekends. All of the previous noise conditions attached to the previous Public Entertainment licence were transferred to the new Premises Licence with the addition of the following conditions to minimise noise disturbance to local residents:-

- That signage be fixed inside the premises requesting patrons leave quietly
- That announcement be made by DJs at the end of an event requesting patrons leave quietly

On 22 May 2007 the Premises Licence was transferred to Stephen Gavin, the current licence holder. Since the transfer of the licence there had been three variations to the licence to change the Designated Premises Supervisor at the premises. The current Designated Premises Supervisor was Stephen Gavin, the Premises Licence holder.

Details of the Application

On 14 August 2008 an application was received from Linda Cummins, the Principal Environmental Health Officer, for a Review of the Premises Licence for the Red Rose Public House on the grounds of the prevention of public nuisance. The Officer stated that there had been numerous complaints since June 2007 from both local residents and local Councillors in relation to noise nuisance associated with the premises. Some of the complaints related to loud music escaping from the premises whilst others related to noise and anti-social behaviour from customers using the outside drinking/smoking areas.

The Officer also stated that between June 2007 and November 2007, as a result of these complaints, Officers working on the Council's Out of Hours Noise Patrol monitored the premises and witnessed breaches of licence conditions on nine occasions due to the doors being kept open whilst entertainment was taking place. In addition, they also witnessed nine occasions when loud voices could be heard from customers using the outside drinking/smoking areas.

Following continuing complaints, noise recording equipment was placed in the home of a local resident to monitor outdoor entertainment from an event taking place at the premises on 27 July 2008. The levels recorded from the front bedroom of the resident's home at 11.30pm were eight times louder than the level recommended by the World Health Organisation. As a result of this, a Noise Abatement Notice was served on Stephen Gavin, the Premises Licence holder on 8 August 2008 preventing any further amplified sound being played in the outside area of the premises.

The Officer stated that despite several meetings with the Premises Licence Holder and several advice letters being sent, there have been no improvements sustained. She stated that during a recent visit to the premises Mr Gavin proposed a number of steps to control the noise emanating from the premises which would help to reduce nuisance to residents but that it remained to be seen whether there was sufficient control of the premises to put such steps into practice.

Full details of the application and supporting statement were attached to Appendix 3 to the submitted report.

On 4 June 2007 a complaint was made to the Licensing Section by the Ward Councillor, on behalf of local residents, in relation to noise nuisance at the premises. The complaint related to noise from a Karaoke taking place at the premises every Sunday. It was alleged that the doors and windows of the premises were left open during these events, leading to noise disturbance to local residents. On 5 June 2007 a letter was sent to Stephen Gavin advising him of the complaints and advising him that it was a condition of the premises licence that all windows and doors should remain closed whilst entertainment was taking place. In addition, the letter advised that the premises would be monitored to ensure compliance with the conditions. A copy of the letter was attached at Appendix 4 to the submitted report.

On 24 July 2007 a complaint was made to the Licensing Section from a local resident alleging that on 20 June 2007, fifteen to twenty customers were observed leaving the premises at approximately 3 am, that there was regular noise disturbance caused by the windows and doors of the premises being left open and of excessive noise from rowdy customers using the outside drinking/smoking areas. A copy of this complaint was forwarded to the Environmental Health (Noise) Team for investigation. In addition, on 26 July 2007 Police and Licensing Officers visited the premises to advise the management of the complaints. Upon arrival at 11.15 pm Officers observed two males standing in a newly erected smoking shelter near to the main entrance to the premises. Raised voices could clearly be heard between the males and as Officers approached one of the males began to urinate in the smoking shelter. The Licensing Police Officer warned the male in relation to his conduct before entering the premises to advise the Designated Premises Supervisor of the incident and the noise complaints. Upon leaving the premises Officers observed another group of customers leaving the premises, one of whom was urinating in the car park. Again the Licensing Police Officer warned the male as to his conduct.

On 7 August 2007 a complaint was made to the Licensing Section from another resident in relation to noise disturbances from the premises. The complainants stated that they had tried to approach the licence holder to resolve the issue but that the situation had not improved and that they now wished to make a formal noise complaint. The matter was referred to the Environmental Health (Noise) Team.

On 8 August 2007 Police and Licensing Officers visited the premises to carry out a routine licensing inspection. At the time of the inspection the premises were not complying with premises licence conditions in relation to CCTV and the provision of an accident book. A letter was sent to the premises on 16 August 2007 advising of the findings and asking that the matters be rectified. A copy of the letter was attached at Appendix 5 to the submitted report.

On 18 September 2007 Police and Licensing Officers again visited the premises to check compliance with licence conditions. Again there was non-compliance with premises licence conditions in relation to CCTV and the provision of an accident book. A further letter was sent to Stephen Gavin and Kelly Berry, the then Designated Premises Supervisor, warning that if the matters were not rectified consideration would be given to legal action in respect of the breaches. A copy of the letter was attached at Appendix 6 to the submitted report.

On 27 September 2007 a letter was received from Stephen Gavin confirming that the problems had been rectified. He also enclosed a letter from Cleveland Security which explained the reason for the failure of the CCTV system. Copies of the letters were attached at Appendix 7 to the submitted report.

On 18 October 2007 Licensing Officers revisited the premises and found that the problems had been rectified.

On 10 November 2007 the Principal Licensing Officer and Principal Environmental Health (Noise) Officer met with Mr Gavin to discuss the ongoing noise complaints. Officers suggested that in relation to the noise being caused by customers using the newly erected smoking shelters it may be appropriate to relocate the shelters away from the nearby residential properties. However Mr Gavin did not feel that this was appropriate and stated that he would instead address the problem by placing signs around the premises asking his customers to have thought for local residents. He also suggested that he would instruct his door supervisors to intervene when customers were behaving in a rowdy manner and that he eventually intended to change the layout of the premises and that he believed that this would go some way to reducing the noise nuisance. Following the meeting a letter was sent to Mr Gavin on 14 November 2007, summarising the meeting and pointing out that the Licensing Act 2003 required that local residents be protected from public nuisance. A copy of the letter was attached at Appendix 8 to the submitted report.

On 13 March 2008 a complaint was made to the Licensing Section by the local Ward Councillor in relation to the expansion of the beer garden at the premises. A local resident had complained to the Councillor of an increasing number of tables and chairs being placed in the grounds of the premises. The matter was referred to the Planning Department for investigation.

On 7 May 2008 a complaint was made to the Licensing Section by a local resident who alleged that music was being played at the premises until 11.30 pm on Thursday evenings despite the licence only allowing entertainment until 11 pm. In addition, the complainant stated that the fire exit at the side of the premises, leading to the beer garden, was still being left open during entertainment.

On 8 May 2008 Licensing Officers visited the premises in relation to the complaint. Upon arrival Officers discovered entertainment being provided and that the fire exit door to the side of the premises leading to the beer garden was propped open allowing music to escape. Officers spoke to a member of staff, Ashley Gavin, who advised that he believed entertainment was allowed until 12 midnight every day. Officers advised Ashley Gavin that the licence only permitted entertainment until 12 midnight on weekends and reminded him of the premises licence condition in relation to the windows and doors to the premises being closed whilst entertainment was taking place. On 14 May 2008 a letter was sent to Stephen Gavin advising him of the incident and reminding him of the premises licence conditions. A copy of the letter was attached at Appendix 9 to the submitted report.

