

**LICENSING SUB COMMITTEE C**

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

**\*\*PRESENT:** Councillor Taylor (Chair): Councillors Carter and G Rogers.

**\*\*OFFICERS:** C Breheny, C Cunningham and T Hodgkinson

**\*\*ALSO IN ATTENDANCE:**

Agenda Item 3

C Beadnall – Applicant  
P Hutchinson – Business Relationship Officer (Punch Taverns)  
J Coen – Applicant’s Legal Representative  
P MacGregor – Principal Environmental Health Officer  
Councillor Porley– Ward Councillor  
PC Higgins – Cleveland Police  
PC Malcolm – Cleveland Police  
M Nevison – Cleveland Police’s Legal Representative  
Mrs Drinkwater – Resident  
Mr A Smith - Resident

**\*\*DECLARATIONS OF MEMBERS’ INTERESTS**

No Declarations of Interest were made at this point of the meeting.

**SUSPENSION OF COUNCIL PROCEDURE RULE NO. 10 – ORDER OF BUSINESS**

In accordance with Council Procedure Rule No. 10, the Committee agreed to vary the order of business to deal with the items in the following order: Agenda Item 4, Agenda Item 3 to allow the Principal Licensing Officer to provide a verbal update in respect of Agenda Item 4.

**LICENSING ACT 2003 – APPLICATION TO VARY PREMISES LICENCE – VIENNA, ALBERT ROAD, MIDDLESBROUGH**

The Principal Licensing Officer advised the Committee that an application had been received from Vienna and that in line with the regulations a hearing had to be held within 28 days of receipt. However, the regulations also stated that if the Committee and other parties were satisfied the hearing could be adjourned.

The Committee was advised that Vienna was situated opposite the Corner House and that the same company owned both premises. The Corner House had a licence to open until 2am and the application for Vienna was for an extension of hours.

A number of issues had arisen as a result of the later opening hours that the Corner House operated and a meeting between the Licensee and the Police had been held. The licensee was working with the Police to address the issues raised and an action plan had been drawn up. The Police had, however, submitted an objection in respect of the application to vary the operating hours for Vienna.

If the case were to be presented to the Committee the legal representative for the Police and the applicant’s legal representative would assert that the action plan needed to be given time to work. It would therefore be beneficial if the application could be considered in two months time. Legal advice had been sought and the Police had agreed that the sensible option would be to adjourn consideration of the application until mid January.

**AGREED** that consideration of the application to vary the premises licence for Vienna, Albert Road, Middlesbrough be adjourned until mid January if a hearing was still required.

**LICENSING ACT 2003 – APPLICATION TO VARY PREMISES LICENCE – PARK END PUBLIC HOUSE, PARK END, MIDDLESBROUGH – REF: MBRO/PR0051**

A report of the Head of Community Protection had been circulated outlining an application for an application to vary the Premises Licence for Park End Public House, Park End, Middlesbrough, Ref No. MBRO/PR0551, as follows:

**Summary of proposed variation to hours for Licensable Activities**

To extend the hours for licensable activities on Thursday, Friday and Saturday as detailed below:-

Sale of alcohol (on and off the premises), Recorded music	11.00am – 1.00am
Live music, Facilities for dancing, Facilities like music/dancing	11.00am – 12.30am

The application included a further 30 minutes (drinking up time) after the last sale of alcohol.

Full details of the application and accompanying operating schedule were attached at Appendix 2 to the submitted report.

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

The applicant, Ms Beadnall, and her Legal Representative were present at the meeting and confirmed that copies of the report and Regulation 6 Notice had been received.

**Details of the Application**

The Principal Licensing Officer confirmed that there were no absent parties and presented the report. The applicant's legal representative stated that the fine incurred by the applicant at Teesside Magistrates Court on 27 February 2007 had been reduced on appeal.

