

LICENSING SUB COMMITTEE C

A meeting of Licensing Sub Committee C was held on 1 September 2009.

PRESENT: Councillor Taylor (Chair); Councillors Mawston and G Rogers

OFFICERS: J Dixon, T Hodgkinson and S Vickers

ALSO IN ATTENDANCE: P Irvine – Designated Premises Supervisor, Red Rose
L Randall – Manager, Red Rose
C Weatherley – Local Resident
Sergeant Higgins – Cleveland Police, Licensing Unit
R Smith – Police Legal Representative

PRESENT AS OBSERVERS: Councillor McTigue
C Lunn, Members Office

**** DECLARATIONS OF MEMBERS' INTERESTS**

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

LICENSING ACT 2003: APPLICATION TO VARY PREMISES LICENCE – RED ROSE PUBLIC HOUSE, CUMBERLAND ROAD, MIDDLESBROUGH - REF. NO. MBRO/PR0076

A report of the Head of Community Protection had been circulated outlining an application to vary the Premises Licence in relation to the Red Rose, Cumberland Road, Middlesbrough, Ref No. MBRO/PR0076, as follows:-

Summary of Current Licensable Activities

Sale by retail of alcohol for consumption on and off the premises
Live/Recorded Music, Dancing.

Summary of Current Hours for Licensable Activities

All licensable activities 11.00am to 11.00pm.
Premises to close at 11.30pm.

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

Summary of Proposed Variation

- To extend the hours for the sale of alcohol on Fridays and Saturdays until 12.00 midnight.
- To remove the condition prohibiting the consumption of alcohol in the external areas of the premises.

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 current Designated Premises Supervisor, Mr Irvine, was present at the meeting, accompanied by the Premises Manager, Mrs Randall, and confirmed that copies of the report and Regulation 6 Notice had been received.

Details of the Application

The Principal Licensing Officer explained that Enterprise Inns Plc was the current licence holder for the Red Rose and the Area Manager for the Company had confirmed that he was happy for Mr Irvine, DPS for the Red Rose, to deal with the matter at Committee.

The Principal Licensing Officer presented the report in relation to an application received on 10 July 2009 to vary the Premises Licence at the Red Rose, as outlined above, and the applicant had advertised the application, as required by the Licensing Act 2003, in the Herald and Post on 23 July 2009, which was confirmed as being an accurate reflection of the facts by the applicant.

The report provided detailed background information in relation to the premises which consisted of a public house situated in close proximity to residential premises, the nearest residential premises being less than 10 metres away. A map showing the location of the premises was attached at Appendix 3 to the submitted report.

It was highlighted that prior to the introduction of the Licensing Act 2003, the premises held a Justices On licence and Public Entertainment Licence which contained a number of conditions which were imposed by the Licensing Committee with the aim of reducing noise disturbance to nearby residents. These licences were converted to a Premises Licence in June 2005 and information was provided in relation to subsequent applications to vary the licence.

Details were provided in relation to the Council's Environmental Health (Noise) Officer's application for the licence to be reviewed on the grounds of prevention of public nuisance following a number of complaints from local residents and local Councillors in relation to noise nuisance from 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. In addition, between June 2007 and July 2008 Council Officers monitored the premises and witnessed breaches of conditions on the licence on 13 occasions. Further complaints were made by local residents in August 2008 in relation to two outside live entertainment events held at the premises in June and July 2008 respectively. The Council's Environmental Health Noise Team served a Noise Abatement Notice on the previous premises DPS to prevent any further amplified sound being played to the outside area of the premises.

The review of the premises licence was heard by the Licensing Sub Committee on 7 October 2008 and after hearing representations from all parties, including the previous DPS, the Committee determined to revoke the premises licence for the Red Rose held by Stephen Gavin.

Following the revocation of the premises licence, the Council was approached by Enterprise Inns Plc, the owners of the Red Rose, with a view to submitting a new application for a premises licence. On 22 October 2008, at the request of Enterprise Inns, a meeting was held between a representative of Enterprise Inns and their prospective DPS (Mr Irvine), Licensing Officers, Environmental Health (Noise) Officers, the Ward Councillor and a number of residents. During the meeting discussions took place regarding the new premises licence application and assurances were given to residents by Enterprise Inns Plc in relation to the future management of the premises.