On 2 June 2008 Stephen Gavin gave a Temporary Event Notice (TEN) to the Council for a 'Family Fun Day' event which was to take place on Sunday 29 June 2008 from 1 pm to 12 Midnight. As Members will be aware the Licensing Act 2003 does not allow objections to be made by Responsible Authorities or Interested Parties to TENs on the grounds of the prevention of public nuisance. The only Responsible Authority permitted to object to a TEN are the Police who can only object if they believe the holding of the event would undermine the crime prevention objective. As a result of no representations from the Police the TEN was issued allowing the event to proceed on 29 June 2008.

On 7 June 2008 Officers from the Council's Out of Hours Noise Patrol were called to the premises by a local resident who complained of loud music escaping from the premises through doors which had been left open. Upon arrival Officers discovered doors open and spoke to the manager who advised that he was unaware that the doors were open. As a result of the visit the doors were subsequently closed. This information was then passed to the Licensing Section by the Environmental Health (Noise) Team.

On 13 June 2008, following receipt of this information, the Principal Licensing Officer visited the premises and spoke with Stephen Gavin. He advised Mr Gavin of the continuing complaints and that breaches of licence conditions had been identified. He further advised Mr Gavin that residents were aware of the Licensing Act Review procedure and that he was speaking with him on behalf of the residents in an attempt to resolve the problems without the need for the licence to be reviewed. Mr Gavin stated that the breaches had been allowed to occur by staff in his absence and that he had since reiterated to staff the importance of complying with the conditions.

The Principal Licensing Officer then discussed with Mr Gavin the forthcoming 'Family 'Family Fun Day'' on 29 June 2008. Mr Gavin stated that the event was to be held for the benefit of the local community and that he intended to have outside musical entertainment, a BBQ, children's rides and a firework display throughout the day. The Principal Licensing Officer asked Mr Gavin to have consideration for local residents bearing in mind the history of noise complaints and suggested a number of measures to minimise noise disturbance including:-

- Monitoring the noise levels and keeping the volume to a minimum
- Giving advance warning to residents, via a leaflet drop the nearest residential properties, informing them of the event and proposed activities
- Giving residents a contact telephone number to call during the event should they be disturbed by noise from the event.

Mr Gavin stated that even though the TEN allowed entertainment until 12 midnight it was his intention to cease the outside musical entertainment by 10 pm.

On 16 June 2008 a letter was sent to Mr Gavin by the Principal Licensing Officer detailing a summary of the discussions with him on 13 June 2008 in relation to the breaches of premises licence conditions and the possible implications, including the Review procedure, should the problems persist. A copy of the letter was attached at Appendix 10 to the submitted report.

On 3 July 2008 Stephen Gavin gave a further Temporary Event Notice (TEN) to the Council for a 'Family 'Family Fun Day'' event which was to take place on Sunday 27 July 2008 from 1 pm to 12 Midnight. As a result of no representations from the Police on the grounds of the prevention of crime and disorder the TEN was issued allowing the event to proceed on 27 July 2008.

On 9 July 2008 a complaint was made to the Licensing Section by a local resident in relation to the 'Family 'Family Fun Day'' held at the premises on 29 June 2008. The complaint related to loud music from the event and to concerns relating to health and safety following a firework display held at the event. The complainant was advised of the Licensing Act Review procedure and also referred to the Environmental Health (Noise) Team to make a formal noise complaint.

On 10 July 2008 a complaint was made to the Licensing Section by the Ward Councillor on behalf of a number of residents. The complaint again related to noise nuisance as a result of the 'Family 'Family Fun Day'' on 29 June 2008 and concerns were raised regarding further similar events. As a result of the complaint a meeting was arranged with the Ward Councillor, six local residents, the Principal Licensing Officer and the Principal Environmental Health (Noise) Officer to discuss the problems. At the meeting the residents submitted an 84 signature petition protesting against the recent events and objecting to future planned events. A copy of the petition was attached at Appendix 11 to the submitted report. At this meeting Officers explained to residents the limited grounds for objection against a TEN but agreed to raise their concerns with the Premises Licence Holder and to monitor future events.

On 10 July 2008 Licensing Officers again visited the premises to check compliance with licence conditions. Upon arrival Officers again discovered the fire exit open whilst entertainment, in the

form of a Karaoke, was taking place. Officers spoke to a member of staff, Ashley Gavin who blamed the non-compliance on customers who were leaving the door open as they were going outside for a cigarette. Officers advised Ashley Gavin to consider having self-closing devices fitted to the doors and asked him to make Stephen Gavin aware of the visit and findings.

On 22 July 2008 the Principal Licensing Officer and Environmental Health (Health and Safety) Officers visited the premises to speak to Stephen Gavin in relation to the forthcoming TEN on Sunday 27 July 2008. The Health and Safety Officers discussed with Mr Gavin, health and safety issues surrounding the event, including the storage and setting off, of fire works. The Principal Licensing Officer also discussed residents' concerns in relation to noise nuisance from the event. Mr Gavin stated that he was aware of the residents objecting to the event but stated that an equal number of local residents were in support of the event. He stated that in order to minimise noise disturbance the band was scheduled to perform between 9 pm and 10 pm and that the fireworks display was due to finish at approximately 10.15 pm.

On the afternoon of 27 July 2008 Officers visited the event to check health and safety issues surrounding the firework display. Whilst attending the event Officers witnessed loud music being played to a large crowd who were seated in the car park near to a temporary stage which had been erected for an Abba tribute band which was to play later that evening. The music could clearly be heard in the surrounding streets.

On 31 July 2008 a Licensing Officer again visited the premises and witnessed the windows and fire exit open whilst entertainment was taking place.

On 6 August 2008 a letter was sent to Stephen Gavin advising him that Licensing Officers wished to interview him in relation to breaches of licence conditions on the following dates:-

- 8 May 2008
- 7 June 2008
- 10 July 2008
- 31 July 2008

On 7 August 2008 Stephen Gavin gave a further Temporary Event Notice (TEN) to the Council for a 'Family Fun Day' event which was to take place on Sunday 31 August 2008 from 1 pm to 2 am. As a result of no representations from the Police on the grounds of the prevention of crime and disorder the TEN was issued.

On 8 August 2008 the Principal Licensing Officer, Principal Environmental Health (Noise) Officer and Sgt P Higgins of Cleveland Police Licensing Unit met with Stephen Gavin to express concerns in relation to the disturbance caused to local residents by the TENs. At this meeting Mr Gavin was served with a Noise Abatement Notice by the Principal Environmental Health (Noise) Officer to prevent any further amplified sound being played to the outside area of the premises. As a result of this meeting Mr Gavin cancelled the 'Family Fun Day' planned for 31 August 2008.

On 1 September 2008 Stephen Gavin was interviewed under caution by Police and Licensing Officers in relation to continual breaches of the premises licence conditions relating to the prevention of public nuisance. At the interview Mr Gavin produced a Noise Limitation Action Plan which he was proposing to implement to minimise noise nuisance. A copy of the plan was attached at Appendix 12 to the submitted report. At the end of the interview Mr Gavin was reported for the offences and evidence was currently being considered with a view to instigating legal proceedings against him.

On 11 September 2008 Officers visited the premises at the request of Mr Gavin to check on the progress of measures proposed in his Noise Limitation Action Plan. A number of measures had been implemented with further works scheduled in the near future. His proposal to relocate the fire exit further away from residential premises was on hold as the works were subject to an application for Building Regulation Approval. Mr Gavin has informed Officers of his intention to submit the application for Building Regulation Approval.

The Principal Environmental Health (Noise) Officer confirmed that copies of the application were served on all responsible authorities on 14 August 2008.