Reference was made to the letter submitted by Park End Community Council and the meeting held on 14 October 2008. The applicant's legal representative explained that the applicant had attended the meeting and reassured the Community Council that if the application was approved any complaints received from local residents would be addressed immediately. The licence holder had also advised the Community Council that she no longer wished to apply for an extension of hours on a Thursday evening. It had been acknowledged at the meeting that some of the noise issues emanated from North Ormesby Institute and none of the residents present at the meeting had objected to the application. A copy of the letter was distributed.

The applicant's legal representative confirmed that the applicant wished to amend the application and delete the part relating to extended hours on a Thursday evening. The application for the proposed variation applied only to Friday and Saturday evenings.

The Committee was advised that there had been a history of applications in respect of the premises but that the application before the Committee needed to be determined in light of the current representations received. Reference was made to section 35 of the Licensing Act 2003 and the need to consider the representations received in respect of the current application.

The applicant's legal representative stated that upon visiting the premises he had been handed a petition, which the DPS had retained. Reference was made to section 18 of the Licensing Act 2003 (Hearings) Regulations 2005, which stated that with the consent of all other parties the authority may take into account documentary or other information produced by a party in support of their application, representations or notice at the hearing.

The Police's legal representative advised that the Police had wished to submit a DVD as evidence but that the applicant's legal representative had advised that it would not be accepted, as there was insufficient time to consider the validity of the document at such short notice.

The applicant's legal representative stated that he accepted that it was much more appropriate to produce evidence prior to the day of the hearing but that he had wished to request that the petition be submitted. The applicant's legal representative accepted that the Police had declined the request.

The Council's legal representative stated that there was a protocol to follow when submitting petitions and that all petitions went through the legal department. The Committee was advised that in order for evidence to be submitted on the day the applicant's legal representative needed the agreement of all parties. In cases where all parties were not in agreement, under the regulations, irregularities could be rectified. However, the Committee had to consider the views expressed by the Police and under the circumstances the Police had accepted the letter sent from the Community Council, which had already been circulated.

The applicant's legal representative returned to the application and advised that if the current application was granted, in essence an additional hour would be awarded for the sale of alcohol on a Friday and Saturday evening and an extra 30 minutes for live music and facilities for music and dancing.

A brief history of the premises was provided and the applicant's legal representative advised that the current DPS had taken over the premises in June 2006 and had accepted the recent prosecution owing to the irregularities that had been in place. These issues had now been resolved and a meeting had recently taken place with the licensing department to ensure that everything was in order.

The Committee was informed that the main clientele of the premises were local people, as there was very little passing trade. On weekends the clientele were aged from 18-75 and midweek the average age of the clientele was 40 years of age. The premises attracted a mature clientele from amongst the local community. Entertainment was provided at the premises and this consisted of a pool league on Monday nights, a quiz on Tuesday nights, a jukebox on Wednesday nights, a poker night on Thursday nights and a disco/karaoke on Friday nights from 8pm to 11.30pm. Entertainment for Saturday nights alternated between a disco/karaoke night and jukebox night.

In terms of complaints received in respect of the premises the applicant's legal representative stated that the last complaint from any party had been received in July 2006, which was approximately 2 ½ years ago. No further complaints had been received since that time. The Community Council had withdrawn its representation, which was a vote of confidence for the management of the premises and no representations had been received from residents. The applicant's legal representative urged the Committee to balance the views of those who had not made representations against those that had submitted representations.

In respect of the concerns raised in the submitted representations these issues concerned people vacating the premises and no concerns had been raised since July 2006. The premises therefore had an unblemished record since July 2006.

The Council's legal representative asked the applicant's legal representative how the DPS intended to mitigate the impact of additional noise if the Committee was minded to grant the application. The applicant's legal representative stated that the question implied that there would be additional noise but that this was not the case. All of the doors and windows would be closed, there would be no consumption of alcohol in the outside area after 11.20pm and the existing safeguards in place would remain in place. The Council's legal representative clarified that if the application was granted the noise would be extended for an additional period of time.

The applicant's legal representative advised that the premises was currently licensed to remain open for an extra hour on bank holidays and it was interesting to note that Mrs Drinkwater had not even been aware that the premises was trading until 1pm on bank holidays. The applicant's legal representative stated that this supported the contention that the premise was able to trade until 1am without causing any disturbance.