On 30 October 2008 a new application for a premises licence was submitted by Enterprise Inns Plc in relation to the current hours and licensable activities. No representations were received from the responsible authorities or interested parties and, as a result, a premises licence was granted on 27 November 2008.

It was confirmed that the Council's Environmental Health (Noise) Officers had made no representations due to the applicant agreeing to the following conditions being added to the premises licence:-

- That outside drinking be restricted to between 11.00am and 9.30pm.
- That the maximum number of tables in the outside area be restricted to eight.
- That the DPS or other identified responsible member of staff, monitor the outside area whilst outside drinking is taking place, every 30 minutes and deal with any unacceptable behaviour.

Details of representations, received on 22 July 2009 and 5 August 2009, from Councillor McIntyre, local Ward Councillor, on behalf of the Park Ward Community Council and a number of local residents, objecting to the application to vary based on the grounds of prevention of crime and disorder, prevention of public nuisance and the protection of children from harm, were provided in the report. These were attached at Appendices 4) and 5) of the submitted report.

A further representation was received from Cleveland Police on 6 August 2009 objecting on the grounds of the prevention of crime and disorder and the prevention of public nuisance and was attached at Appendix 6) to the submitted report.

Appendix 7) to the submitted report was a representation received on 4 August 2009, from Mrs Weatherley, a local resident, detailing her support for the application to vary.

The Principal Licensing Officer brought to the Committee's attention that, on 5 August 2009, a complaint was made to the Council's Environmental Health (Noise) Team by a local resident in Chelmsford Road, Middlesbrough, in relation to loud music being played from the premises. The matter was currently being investigated.

A Committee Member queried the approximate distance between the complainant's house and the premises and it was stated that there was a distance of approximately 13 metres.

Applicant in Attendance

Mr Irvine, the current DPS, Red Rose, accompanied by Mrs Randall, Manager, Red Rose, was in attendance at the meeting and presented the case in support of the application to vary.

Mr Irvine highlighted that, following the revocation of the Premises Licence at the Red Rose in October 2008, Enterprise Inns had changed its policy in relation to premises licences and had registered interests in all of its premises in order to be kept up to date with any problems arising at any of its premises.

Mr Irvine wished to point out that the problems that had previously occurred at the premises had nothing to do with him or his staff and had occurred under the previous management. Mr Irvine stated that he had lived in Linthorpe for 15 years and considered the Red Rose to be a community pub and could not recall any trouble at the premises until it was taken over by Mr Gavin and added that he was well aware of Mr Gavin's history at the premises.

Mr Irvine advised the Committee that he had taken charge of the premises in October 2008 and there had been no incidents since that time. Mr Irvine added that he and his staff had built up a good relationship with neighbours of the premises and were re-establishing links within the local community. Mr Irvine indicated that the noise complaint currently under investigation may have been made by a relative of an ex-member of staff whom he had dismissed.

Mr Irvine stated that by requesting an additional hour on Fridays and Saturdays he was not looking to make the premises a late night drinking venue but merely wanted to compete on a level playing field with other premises in the vicinity which remained open till 12.00 midnight.

Mr Irvine advised that he ran another community pub in Middlesbrough and one in Billingham. He reassured Members that he had installed a very experienced, no-nonsense team headed by Mrs Randall who maintained regular dialogue with Councillor McIntyre (Ward Councillor). It was stated that Mrs Randall had built bridges with the community and attended local community council meetings. Mr Irvine also offered the use of the premises, free of charge, to local customers who wished to hold private functions. Mr Irvine added that the premises' immediate neighbours supported the application to vary and he had received three letters of support that morning.

Mr Irvine stated that many of his patrons left the premises at 9.45 – 10.00pm to go to other pubs in the village that remained open until midnight and he was finding it difficult to continue operating the premises at the current hours. He also wished to be able to allow patrons to sit outside the premises to enjoy the sunshine whilst having a drink as other premises in the vicinity offered such facilities.