In addition, to fulfil the requirements of the Licensing Act 2003, Licensing Officers have posted notices in the vicinity of the premises and in the Council Offices advertising the review application. At the end of the 28 day consultation period a further nine representations were received.

On 3 September 2008 a representation was received from Cleveland Police on the grounds of prevention of crime and disorder, the prevention of public nuisance and the protection of children from harm (see Appendix 13 to the submitted report). The Police highlighted a number of incidents of disorder at the premises between June 2007 to date, which have required Police attendance. In addition, they stated that on 27 July 2008 the Police received no fewer than eight complaints from local residents in relation to noise emanating from the premises. They also referred to an incident of an underage sale of alcohol to 15 and 16 year old girls as part of a Police led test purchase which resulted in the seller being issued with a fixed penalty ticket. Further statements had been provided by Sgt P Higgins and PC L Thompson and were attached at Appendices 14 and 15 to the submitted report.

On 3 September 2008 a representation was received from Councillor F McIntyre, the Ward Councillor, on the grounds of the prevention of crime and disorder and the prevention of public nuisance. Councillor McIntyre raised concerns regarding loud music emanating from the premises and the anti-social behaviour of customers using the premises (A copy of the letter was attached at Appendix 16 to the submitted report.)

On 8 September 2008 a representation was received from Mrs Wendy Aspland, a local resident, on the grounds of the prevention of crime and disorder and the prevention of public nuisance. She raises concerns in relation to noise nuisance and anti-social behaviour caused by customers using the premises. In particular, she complains of the disturbance caused to local residents as a result of the 'Family 'Family Fun Day'' events which have been held in the car park of the premises (A copy of the letter was attached at Appendix 17 to the submitted report).

On 9 September 2008 a representation was received from Barbara Smith of the Park Ward Community Council on the grounds of the prevention of public nuisance. She stated that following a recent Community Council Meeting she had been asked to raise the concerns of a large group of residents in relation to noise nuisance being generated from a number of sources associated with the premises, including music escaping via the open fire exit and the noise from customers using the outside drinking/smoking area. In addition, she complained of the disturbance caused to local residents as a result of the 'Family 'Family Fun Day'' events. (A copy of the letter was attached to Appendix 18 to the submitted report).

On 9 September 2008 a representation was received from Mrs Susan Riley, a local resident, on the grounds of the prevention of crime and disorder, the prevention of public nuisance and public safety. She stated that for the past two years her family had experienced disturbances caused by excessive loud music noise through the open fire exit, customers fighting and using foul language, customers urinating in her garden, customers leaving well after closing time and barrels being rolled out on weekends between 11.45 pm and 12.15 am. In addition, she pointed to the recent expansion of the seating in the beer garden, from three tables seating twelve people to seating for in excess of one hundred people at the present time. She also complained of the disturbance caused to her family by the 'Family 'Family Fun Day's', in particular by the live bands and firework displays. (A copy of the letter was attached at Appendix 19 to the submitted report).

On 9 September 2008 a representation was received from T Annandale, a local resident, on the grounds of the prevention of crime and disorder and the prevention of public nuisance. She complained of disturbances caused by loud music, use of foul language and occasional fighting by customers, taxis arriving and sounding horns, customers using her garden as a toilet and noise from customers using the outside drinking/smoking area. She stated that the current restrictions placed on the premises did not seem to be put into practice and also complained about the disturbance caused by the 'Family 'Family Fun Day's' (A copy of the letter was attached at Appendix 20 to the submitted report).

On 9 September 2008 a representation was received from Mrs L Rathbone, a local resident, on the grounds of the prevention of public nuisance. She complained of disturbance from music and anti-social behaviour and of the disturbance caused by the 'Family 'Family Fun Day's'. (A copy of the letter was attached at Appendix 21 to the submitted report).

On 9 September 2008 a representation was received from Mrs L Corner, a local resident, on the grounds of the prevention of public nuisance and the protection of children from harm. She stated that she had lived in Cumberland Road for 47 years and had never experienced any real problems until recently. She complained of a dramatic increase in noise and anti-social behaviour at the premises including beer bottles and glasses littering the area next to her home. She also pointed to an expansion of the drinking/smoking area and to problems caused by the 'Family 'Family Fun Day''. (A copy of the letter was attached at Appendix 22 to the submitted report).

On 11 September 2008 a representation was received from Mr and Mrs Brothwood, local residents, on the grounds of the prevention of crime and disorder and the prevention of public nuisance. They complained of disturbance caused by noise and anti-social behaviour from customers, in particular fighting and broken glass. (A copy of the letter was attached at Appendix 23 to the submitted report).

The Committee was advised of the following options:

1. To modify the conditions of the licence.
2. To exclude a licensable activity from the scope of the licence.
3. To remove the designated premises supervisor.
4. To suspend the licence for a period not exceeding 3 months.
5. To revoke the licence.
6. Alternatively Members could consider that it was not necessary to take any of the above steps and may issue an informal warning/and or recommend improvement within a certain time period.

Questions from the Applicant's Legal Representative to the Principal Licensing Officer

The Applicant's Legal Representative had the opportunity to ask questions of the Principal Licensing Officer and the following issues were raised:

Confirmation was given by the Principal Licensing Officer that there had been four changes of Designated Premises Supervisor at The Red Rose Public House since 22 May 2008.

The Applicant's Legal Representative queried whether the Premises Licence Holder had contacted the Licensing Officer following a letter dated 16 August 2008 which confirmed breaches of the licence that had been noted on a routine licensing inspection on 8 August 2008. (A copy of the letter was attached at Appendix 5 to the submitted report). The Principal Licensing Officer confirmed that the Premises Licence Holder had not contacted the Licensing Officer and therefore a further visit had been carried out by Police and Licensing Officers on 18 September 2008. As on the previous visit there was non-compliance with premises licence conditions in relation to CCTV and the provision of an accident book.

It was confirmed that letters were sent to the Premises Licence Holder and K Berry, the Designated Premises Supervisor at that time, warning them of legal action if the issues of non-compliance were not rectified within seven days. (Copies of the letters were attached at Appendix 6 to the submitted report). A copy of The Premises Licence Holder's response was attached at Appendix 7 to the submitted report along with a copy of a letter from Cleveland Security Limited which explained why the CCTV had not been recording. The Principal Licensing Officer could not confirm the Premises Licence Holder's explanation of why an accident book had not been available at the premises as he was not the Officer who had re-visited the premises on 18 September 2008.

The Principal Licensing and Principal Environmental Health (Noise) Officers met with the Premises Licence Holder on 10 November 2007 to discuss ongoing issues including complaints

from residents regarding noise. At that meeting Officers had suggested that in relation to the noise being caused by customers it might be appropriate to relocate newly erected smoking shelters away from the nearby residential properties. The Principal Licensing Officer confirmed that the Premises Licence Holder had stated that he did not think this was appropriate and that he would instruct his door supervisors to intervene in any rowdy behaviour by customers.

The Applicant's Legal Representative referred to a visit to the premises by Licensing Officers on 8 May 2008 following a complaint about noise made by a local resident the previous day. The Principal Officer was unable to confirm the exact time of the visit but stated that he would be able to ascertain this information from the Licensing Officer's pocket book. The Principal Licensing Officer confirmed that Ashley Gavin, a member of staff, had been advised that the licence only permitted entertainment until 12 midnight on weekends and reminded him of the premises licence condition in relation to the windows and doors to the premises being closed whilst entertainment was taking place. A letter was sent to the Premises Licence Holder on 14 May 2008 advising him of the incident and reminding him of the licence conditions.