## **Relevant Representations**

### **Cleveland Police – Legal Representative/Sergeant Higgins/PC Malcolm**

The Police's legal representative, M Nevison, Sergeant Higgins and PC Malcolm were in attendance at the meeting to present the representations against the application.

Sergeant Higgins confirmed the content of his statement dated 20 October 2008. He advised that the premise was a local premise and that in practical terms there was no public transport available to transport people home after 11.10pm. The current DPS had been in place since 2005 and there had been a history of noise complaints at the premises dating back to 2006. Sergeant Higgins stated that the additional opening hour, which had previously been granted from 11pm – 12 midnight, had been the main cause of concern. Prior to the change in hours no complaints had been made to the Police, however, since the extra hour had been granted complaints had been received.

On reflection as to why the Police had agreed to the extra hour Sergeant Higgins stated that there had been a big emphasis on promoting the opportunity to ensure that additional hours were granted and then to address any issues that arose through the review process. The premises had no history of complaints and therefore it had not been appropriate to make a representation at that stage.

In the summer of 2006 complaints had been received in respect of additional noise from the premises and it was noted that there was a link between people drinking in the beer garden until 12.30am and the additional noise. Sergeant Higgins stated that on 14 July PC Helyer had visited the premises at 19.30pm and received a very hostile reception from the patrons. PC Helyer had been dressed in plain clothes but the patrons had realised that she was a Police Officer.

The applicant's legal representative stated that this information in respect of PC Helyer was not in the statement and that section 9.24 of the guidance stated that responsible authorities may not add further representations to those disclosed to the applicant prior to the hearing. The Police's legal representative stated that the information in respect of the visit was included in statement and that the additional information was only to provide clarification on why the incident with the Police vehicle had been mentioned.

The Council's legal representative advised that although each party could not introduce completely new evidence responsible authorities were able to expand on their existing representation.

The Police's legal representative stated that the visit had been a matter of record and that the main issue had been caused by noise escaping from the premises, as the doors had been propped open at the time of the visit. Sergeant Higgins confirmed that the premise was situated in a residential area and that there were residential properties situated directly opposite the premise. In respect of any conditions that could be added to the licence to assist in the prevention of public nuisance caused by noise Sergeant Higgins stated that the issues arose when people were leaving the premise and the licensee could have no control over this matter.

### **Questions to the Police from the Applicant**

The applicant's legal representative was afforded the opportunity to ask questions of the Police and the following issues were raised: -

- In response to a query, Sergeant Higgins confirmed that there had been no issues to note in respect of complaints about the premise since the summer of 2006. Sergeant Higgins agreed that the premise currently traded on a weekend until 12.30pm and that there had been no issues. The premise was also licensed to trade until 1pm on bank holidays and no issues had arisen.

- Reference was made to statement that if additional hours were granted it was clear that problems at the premise would be aggravated. The applicant's legal representative questioned whether it was always the case that premises trading until 12 midnight received more noise complaints than premises which traded until 11pm. Sergeant Higgins stated that there was not a direct correlation and that the complaints received depended on the clientele of the premise and the ambient noise level of the area in which the premise was situated.
- The applicant's legal representative asserted that the statement made by Sergeant Higgins that problems at the premises would be aggravated if additional hours were granted was sheer speculation.

#### Questions from Members

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

- In response to a query the applicant advised that the residential properties opposite the premise were approximately a road's width away. The properties were fronted by small residential gardens approximately 18ft in width.
- In response to a question the applicant advised that the premise could hold up to 250 patrons. It was noted that last orders at the nearby North Ormesby Institute was 11pm Monday to Saturday and 10.30pm on Sundays. The North Ormesby Institute did not benefit from additional operating hours.

#### Environmental Health – Principal Environmental Health Officer

The Principal Environmental Health Officer, P MacGregor, was in attendance at the meeting to present the representations against the application.