Questions to the Applicant

The Police Legal Representative asked questions of the applicant and the following issues were raised:-

- The Police legal representative referred to the applicant's comment regarding the difficulty he was experiencing in competing with other licensed premises due to not being able to open as late and also that he was not able to offer outside space to patrons. The legal representative confirmed that the Police was happy for the applicant to operate an outside drinking space until 9.30pm in order to assist.
- Reference was made to Sergeant Higgins' statement and it was highlighted that nine of the incidents detailed in the statement had occurred after 11.00pm and that by opening for an additional hour, patrons would consume more alcohol and contribute to rowdy behaviour. The applicant stated that the way in which the previous DPS had run the premises had resulted in the instances of crime and disorder and that he did not envisage any problems under his management.
- The Police legal representative stated that Mr Irvine had been running the premises since October 2008 and did not consider this to be a long time. Mr Irvine responded that it was a long time for there to have been no trouble at the premises.
- The Premises Manager, Mrs Randall, added that the clientele at the Red Rose had also changed since the previous DPS had gone and more mature customers were now using the premises. The Police legal representative suggested that this may be due to the restrictions placed on the licence to which Mr Irvine responded that the previous DPS had let anyone into the premises and had no regard for the licensing laws. Mr Irvine considered that the measures he and his staff had taken had eradicated trouble at the premises.
- The Police legal representative considered that it was about balancing everyone's interests and that an additional hour twice a week would cause extra stress to neighbours of the premises. Mr Irvine stated that the premises was often empty before 10.00pm on a weekend due to it not being open as late as its competitors which was damaging his trade.

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

- Reference was made to the history of the premises which had also been under the ownership of Enterprise Inns plc who had claimed not to have been unaware as to the problems at the premises and a Member of the Committee considered this to show a significant lack of supervision on their part. Mr Irvine was asked whether Enterprise Inns sent out a supervisor to see how the premises was operating. In response, it was explained that, following the revocation of the licence under the previous DPS, a meeting was held with Enterprise Inns which had resulted in the Company registering an interest in all of its licensed premises. This meant that the Company now received copies of all correspondence from the Police and local authority on matters relating to its premises. This allowed the Company to monitor what was happening in its premises at all times.
- A Member of the Committee referred to the request for tables to be reinstated outside for an outside drinking area which would be limited to eight and it was queried how many tables had been outside previously. Mr Irvine replied that there had been approximately 34 tables at one time which had bordered neighbours' gardens. A plan was circulated which showed the area where it was proposed to place eight tables which would be situated at the furthest point away from residential dwellings. It was confirmed that this area would be fenced in.
- In response to a query, Mr Irvine advised that the smoking area was situated outside the main entrance to the premises. This was indicated on a location plan and circulated to those present.

Relevant Representations

Mrs Weatherley – local resident

Mrs Weatherley, a local resident, was in attendance at the meeting to support the applicant and spoke in support of the application.

Mrs Weatherley stated that she had lived in nearby Haymore Street for 20 years and had never been disturbed by people leaving the Red Rose but mentioned that she had been disturbed by people leaving the Erimus Club. She stated that she had previously been a patron of the Red Rose but had stopped going in when the previous DPS took over as there had been high levels of violent behaviour. Mrs Weatherley considered that Mr Irvine and his staff managed the premises well and would not tolerate any bad behaviour. They had embraced local residents who were now using the premises again and it was now a family pub once more. Mrs Weatherley concluded that she fully supported the application and supported Mr Irvine and his staff.

Questions to Mrs Weatherley

All parties were afforded the opportunity to ask questions of Mrs Weatherley and the following issues were raised:-

- Councillor McIntyre, local ward councillor in attendance making representations against the application, asked Mrs Weatherley whether she had ever experienced any problems with the Red Rose when the previous DPS had been in charge. Mrs Weatherley advised that she had not, however, she had known about the trouble at the premises.
- Councillor McIntyre queried whether Mrs Weatherley had ever sat outside the premises when the tables had been there and if so, how long ago. Mrs Weatherley confirmed that she had enjoyed sitting outside the premises on a sunny day and had done so when the previous DPS was in charge but she had stopped going when the DPS had barred her friends from the premises.

The Police legal representative asked questions of Mrs Weatherley and the following issues were raised:-

- Reference was made to Mrs Weatherley's comment that she had been disturbed by people leaving the Erimus Club and she was asked whether those people could have been leaving the Red Rose. Mrs Weatherley stated that she was sure that they were leaving the Erimus Club as the conversation was that of a more elderly nature, for example chatting about bingo and also an elderly gentleman who used to stand outside of her house coughing which kept her awake.
- In response to a query, Mrs Weatherley stated that she had stopped sitting outside the Red Rose when the previous DPS had barred the people she socialised with for complaining about the quality of the beer.
- In response to a further query, Mrs Weatherley confirmed that she saw no difficulties with the operation of the premises as it currently stood and had no interest in the premises other than being a local patron who also played an active part in fundraising events at the premises.