The Principal Licensing Officer stated that he visited the premises on 13 June 2008 and spoke to the Premises Licence Holder to advise him that complaints were still being received regarding noise. The Principal Licensing Officer confirmed that he advised the Premises Licence Holder that he was speaking with him on behalf of the residents to attempt to resolve the problems without the need for a licence review.

The Applicant's Legal Representative referred to Government guidance issued under section 182 of the Licensing Act 2003 paragraph 11.8 which stated "It is good practice for authorised persons and responsible authorities to give licence holders early warning of their concerns about problems identified at the premises concerned and of the need for improvement. A failure to respond to such warnings is expected to lead to a decision to request a review". In response to a query by the Applicant's Legal Representative, the Principal Licensing Officer confirmed that he had acted in accordance with the Government guidance.

The Applicant's Representative stated that between 26 July 2007 and 31 July 2008 Licensing Officers had visited the premises on nine separate occasions. The Applicant's Representative queried whether this number of visits was usual. The Principal Licensing Officer stated that this was a high number of visits and premises would usually only be visited once a year.

The Applicant's Representative asked the Principal Licensing Officer whether prosecution against the Premises Licence Holder for breaches of the premises licence was being considered and the Officer indicated that this was pending.

Following a query regarding the submission of an application for Building Regulation Approval, the Principal Licensing Officer was unable to confirm whether the application had been approved.

The Premises Licence Holder's Solicitor confirmed that the application had been approved and the building works had been completed.

Applicant in Attendance

The Applicant's Representative stated that this was an application brought by Middlesbrough Environmental Health Team under Section 51 of the Licensing Act 2003 for a review of the premises licence. The current Premises Licence Holder was S Gavin, who was also the Designated Premises Supervisor. The application had arisen due to numerous complaints about the noise and alleged breaches of licence conditions. The Premises Licence had been transferred to the Premises Licence Holder on 22 May 2007. The previous Premises Licence Holder was Annette Niven. On 15 June 2007 Kelly Berry became the Designated Premises Supervisor. On 26 October 2007 Thomas Norton became the Designated Premises Supervisor. On 11 February 2008 there was a further variation when Kelly Berry again became the Designated Premises Supervisor. On 17 April 2008 S Gavin, the Premises Licence Holder, became the Designated Premises Supervisor.

Complaints about the premises had been received from local residents and the bulk of the complaints were related to noise nuisance caused by loud amplified music playing whilst the

windows and doors of the premises were left open. Noise disturbance was also caused by patrons outside of the premises.

A number of visits were made by Licensing, Noise Patrol, and Police Officers in response to complaints from residents. During these visits the doors and windows of the premises were open whilst entertainment was in progress resulting in alleged breaches of licence conditions. Numerous warning notices had been issued to the Premises Licence Holder during the last twelve months.

The Applicant's Representative referred to Appendix 2 to the submitted report which was a plan showing the location of The Red Rose Public House, which was situated in the middle of a residential estate. The noise emanating from the premises had an effect on the local residents. This was the reason why so many conditions had been attached to the licence in order to keep noise to a minimum. Concerns had been raised by the Council's Noise Team that the conditions attached to the Licence were not being adhered to. L Cummins, Principal Environmental Health Officer had provided a witness statement which was attached at Appendix 3 to the submitted report. P McGregor, Principal Environmental Officer, was present at the meeting to confirm the events with regard to The Red Rose Public House.

The Principal Environmental Officer explained that he had worked for Middlesbrough Council for nine years and had been qualified for twelve years.

The Principal Environmental Officer confirmed that there were various conditions attached to the Premises Licence for The Red Rose Public House relating to noise. The conditions were listed in the witness statement referred to at Appendix 3. Embedded restrictions on the premises licence included the operation of a noise cut-off device to control noise from amplified sound during public entertainment events, that all windows and external doors (including the fire exit) in areas with the premises used for public entertainment were kept closed during times of entertainment, except for emergency egress. Additional conditions listed on the licence included the provision of acoustic fans, that all entrances and exits were lobbied to reduce noise escape, and signs were displayed requesting clientele to leave the premises quietly.

The Principal Environmental Officer stated that the first complaint regarding noise was received on 1 June 2007, which was ten days after the Premises Licence Holder had taken over the Premises Licence on 22 May 2007. A complaint was made to Community Protection by a local Councillor that residents were complaining of noise from a karaoke and that the doors and windows of the premises were open during times of entertainment. The premises were then monitored by Officers during the out of hours noise patrol between June and November 2007. On nine occasions the Officers witnessed the doors open when entertainment was taking place and on a further nine occasions they witnessed the loud voices of customers on the premises using the outdoor smoking areas and beer gardens.

The Principal Environmental Officer confirmed that another noise complaint was received on 9 July 2007 from a local resident. However investigations revealed that the complainant had approached the manager of the premises and no longer wished their complaint to be pursued. A further complaint from another resident was received on 24 July 2007 that the doors to the premises were open during times of entertainment, and that people outside the premises were swearing. An investigation into this complaint began and diary sheets were issued to the complainant. The main complaint was regarding noise from patrons using the beer garden. Exhibit LC1, Appendix 3, page 39, of the submitted report was a copy of the diary sheets completed by the complainant detailing incidents of noise nuisance from the premises between 28 July 2007 and 25 August 2007. Noise monitoring equipment was not installed regarding this complaint as the complainant did not respond to correspondence and telephone calls to make the reservation. A copy of a letter sent to the Designated Premises Supervisor on 3 August 2007 informing her of the complaint was also attached as Exhibit LC2, Appendix 3, page 41, of the submitted report.

The Principal Environmental Officer confirmed that on 27 July 2007 an anonymous complaint was made to the Noise Patrol at 23.45 hours regarding noise from patrons who were drinking and smoking in the outside area. Officers were called and witnessed this activity but could not progress the matter due to the anonymity of the complainant. Diary sheets were sent to

complainants in response to a further two complaints received on 5 and 28 August 2008 but were not returned and therefore no further action was taken.

Following a temporary event held on 27 July 2008 the Principal Environmental Officer confirmed that nine complaints all relating to noise from The Red Rose were received. Noise recording equipment had been installed in a local resident's home and this had provided evidence that a statutory noise nuisance existed. The noise level recorded in the front bedroom at 23.30 hours, at times in excess of 60 decibels, was more than eight times louder than that recommended by the World Health Organisation. The Premises Licence Holder was served with an Abatement Notice in respect of Noise Nuisance on 8 August 2008, a copy of which was attached as Exhibit LC5, Appendix 3, page 45 to the submitted report.

The Principal Environmental Officer explained that the Notice gave instructions to the person it was served on as to how the noise had been caused that created the nuisance and what needed to be done to rectify the problem. The Notice issued informed the Premises Licence Holder that he had to cease to permit the playing of music, singing and other amplified sound on land within the curtilage of the said premises, to prevent nuisance to nearby occupiers and to close all doors and windows of the premises when playing music, singing or emitting other amplified sound within the building, to prevent nuisance to nearby occupiers.

The Principal Environmental Officer concurred with the witness statement provided by L Cummins at Appendix 3 that during the history of events, the Premises Licence Holder was informed by letter and in person of the problems associated with the premises by Environmental Health staff and Licensing Officers on many occasions. During a recent visit to the premises by Environmental Health Officers, the Premises Licence Holder indicated that he would take further steps to control the noise emanating from the premises by way of:

- More signage requesting customers to restrict noise levels.
- The removal of door hooks to prevent the doors from being kept open.
- Sealing off of disused extractor fans.
- Re-location of speakers away from external doors.
- Re-siting of outdoor seating, away from residential premises.