The Principal Environmental Health Officer advised that he had been an Environmental Health Officer for a period of 12 years and had worked for Middlesbrough Council for the last 9 years. He advised the Committee that the application submitted by the premise had prompted him to review the information held in respect of the premise and as a result he had asked the noise team to make a number of visits.

The Committee was advised that the original complaints in respect of the premise had originated in 2006 and had been submitted through the ward Councillor. The complaints had prompted an investigation and a number of visits had been undertaken by the noise patrol service. It was noted at that time that people were spending time outside of the premise and as result it had been put to the Committee by the applicant's solicitor that no complaints had been received for a period of 2 ½ years.

The Principal Environmental Health Officer advised that a meeting had been held with the DPS and Punch Taverns representative in June 2007. A letter sent to the DPS following the meeting was attached to the report and the Principal Environmental Health Officer drew Members' attention to the issues that the DPS had acknowledged were causing difficulties at that time. It was noted that the DPS had been having problems ensuring that patrons left the premises at closing time and the representative from Punch Taverns had provided reassurances that management controls would be reviewed.

The Principal Environmental Health Officer advised that problems at that time (June 2007) were ongoing and therefore the assertion by the applicant's legal representative that there had been no complaints for a period of 2 ½ years was a slight extension. A number of visits had been made to the premise and it had been noted that noise from the premise was occurring as a result of people gathering outside after leaving the premise. These incidents had been witnessed in 2006 and 2007.

Upon receipt of the application the Principal Environmental Health Officer advised that he had asked the noise patrol teams to visit the premise and that a visit had been undertaken on 5 October 2008. It had been reported that at 12.35am on that date there was a group of approximately ten people on the front forecourt of the premise talking in loud voices. No music had been playing but the Principal Environmental Health Officer advised that loud music had been emanating from the premise on a visit that had taken place on 3 October 2008 and that these matters would be made worse if the operating hours of the premise were extended.

The applicant's legal representative queried where the information in respect of the recent visits was documented in the representation submitted. The Principal Environmental Health Officer advised that the information referred to was contained in the memo dated 28 October 2008, which had been circulated to all parties prior to the meeting. The applicant's legal representative stated that the information contained within the memo did not detail the dates of the visits and no reference at all had been made to the visit now being discussed on 3 October 2008. The applicant's legal representative stated that the hearing needed to be fair to all parties and that at no point had he been made aware of the information in respect of the details of the visits prior to the hearing.

The Council's legal representative advised that the hearing needed to be fair to all parties and that in order to make the hearing fair the applicant's legal representative could be given sufficient time to consider the information presented. The Committee could adjourn to enable the applicant's legal representative to consider the additional information presented. Following the adjournment the Committee would decide whether or not to accept the additional information, after taking into consideration the views of the applicant's legal representative.

The applicant's legal representative stated that the information provided by the Principal Environmental Health Officer referred to one recent incident and that no date for this incident was given in the report. No other information in respect of recent visits to the premise had been provided and the applicant's legal representative requested that the Environmental Health Officer agree for this additional information to be left out.

Councillor Porley requested that he be granted permission to present his representation prior to any agreement in respect of the information to be disclosed by the Environmental Health Officer, as he had to leave to attend another meeting. The Chair granted permission for Councillor Porley to present his objection and it was agreed that further discussion in respect of the evidence to be presented by the Environmental Health Officer would take place following Councillor Porley's presentation.

#### Councillor Porley – Ward Councillor Park End

Councillor Porley, Ward Councillor Park End, was in attendance at the meeting to present the representation on behalf of the residents of the Ward against the application.

Councillor Porley advised that he objected to the application and was present at the meeting on behalf of residents of the Ward, in particular the people living in Penistone Road, who had raised concerns in relation to the extended hours. Councillor Porley stated that the premise was situated in a residential area and that the extended hours would cause annoyance and nuisance to residents. It was unacceptable for people to be leaving the premise at 1.30am and 2am in the morning. Councillor Porley respectfully requested that the Committee noted the concerns of local residents and refused the application.