The Principal Environmental Officer agreed that the above steps were all relatively low cost but stated that they may or may not reduce the noise nuisance. The Principal Environmental Officer added that there had been a number of different Designated Premises Supervisors at the premises during the past two years and there were continuing problems with regard to noise and disorder. In response to a query the Principal Environmental Officer agreed that he felt a lot of the problems were in relation to the management of the premises.

Questions to the Applicant from Members of the Committee

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

- In response to a query regarding whether the Abatement Notice in respect of Noise Nuisance had been enforced, the Principal Environmental Officer confirmed that it had not, since the proposed 'Family Fun Day' event scheduled for August 2008 had been cancelled. The Notice had to be in place and if it was then breached a prosecution could be made. No evidence had been obtained of a breach of the Notice.
- Following a question regarding acceptable levels of noise, the Principal Environmental Officer confirmed that a normal level of noise at 11.00 pm at night would be approximately 30 decibels. The noise recorded from the premises was in the region of 60 to 70 decibels with some peaks of up to 90 decibels.

Questions to the Applicant from the Premises Licence Holder

The Premises Licence Holder had the opportunity to ask questions of the Applicant and the following issues were raised:

A Ross, Solicitor for the Premises Licence Holder, asked for clarification on the Abatement Notice and the Principal Environmental Officer confirmed that it was in place for all external parts of the premises. Music played within the premises was not covered by the Notice, although all windows and external doors were required to be closed when music was playing.

The Solicitor referred to the Noise Limitation Action Plan provided by the Premises Licence Holder, a copy of which was appended at page 67 to the submitted report, and asked whether an Officer had checked whether the Plan had been implemented. The Principal Environmental Officer was able to confirm that an Officer had visited the premises recently and that the side exit door had been re-located but that he was not aware of the detail of the visiting Officer's report.

In response to a further question the Principal Environmental Officer stated that he was not in a position to confirm whether new signs requesting customers to restrict noise levels had been displayed or whether other measures in the Action Plan had been implemented.

The Solicitor asked the Principal Environmental Officer if all the measures in the Action Plan were implemented, together with proper control of the premises, whether he would be satisfied. The Principal Environmental Officer stated that these issues had been discussed on several occasions with the Premises Licence Holder and the other Designated Premises Supervisors. The Principal Environmental Officer agreed that with proper control and more conditions added to the licence the noise issue could be managed. The Principal Environmental Officer stated that he did not wish to discuss further conditions to the licence at the present time although he confirmed that the abandonment of drinking outside the premises would help in reducing the noise nuisance.

The Solicitor asked whether credit was due to the Premises Licence Holder for implementing the measures detailed in his Action Plan. The Principal Environmental Health Officer responded that credit would have been due if the Premises Licence Holder had implemented the measures sixteen months ago when the noise complaints had begun.

Relevant Representations

Cleveland Police

The Police Legal Representative was present at the meeting to present a representation in support of the application.

The Police Legal Representative advised the Committee that Cleveland Police echoed the concerns of Middlesbrough's Environmental Health Team. The Police Legal Representative referred to Sgt Higgins' witness statement which was attached at Appendix 14 to the submitted report. Sgt Higgins confirmed that the contents of his statement were correct. Sgt Higgins confirmed that the number of incidents recorded at the premises since June 2007, which was sixteen, would be mid-league in terms of the number of incidents recorded at similar public houses.

On Saturday 30 June 2008 there had been a complaint of rowdiness and noise coming from The Red Rose Public House. The complaint had been received at 03.08 hrs when the premises were closed. No units had been available for despatch and there was no further result from enquiries. Sgt Higgins confirmed that the complainant was not anonymous.

On Thursday 26 July 2008 the Designated Premises Supervisor had requested Police assistance at 22.57 hours to deal with a disturbance inside the premises. PC Hellyer was on duty and attended the premises but the incident was over and there were no complaints.

On Friday 27 July 2007 following a call from the Premises Licence Holder regarding a fight between customers on the premises, Police attended, however the victim had left the premises and Police were unable to ascertain what had gone on.

On Friday 7 September 2007 there was a fight inside the premises which had spilled into the car park. One male was taken to hospital after being struck with a glass. Police attended the hospital and two people were arrested. One was charged with the assault that had occurred at

The Red Rose Public House and the other was cautioned for a public order offence committed at the hospital.

On 30 September 2007 Police attended the premises following a call from the Designated Premises Supervisor regarding a fight in the toilets involving four or five males. When Police attended all was quiet and no complaints were made.

On 21 December 2007 a call was received from a member of staff, who was previously the Designated Premises Supervisor, regarding a fight involving twenty people both inside and outside the premises. The Police attended but all was quiet upon arrival and no complaints were made.

On 19 January 2008 a report was received of a female being assaulted by another female outside the premises. The female assailant attended the Police Station the next day and was given a caution for the assault.

On 9 March 2008 a number of units were despatched to the premises following a report of a fight at the premises. The Police attended but all was quiet upon arrival and there were no complaints and no injuries. Sgt Higgins confirmed that the caller had given their details.

On 28 March 2008 the Premises Licence Holder requested Police attendance to a fight between ten and fifteen persons at the premises. The Police attended but it was all quiet on arrival and there were no complaints.

On 4 May 2008 a report was made of an assault on a male in the car park of the premises. The Police attended but no complaint was made. Confirmation could not be given as to who made the call or whether it was a customer who was assaulted.

On 15 May 2008 Police received a call from the Premises Licence Holder regarding ten persons fighting outside after leaving a party at the premises. Police attended but all was quiet upon arrival and there were no complaints made.

On 23 June 2008 there was an anonymous report of noise disturbance at the premises but no confirmation could be given as there were no details of Police findings.

On 29 June 2008 a report of a firearms incident at the premises was received. The call was made in Newcastle. Following a thorough investigation it was confirmed that no firearms were involved and there had been a disagreement between the fairground equipment provider and the Premises Licence Holder over takings which was resolved amicably.

On 27 July 2008 eight calls were received from five different people complaining of noise coming from the premises. Police attended at 00.30 hours and found customers still drinking alcohol and staff members intoxicated.

On 28 August 2008 five males were arrested on suspicion of robbery following an incident outside the Somerfield Store in Linthorpe Village. Five males had been drinking and playing pool inside The Red Rose Public House with the manager, A Gavin, since 01.30 hours. The males had taken bottles and glasses from the premises from which they were still drinking and these were subsequently smashed in Brompton Street.

The Police Legal Representative asked why these incidents were a cause for concern. Sgt Higgins explained that all the incidents described would give rise to additional noise and disturbance and when a fight started the noise could be heard several streets away from the source.

Sgt Higgins also confirmed that there had been an incident involving the sale of alcohol to 15 and 16 year old girls who had visited the premises as part of a Police led test purchase. The seller had been issued with a fixed penalty notice. In addition, on 15 March 2008, a drugs sniffer dog had been taken into the premises and on that occasion one male had been found in possession of class A drugs and a second male found in possession of a CS gas canister. The drugs

operation had been carried out at the request of the Premises Licence Holder working in partnership with the Police, to help tackle those misusing drugs in the premises.

The Police Legal Representative asked Sgt Higgins whether he had seen the Noise Limitation Action Plan and whether he had any comments. Sgt Higgins stated that he was not an expert in noise nuisance and that the real issue related to the noise coming from the car park. Even if the premises was sealed there was still the issue of patrons smoking and drinking outside the premises in the car park.

Questions to Cleveland Police by Members of the Committee

Members of the Committee had the opportunity to ask questions of Cleveland Police and the following issue was raised:

In response to a query, Sgt Higgins confirmed that the drugs operation had been carried out at a random time selected by the Police.

Questions to Cleveland Police by the Premises Licence Holder

The Premises Licence Holder's Solicitor had the opportunity to ask questions of Cleveland Police and the following issues were raised:

In response to a query, Sgt Higgins confirmed that the Premises Licence Holder had agreed to the drugs operation as part of the Pubwatch scheme. There were separate Pubwatch meetings for different areas in Middlesbrough including the town centre and outer estates. The Red Rose Public House had become involved in the town centre scheme because it had the same kind of issues with crime and disorder as in many town centre public houses.

In response to a query as to whether an 11 pm closing time on Friday and Saturday evenings would help reduce crime and disorder, Sgt Higgins confirmed that this may help to reduce the number of incidents. Generally, the later a venue remained open, the greater the number of incidents of crime and disorder.

Councillor F McIntyre, Ward Councillor

Councillor McIntyre was present at the meeting to present a representation in support of the application.

Councillor McIntyre highlighted a representation submitted by Mrs L Rathbone, a resident, attached at Appendix 21 to the submitted report. Mrs Rathbone had wished to speak to the Committee but had had to leave the meeting.

Councillor McIntyre referred to her letter regarding the review of the licence for the Red Rose Public House which was attached at Appendix 16 to the submitted report. Since the present Premises Licence Holder took over Councillor McIntyre had received numerous complaints from residents about noise disturbance from the premises. The Councillor had visited The Red Rose Public House at closing time and had witnessed crowds of noisy people existing the premises, drunken men fighting, a man urinating into the bushes and a couple almost having sex on the benches at the front of the premises. All these things had been witnessed on only one visit to the premises. The residents were fed up that The Premises Licence Holder did not seem to have any control either inside or outside of the premises.

Mrs S Riley, Resident

Mrs Riley, a resident, was present at the meeting to present a representation in support of the application.

Mrs Riley had been introduced to the Premises Licence Holder when he became the current licence holder. The Premises Licence Holder had stated his intention to demolish the existing premises and re-build a public house on the other side of the existing car park at a cost of around two million pounds. The Premises Licence Holder had indicated that he wanted to make it a

family pub. Mrs Riley stated that what had actually happened was that the beer garden had been expanded and the noise emanating from the premises had increased greatly. Mrs Riley had complained to the manager about a side door being propped open whilst music was playing loudly inside the premises. The manager apologised and said that this would not happen again.

Mrs Riley stated that she had been threatened by a member of staff that her windows would be broken if she didn't keep quiet. Mrs Riley had informed the Police of this threat and also the Premises Licence Holder. The member of staff who made the threat was no longer employed at the premises. Mrs Riley stated that people had a right to enjoy themselves but not at the expense of others.

Following the first 'Family Fun Day' held at the premises Mrs Riley had found spent fireworks on the trampoline in her garden. The fireworks had been launched from the roof of the premises. Mrs Riley stated that there had been no control at all. Mrs Riley added that she had received a leaflet informing her of the 'Family Fun Day' the day before it was due to take place. There was no contact telephone number on the leaflet. The 'Family Fun Day' had gone on until midnight and there were children running around outside the premises at that time.

Questions to Mrs Riley by the Premises Licence Holder

The Premises Licence Holder had the opportunity ask questions of Mrs Riley and the following issues were raised:

In response to a question regarding the fireworks on the first 'Family Fun Day' on Sunday 29 June 2008, Mrs Riley confirmed that twelve spent fireworks had landed in her garden.

In response to a further question Mrs Riley confirmed that the fire door had been closed at the premises for the last two weeks. Following a further query, Mrs Riley could not confirm whether the side exit door which had been moved had been closed recently.

Questions to Mrs Riley by Members of the Committee

Members of the Committee had the opportunity to ask questions of Mrs Riley and the following issue was raised:

In response to a question, Mrs Riley confirmed that she was not involved in the 'Family Fun Day' but had received a leaflet advertising the event the day before it took place. Councillor McIntyre provided the Committee with a copy of the leaflet.

Mrs W Aspland, Resident

Mrs Aspland was present at the meeting to present a representation in support of the application.

Mrs Aspland stated that the music played at The Red Rose Public House on the 'Family Fun Day' held on 27 July 2008 was as loud as a concert. Even with the windows of her house closed she could hear every word of every song. Mrs Aspland stated that it was not a 'Family Fun Day' it was a concert and it was far too loud for a 'Family Fun Day' in a residential area.

Premises Licence Holder

Mr S Gavin, Premises Licence Holder and Mr A Ross, Solicitor, were present at the meeting to present a representation against the application.

The Solicitor stated that the Premises Licence Holder had listened to what had been said during the Review and on previous occasions with regard to complaints. With regard to the concerns about noise the Premises Licence Holder had put forward a plan for a number of measures. These measures reinforced some of the conditions already on the Premises Licence. The measures went considerably further in trying to address the concerns raised in the application for review. The Premises Licence Holder appreciated that Temporary Event Notices (TENs) were a matter that only the Police could object to. The Premises Licence Holder had listened to the concerns of the Environmental Health Team and the Police and cancelled the family 'Family Fun

Day' scheduled to be held in August 2008. The Premises Licence Holder was prepared to give at least fourteen days' advance notice to the Police of any further TENs applied for. This early notice would allow for liaison with the Local Authority and the Police in order to address any concerns which may arise in the future.

Linked in with the complaints about the noise were the Police concerns about public order. These complaints were not recent. The premises was partly included in the town centre pubwatch scheme because there were other late night premises in the area. The Premises Licence Holder's concern was to run The Red Rose as a public house and not as a late night venue. In order to prevent any future problems of disturbance the Premises Licence Holder proposed to dispense with the terminal hour between 11 pm and 12 pm on Friday and Saturday nights and to close the premises at 11 pm on both evenings. The Premises Licence Holder was concerned to ensure the public house was run properly and put forward this proposal to the Committee with this in mind.

With regard to occasional midnight closing the Premises Licence Holder asked to retain this option, as it was sporadic rather than regular. The Premises Licence Holder wished to disassociate The Red Rose from other premises in the area where there were problems.

The Premises Licence Holder confirmed that he had been the Designated Premises Supervisor since April 2008. The Premises Licence Holder explained that some of the previous Designated Premises Supervisors had not done their job properly and had not followed his instructions and therefore he decided to take the responsibility on himself. The Premises Licence Holder added that it had been difficult to find a suitable person and he had taken on the responsibility himself so that "the buck stops with him". The Premises Licence Holder confirmed that he intended to stay as the Designated Premises Supervisor. The Premises Licence Holder stated that he spent a lot of time at the premises trying to resolve issues and referred to the Noise Limitation Action Plan he had prepared. The Premises Licence Holder added that he had recently submitted a planning application for a new lobby at the front of the premises to help reduce the noise coming from inside the premises.

Copies of photographs showing the premises as it was before and after measures in the Action Plan were taken, were shown to the Committee. The Premises Licence Holder confirmed that all the measures in the Action Plan had been implemented. The tables and chairs outside the premises had been moved to the other side of the building as far away as possible from neighbouring residential properties. The Premises Licence Holder indicated the position of the tables and chairs on a plan of the premises attached at Appendix 2 to the submitted report. The Premises Licence Holder stated that there was an extension to the building which was not shown on the plan. The main entrance/exit to the premises was on the west side. Following the introduction of the smoking ban a side exit door on the north side had been constantly left open causing noise to escape from the premises. This exit had now been moved to the west side of the premises.