#### Questions to Councillor Porley from the Applicant

The applicant's legal representative was afforded the opportunity to ask questions of Councillor Porley and the following issues were raised: -

- In response to a query, Councillor Porley advised that four residents who lived on Penistone Road had approached him to express their concerns, they were all were from different households and lived very close to the premise.

- Councillor Porley confirmed that he had been present at the Community Council meeting that had been held on 14 October 2008 and that the four residents who had approached him were not in attendance at that meeting.
- In response to a query, Councillor Porley stated that although he lived on Penistone Road he did not live in close proximity to the premise and had not experienced any problems himself.

**\*\*Councillor Porley left the meeting at this point.**

The applicant's legal representative sought clarification on the information to be disclosed by the Environmental Health Officer. The Council's legal representative made reference to the memo dated 28 October 2008 and asked the Principal Environmental Health Officer whether he intended to disclose information about other visits that were not detailed in the memo.

The applicant's legal representative had not given his consent for additional information to be disclosed and section 18 of the Licensing Act 2003 (Hearings) Regulations 2005 stated that the consent of all parties was required in respect of information produced at the hearing.

The decision was taken that the meeting be adjourned, in order that the applicant's legal representative be provided with the opportunity to consider the additional information. Upon return the applicant's legal representative advised that following a discussion with the Principal Environmental Health Officer the Officer had agreed that he was happy to refer only to the evidence detailed in the submission and that he was prepared not to disclose new information.

Environmental Health – Principal Environmental Health Officer

The Principal Environmental Health Officer, P MacGregor, agreed to continue presenting his representation against the application.

The Principal Environmental Health Officer advised that visits to the premises had been made and that in his own assessment the area was one of a residential nature. There were a number of houses situated in close proximity to the outside drinking areas at the front of the premise. The Officer stated that from his own experience it was known that the estates of that nature were very quiet areas at 1.30am in the morning. No commercial activity was taking place and there was no reason to assume that Park End was any different.

The Officer stated that in his own experience of dealing with many other noise complaints in respect of outside drinking areas noise disturbance had an effect on people who lived in close proximity to licensed premises. The smoking ban had also added to the numbers of people using the outside drinking areas.

The Principal Environmental Health Officer made reference to the applicant's legal representative's assertion that an extension of hours was no different to those granted on bank holidays. The Principal Environmental Health Officer stated that there were only 8 bank holidays in the year compared with 52 Friday and Saturday nights, totally approximately 100 occasions. In his experience people were generally more accepting of noise disturbance on bank holiday weekends including Christmas and New Year, as people were expecting a relaxing time. However, an extension of hours every Friday and Saturday night was completely different.

In respect of visits undertaken by the noise team, with regard to noise from outside of licensed premises, the Principal Environmental Health Officer advised that the noise generated by people congregating in outdoor areas was difficult to control. In comparison internal noise could be controlled by sound limiting devices, closing windows and acoustic lobbies. Controlling the noise generated by groups of people competing to be heard and enjoying themselves in outdoor areas was much more difficult. Background noise levels in residential areas were also very low and as a result the noise carried.

The Principal Environmental Health Officer made reference to the Council's Licensing Policy and stated that in his view the premise was situated in a residential area. Section 50 and 51 of the Licensing Policy stated that, 'in those parts of the Borough, which are predominately residential, it is anticipated that the normal hours of opening of new licensed activities would be encouraged to be a maximum of 11pm. Opening hours of midnight and beyond are more likely to be acceptable, in principle, for premises in commercial areas. In all cases, the granting of a licence will still depend on the impact of an activity, particularly on local residents. It is necessary to consider amongst other things, the level of impact that could arise from noise and vibration...and whether any impact is particularly unacceptable late at night.'

In terms of the application the Principal Environmental Officer stated that the premise already had a licence to trade until 12 midnight. It was acknowledged that the applicant had made inroads in controlling the premise and no complaints had been received in 2008. However, this did not constitute a reason to extend the opening hours until mid morning, as an opening hour of 1.30am was not appropriate for the area.