The Premises Licence Holder reiterated that he proposed to install a new entrance lobby to double up the sound insulation at the front entrance/exit to the premises. This would mean between the lounge, the bar and the car park there would be three doors which would help reduce the amount of noise escaping to the outside. All the windows that were not required for emergency exits had had locks fitted so that they could not be opened and this measure had been agreed with Building Control. The windows were high up and could not be used as emergency exits.

Speakers situated near to the doors had been turned off and the old extractor fans had been sealed off. Closers had been fitted to all doors and all hooks had been removed so that doors could not be left open.

The Premises Licence Holder confirmed that there was one outdoor smoking shelter on the north side and another on the west side. Since the exit on the north side had been moved the Premises Licence Holder stated that the shelter on that side would probably not be used. The Premises Licence Holder reiterated his proposal to dispense with the terminal hour between 11pm and 12 pm on Friday and Saturday nights and to close the premises at 11 pm on both evenings.

In relation to reaction received from residents following the application for review of the Licence, the Premises Licence Holder stated that The Red Rose was a transient public house, with many of its patrons coming from outside of the area. The Premises Licence Holder showed the Committee several letters of support and a petition containing 600 signatures in support of The Red Rose. The Premises Licence Holder stated that he was trying to make The Red Rose a family pub. The Premises Licence Holder added that he had lost around £2000 on the 'Family Fun Days' although he had not organised them with the intention of making a profit. The Premises Licence Holder stated that he had no plans to organise any family 'Family Fun Days' in the future and that the idea had been a mistake.

The Premises Licence Holder explained that he had not realised that the CCTV was not recording when Licensing Officers visited the premises. The Premises Licence Holder stated that he relied on the company that had provided it to ensure it was working. There had been a power surge which had stopped the system from recording although the screen was still displaying footage.

In relation to concern expressed by the Police regarding late night drinking, the Premises Licence Holder stated that he had discussed this with the Police and been advised of the law. So long as no drinks were purchased from the premises, friends were entitled to remain in the public house. The Premises Licence Holder added that he could not be responsible for people once they had left the premises.

The Principal Licensing Officer explained that licensing laws were not been contravened so long as alcohol being consumed was not purchased from the premises. However, if people then caused a disturbance outside the premises this would have an impact on residents.

The Premises Licence Holder reiterated that he had taken advice from the Police and regretted the incident.

Questions to the Premises Licence Holder by Members of the Committee

Members of the Committee had the opportunity to ask questions of the Premises Licence Holder and the following issues were raised:

In reply to a query regarding checking the CCTV footage, the Premises Licence Holder explained that the system was checked at least once a week and that it was a one off power surge incident that had caused it to malfunction. The CCTV was recording but not retaining the recordings and the Premises Licence Holder had not realised that it was not working properly.

In response to a question about noise levels and whether they were monitored throughout the 'Family Fun Day' held in June 2008 the Premises Licence Holder confirmed that he had received a visit prior to the event from the Principal Licensing Officer but not from the Noise Team. Some general advice had been given bearing in mind the noise complaints received previously.

In response to a question regarding advance notice being given to residents of the 'Family Fun Day', the Premises Licence Holder confirmed that he had placed notice on the front page of the Evening Gazette newspaper and also distributed a leaflet to local residents. The Premises Licence Holder confirmed that the leaflet drop had commenced on the Thursday before the 'Family Fun Day'.

In reply to a query regarding the amount of time he spent at the premises, the Premises Licence Holder replied that he was now there every night to ensure that all the problems were resolved. The Premises Licence Holder added that he would be putting up clamping warning notices in the car park. Around 60% of people parking in the car park were not patrons of The Red Rose but contributed to the noise disturbance.

The Committee was advised that all staff employed at the premises were given training and a training manual was kept. In addition to training offered by the Council, drugs awareness days were provided by the Police. Several staff members had enrolled on a noise course.

Reference was made to one of the photographs showing a canopy and benches outside the premises. The Premises Licence Holder confirmed that the canopy had been erected in August 2007 in response to the smoking ban and the number of benches had been increased at the same time. The area had been enclosed and no dogs were permitted inside it. The idea was to try to make The Red Rose a family pub but it had been a mistake and the benches had now been moved.

A Member asked why, despite complaints being received since 2007, measures to alleviate the noise disturbance had only been taken recently. The Premises Licence Holder responded that he had been trying to train staff to deal with problems appropriately but that he had inherited some of his staff from the previous owner. Twenty members of staff had worked at The Red Rose for over ten years and he had been trying to change the culture.

In response to query regarding complaints before the Premises Licence Holder took over the premises, the Principal Licensing Officer confirmed that there had been a few complaints and these had been dealt with by noise conditions attached to the licence.

A Member asked why it had taken eleven months to address the issues raised in relation to noise nuisance in the Principal Licensing Officer's letter of 14 November 2007. The Premises Licence Holder replied he had planned to re-design the premises and the plans had been drawn up but due to the current financial climate he had been unable to proceed.

Questions to the Premises Licence Holder by the Applicant

The Applicant had the opportunity to ask questions of the Premises Licence Holder and the following issues were raised:

In reply to a question, the Premises Licence Holder confirmed that he had received numerous visits and letters from Council Officers regarding noise levels. The Premises Licence Holder agreed that various measures to alleviate the noise nuisance had been suggested and advice given by the Principal Licensing and Principal Environmental Health Officers.

In response to a question, the Premises Licence Holder confirmed that there had been four changes of Designated Premises Supervisor since he became Licensee of the premises. None of the previous Designated Premises Supervisors were currently employed at the premises.

Responding to a question about staff training, the Premises Licence Holder confirmed that staff were due to attend a noise course organised by Middlesbrough Council. The Principal Environmental Health Officer stated that he was not aware of any noise courses being offered by Middlesbrough Council.

Reference was made to the alleged firearms incident which had occurred at the 'Family Fun Day' held on 29 June 2008. The Premises Licence Holder confirmed that he had had a disagreement with a fairground worker over takings. Confirmation was given that no profit had been made by the Premises Licence Holder from the 'Family Fun Day'. The fairground rides had been hired with a £400 deposit which had been refunded. The fairground owner charged £1.50 per ride and there had been a dispute over how much money had been collected.

In reply to a question, the Premises Licence Holder stated that the last 'Family Fun Day' scheduled for August 2008 had not been cancelled in response to the Abatement Notice in respect of Noise Nuisance. The 'Family Fun Day' could still have gone ahead without the music.

Residents in support of the Licence Holder:

Mrs S Martin

Mrs Martin was present at the meeting to present a representation against the application.

Mrs Martin stated that she worked in Linthorpe Village and walked past The Red Rose Public House twice a day on her way to and from work. Mrs Martin finished work at 10.00 pm at night. When walking past the premises she could often hear laughing and arguing and lads drinking.

Mrs Martin stated that she disregarded the noise because it did not bother her. Mrs Martin had known the Premises Licence Holder for about six months and thought the public house was quieter now that S Gavin was the Premises Licence Holder. Before the current Premises Licence Holder took over the pub, Thursday, Friday and Saturday nights had been unbearable with fighting in the car park. The noise that could be heard now was people laughing, singing and having a good time. There was fighting sometimes but this happened everywhere. Mrs Martin confirmed that The Red Rose Public House backed on to her property in Chelmsford Road.

Miss N Martin

Miss N Martin was present at the meeting to present a representation against the application.

Miss Martin stated that she lived at the back of the car park of The Red Rose Public House. Miss Martin confirmed that she did not hear any noise from the car park. Previously, Miss Martin would not go into the premises because she did not feel safe as there was a lot of fighting all the time. Since S Gavin became the Premises Licence Holder, Miss Martin did frequent the premises and if there was any trouble the staff always tried to sort it out. Miss Martin added that people who smoked needed somewhere to go and that the smoking shelter had been moved. The smoking shelter was now a little bit more out of the way for customers.

****At 1.00 pm, the Chair announced that the Committee would adjourn for a period of 30 minutes and that everyone should return at 1.30 pm prompt.****

At 1.30 pm, all interested parties were present and the meeting was reconvened.

Summing Up

The Chair invited all parties to sum up.

Applicant's Legal Representative

The Applicant's Legal Representative referred to the fact that there had been numerous complaints about the noise inside and outside of the premises. There had been at least nine visits to the premises by Licensing Officers during the past year, which was an unusually high number of visits. There had also been numerous visits made by Noise Control Officers and meetings had taken place with the Premises Licence Holder in an attempt to resolve complaints. Suggestions had been made about steps that could be taken to make sure that noise did not escape from the premises.

The Council's Environmental Health Team was concerned about the lack of management at the premises. Evidence from the Premises Licence Holder referred to problems caused by staff, however the Premises Licence Holder was responsible for the premises. The Premises Licence Holder had acknowledged that, even though he had taken over as Designated Premises Supervisor, complaints had continued.

The Applicant's Legal Representative referred to guidance issued under section 182 of the Licensing Act 2003 which stated at paragraph 11.8 that "It is important to recognise that the promotion of the licensing objectives relies heavily on a partnership between licence holders, authorised persons, interested parties and responsible authorities in pursuit of common aims. It is therefore equally important that reviews are not used to drive a wedge between these groups in a way that would undermine the benefits of co-operation. It is good practice for authorised persons and responsible authorities to give licence holders early warning of their concerns about problems identified at the premises concerned and of the need for improvement. A failure to respond to such warnings is expected to lead to a decision to request a review."

The Committee had heard evidence that over the past year Officers had met with the Premises Licence Holder and that it had taken over a year for the Premises Licence Holder to respond to the complaints. An Abatement Notice in respect of noise nuisance had been served. A lot of concern had been raised about the 'Family Fun Days'. The Premises Licence Holder had stated that he had no intention of applying for any more Temporary Event Notices (TENs). However, if

the Premises Licence Holder did apply for a TEN in the future, the Council could not attach any conditions to it, which was a concern. The sale of alcohol to underage persons at the premises was also a concern and the lack of management control. Attaching further conditions to the licence was unlikely to have any effect on the noise nuisance. No evidence had been presented to back up the Premises Licence Holder's claim that The Red Rose was a family pub.

The Applicant's representative stated that the Applicant believed the licence should be revoked. If the Committee decided not to revoke the licence, the Applicant would welcome the opportunity to make further representations.

Cleveland Police

The Police Legal Representative advised the Committee that with regard to the issue of a TEN, the Police could make representations on the grounds of crime prevention. Given that in this the case it was the noise that was the issue, the Police would not have grounds to object.

The Police Legal Representative reiterated the concerns of the Environmental Health Team. There had been a number of instances where the Police had been called to the premises. There was a negative effect on residents in the immediate locality. Therefore, the Police supported the submission made by the Environmental Health Team.

Councillor F McIntyre

The concerns of both the Environmental Health Team and the Police were echoed by the Ward Councillor on behalf of residents. There had been no evidence that The Red Rose was a family venue. The Red Rose was located in a residential estate and residents were very unhappy about the noise nuisance. If customers were allowed to drink outside they created noise and in addition the doors and windows were often open adding to the noise.

Premises Licence Holder

The Premises Licence Holder's Legal Representative urged the Committee to take on board the positive comments that had been made regarding The Red Rose Public House. The Committee had heard from two residents that they did not have any problem with the premises and would not have frequented it before the current Premises Licence Holder took it over. The character of the pub had changed. A public house was a place to go for a drink and conversation and this had to be tolerated to a certain degree. The Red Rose was not a new public house. There were no grounds for the licence to be revoked on public order because, according to Police evidence, it was mid-league in so far as the number of call outs received was concerned. It was also highlighted that the Premises Licence Holder had become involved with the Pubwatch scheme and taken part in drug awareness exercises in conjunction with the Police voluntarily.

The Premises Licence Holder had taken on board the concerns of local residents and Licensing and Environmental Health Officers and drawn up and implemented a Noise Limitation Action Plan. The Premises Licence Holder had planned to demolish the existing premises and build a new public house, however due to the current financial climate he had been unable to fulfil this plan. The Premises Licence Holder had tried to encourage families with the family 'Family Fun Days' but the days had not been a success and no further events were planned. The Premises Licence Holder had cancelled a family 'Family Fun Day' scheduled for August 2008 due to the concerns raised by residents and the authorities. There were no plans for any further 'Family Fun Days'.

The Premises Licence Holder had volunteered to dispense with the terminal hour between 11pm and 12 pm on Friday and Saturday nights and to close the premises at 11 pm on both evenings as a further means of reducing the noise nuisance. This would also bring The Red Rose into line with what was expected of a public house rather than being in the category of late night premises. Most of the complaints were received late at night so hopefully this measure would alleviate many of the complaints about noise. These were measures that the Premises Licence Holder was suggesting of his own accord and indicated a willingness to deal with matters himself. The Premises Licence Holder had been the Designated Premises Supervisor since May

2008 and was taking personal control of the premises to ensure that it operated in accordance with the licence.

The Premises Licence Holder accepted that when the noise levels were monitored they were unacceptably high and but there would be no repeat of this situation as no more 'Family Fun Days' would be held. The Premises Licence Holder's Legal Representative urged the Committee to view revocation of the licence as a last resort.

Letters in support of The Red Rose Public House and a petition were handed to the Chair of the Committee.

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

Subsequently all the parties returned and the Chair announced the Committee's decision.

DECISION

ORDERED that the Premises Licence in respect of The Red Rose Public House, Cumberland Road, Middlesbrough, TS5 6JB, Ref No MBRO/PR076 was revoked.

In reaching this decision Members considered the following:-

1. The application for review of the premises licence, on its own merits.
2. The four Licensing Objectives of the Licensing Act 2003, in particular the Prevention of Public Nuisance and the Prevention of Crime and Disorder.
3. Relevant Government Guidance, particularly in relation to:-
 - Reviews, starting at page 82.
4. Middlesbrough Council's Licensing Policy particularly in relation to:-
 - Prevention of Public Nuisance, starting at page 10.
5. The representations made by the Principal Environmental Health (Noise) Officer, Cleveland Police, the local Ward Councillor, local Community Council and residents in support of the application.
6. The representations made by Mr Stephen Gavin and his legal representative.
7. The representations made by two local residents in support of Mr Gavin.

Members made their decision based on the following reasons: -

1. They believed that there was a lack of control and bad management at the premises.
2. They stated that despite numerous visits by Officers offering advice and assistance, Mr Gavin has refused help and assistance.
3. There has been a catalogue of offences and incidents at the premises over a period of time and no improvements have been made in the time that Mr Gavin has held the premises licence.
4. They believed that the only effective solution in dealing with the noise, nuisance and bad management was to revoke the premises licence.