#### Questions to the Principal Environmental Health Officer from the Applicant

The applicant's legal representative was afforded the opportunity to ask questions of the Principal Environmental Health Officer and the following issues were raised: -

- In response to a query the Principal Environmental Health Officer confirmed that the Environmental Protection Manager had not felt the need to request a review following the letter that had been sent to the DPS on 13 July 2007. It was confirmed that no further complaints from residents had been received.
- The Principal Environmental Health Officer confirmed that he was aware that he had the powers under the Environmental Protection Act 1990 to serve a statutory abatement notice if a statutory nuisance was witnessed. The Principal Environmental Health Officer confirmed that there had been no need to take any formal action against the DPS since July 2007.
- In response to a query the Principal Environmental Health Officer stated that his assertion that extending the opening hours would result in increased noise disturbance was not simply speculation. It was an opinion that he had formed as an experienced Environmental Health Officer and as a person putting himself in the position of a person living next door to a licensed premise.
- The Principal Environmental Health Officer acknowledged that if the extended hours were granted and as a result complaints were received the review process could be instigated and the licence would be reviewed by the Committee. The Principal Environmental Health Officer stated that although the review process could be instigated the issue was whether the extension of hours was really appropriate and in line with the Council's Licensing Policy.
- Reference was made to the Temporary Event's Notices that had been submitted two weeks running in December 2008 and the applicant advised that 4 Temporary Event's Notices had also been issued in 2007 to operate extended hours until 1am. The Principal Environmental Health Officer confirmed that in respect of the extended hours granted on these dates no complaints had been received.
- In response to a query the Principal Environmental Health Officer confirmed that he had received no complaints from residents in respect of the visit referred to in the submitted memo during which customers were observed gathered on the forecourt of the premise.
- The Principal Environmental Health Officer confirmed that the recent visits to the premise were a direct result of the application being submitted. The visits had not been in response to any complaints from local residents.



## **Summing Up**

### **Cleveland Police**

The Chair invited Cleveland Police's legal representative to sum up.

The Police's legal representative summed up by stating that the previous extension of operating hours did result in an increase in noise complaints and that during a visit by Sergeant Higgins on 14 July 2006 conditions of the licence were being breached. The Committee was reminded that each application had to be considered on its own merits but that a previous extension of this premise's opening hours had led to an increase in noise complaints. From the Police's perspective although no recent complaints had been received in respect of the premise an extension of hours had been requested. On a visit to the premise in 2006 noise had been emanating from the premise and the doors had been propped open.

The premise was not situated in the town centre and there was no public transport available at 1.30am. Reference was made to paragraph 32 of the Council's Licensing Policy and the need to achieve a fair balance between the benefit to the community and loss of amenity to local residents. The Police's legal representative stated that although the premise had a right to make a living the residents who lived in the nearby vicinity also had the right to a private life and family life.

Reference was made to the option of seeking a review if complaints were received and the Police's legal representative stated that Cleveland Police wished to be proactive and not reactive. A review could take up to two months to be convened and during that time local residents would continue to suffer.

The Police's legal representative stated that an extension of operating hours until 1.30am every Friday and Saturday evening, in addition to opening until 2.30am on bank holidays was not suitable for a residential area. It was questioned how many more extensions would need to be requested before the hours operated became that of a nightclub. The Police's legal representative respectfully requested that the application be refused.

### **Principal Environmental Health Officer**

The Chair invited the Principal Environmental Health Officer to sum up.

The Principal Environmental Health Officer stated that the key issue was the extension of hours in a residential area. The premise had experienced problems in the past with regard to noise and although attempts had been made to control the noise it did not change the fact that the premise was situated in a very definite residential area.

Reference was made to section 42 of the Council's Licensing Policy which stated that, 'the Licensing Authority will normally encourage a closing time of 11pm for licensed premises in predominately residential areas. Hours of 12am and beyond will be more favourably considered for premises located in predominately commercial areas, such as the Town Centre.'

The Principal Environmental Health Officer stated that his role was to protect local people from the likelihood of noise and disturbance and respectfully requested that the application to extend the hours be refused.

### **Applicant's Legal Representative**

The Chair invited the applicant's legal representative to sum up.

The applicant's legal representative summed up by stating that no complaints had been received from residents in respect of the premise since the summer of 2006 and that the incidents raised by both the Police and Environmental Health had related to previous issues. Since the summer of 2006 the premise had enjoyed 1am trading hours on bank holidays and had also benefited from six Temporary Event's Notices to trade until 1am. No complaints had been received in respect of any of these occasions and had residents had concerns then they would have complained.

Despite the letter issued to the applicant on 13 July 2007, which stated that if problems persisted at the premise a review of the licence would be sought no review had taken place. There had been no problems at the premise for at least a year and no residents who lived in close proximity to the premise had submitted an objection. It was stated that if the application were granted then there would be no problems at the premise, as there had not been any problems to date.

The applicant's legal representative stated that in respect of the action that could be taken if complaints were received the Environmental Protection Act 1990 required that if a statutory nuisance was witnessed an abatement notice had to be issued. Environmental Health, the Police and local residents could also seek a review of the licence. In addition, section 161 of the Licensing Act 2003 included provision for a closure order on the grounds of crime and disorder and public nuisance, whereby the Police could take immediate action.

It was stated that the Licensing Act 2003 promoted a 'light touch bureaucracy' and that the premise had a clean record for at least a year to eighteen months. The responsible authorities had the powers to take action if necessary but it was emphasised that there would be no problems if the application were approved. Mrs Drinkwater had not even been aware that the premise was already trading until 1am on bank holidays. The applicant's legal representative stated that the premise did not want to become a nightclub and that the applicant was prepared to withdraw the application for an extension of hours beyond 1am on bank holidays. The applicant did not seek to trade beyond 1am on either weekends or bank holidays.

The applicant's legal representative advised that a judgement needed to be made based on the submission of the application. There had been no recent problems at the premise and it was inappropriate to speculate on problems going forward.

The Principal Environmental Health Officer advised the Committee that in respect of the Environmental Protection Act 1990 the local authority's powers related only to the premise, once people left the premise the local authority's power to issue an abatement notice in respect of a statutory nuisance no longer applied. The Principal Environmental Health Officer stated that the main concern in respect of the premise related to people frequenting the exterior grounds and the smoking area, which were the two main sources of the noise nuisance.

The Principal Licensing Officer confirmed that the premise could continue to apply for a Temporary Event's Notice to trade beyond its normal licensed hours and the Police were the only responsible authority that could object.

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 application to Vary the Premises Licence for Park End Public House, Park End, Middlesbrough be refused.

In reaching the above decision Members had considered the following: -

1. The four Licensing Objectives of the Licensing Act 2003.

2. Relevant Government Guidance, particularly in relation to:-
  - Prevention of Public Nuisance, starting at paragraph 2.32
  - The Pool of Conditions at Annex D
  - Crime and Disorder, starting at paragraph 2.1
  - The Pool of Conditions at Annex D
3. Middlesbrough Council's Licensing Policy particularly in relation to:-
  - Prevention of Crime and Disorder (pages 17 and 18)
  - Prevention of Public Nuisance (pages 10 to 16 in particular para 38 and 42)
4. The representations made by Catherine Beadnall and her legal representative.
5. The representations made by Cleveland Police, the Principal Environmental Health Officer, the local Ward Councillor and local resident.

The Committee had decided to refuse the application for the following reasons: -

1. The Committee considered all the relevant representations before them and decided to refuse the application on the grounds of preventing public nuisance.
2. In the past problems had arisen with regard to disturbance as a result of the original extension. Middlesbrough Council's policy clearly states that licensed premises in residential areas should close at 11.00pm. The premises already benefit from extended hours from 11.00pm to 12.00 midnight. Any extension to the current hours would be an unacceptable disturbance and nuisance to local residents.
3. Middlesbrough policy states that opening hours after 12.00 midnight and beyond are more favourably considered in commercial areas with greater access for public transport.
4. The case has been decided on its own merits and there is no strong reason to depart from the Council's policy. By refusing the application the Committee consider that it would be meeting the objective of preventing public nuisance.