Councillor McIntyre – Ward Councillor, Park Ward

Councillor McIntyre, Ward Councillor for Park Ward, was in attendance at the meeting to make representations on behalf of Park Ward Community Council and several local residents who opposed the application.

Councillor McIntyre accepted that, under the management of Mr Irvine and his staff, the premises had improved dramatically and considered Mrs Randall to be a very good manager. Councillor McIntyre felt that whilst the management of the premises had changed for the better, one thing that had not changed was the geography of the premises and the fact that residents still lived nearby. She believed that if the additional hour on Fridays and Saturdays was granted, this would cause additional noise disturbance at night for residents. Councillor McIntyre added that even though it had been stated that a more mature clientele had been attracted back to the premises, residents would still experience noise disturbance from patrons leaving the premises, saying goodnight, etc and from cars and taxis coming and going.

Mr Irvine accepted that he was unable to physically move the premises but felt that residents would have been aware of the premises' existence when they moved to the area and would expect some noise. Councillor McIntyre stated that some residents pre-dated the premises but the nearest residential property was approximately 10 metres away from the premises.

Councillor McIntyre stated that Mr Irvine had not been in charge of the premises for a year yet and that residents knew little about his background and did not feel that sufficient time had elapsed to support his application based on his history in relation to the premises.

Residents had indicated that they did not object to the outside drinking area being reinstated providing that it was properly supervised.

Cleveland Police

Cleveland Police were in attendance at the meeting to make representations in relation to the application.

The Police legal representative made reference to Sergeant Higgins' statement and stated that the Police had no objections to the outside drinking area being reinstated and operating until 9.30pm. However, the Police had concerns in relation to the additional hour being requested as it could potentially undermine the four licensing objectives.

Sergeant Higgins agreed that since the change of management and DPS at the premises, violence and disorder were at an all time low and stated that he had worked closely with Mr Irvine and Mrs Randall and would continue to do so in the future.

Sergeant Higgins summarised his concerns in relation to the additional hour requested as follows:-

- In his experience of all licensed premises, Sergeant Higgins considered that the later a premises remained open, crime and disorder levels associated with the premises were increased.
- Whilst he accepted that Mr Irvine and his staff ran the premises well, Sergeant Higgins believed that there would be an increase in crime and disorder incidents at the premises if it were to remain open beyond 11.00pm as patrons would consume more alcohol in the additional hour.
- The location of the premises concerned Sergeant Higgins as it was located amongst residential properties and noise nuisance was another concern.
- Sergeant Higgins considered that an additional hour would provide patrons with the opportunity to drink alcohol for an extra hour which would inevitably lead to increased disorder and noise.

Questions to those Making Representations

The applicant was afforded the opportunity to ask questions of those making representations and the following issues were raised:-

- Mr Irvine stated that there had been no disorder at the Red Rose since he had taken over management of the premises and added there had been very little disorder at the other pub he ran in Middlesbrough, both of which were difficult pubs to run, as he had strict measures in place to deal with problems. Mr Irvine referred to two pubs situated approximately 100m from the Red Rose and asked whether they experienced incidents of disorder on a regular basis. Sergeant Higgins replied that they did.
- Mr Irvine then asked whether the two pubs he referred to had experienced more or less incidents of crime and disorder than the Red Rose when the previous licence holder had been in charge. Sergeant Higgins confirmed that under the previous management, there had been more incidents at the Red Rose.
- A Member of the Committee referred to Sergeant Higgins' statement where he had described the Red Rose as a 'small estate pub', however, he had then compared it to later opening premises in the town centre where crime and disorder was experienced and felt that he was basing his concerns on all licensed premises. Sergeant Higgins responded that his concerns were based on the fact that later opening premises tended to have higher levels of crime and disorder due to them being open later, allowing patrons to consume more alcohol. He added that the top ten venues linked to crime and disorder all had opening hours of midnight and beyond.
- A Committee Member asked whether there had been any incidents of crime and disorder up to 11.00pm since Mr Irvine had taken charge of the premises. Sergeant Higgins advised that there had only been one incident during this time.
- In response to a query as to whether this incident had been recorded, Sergeant Higgins confirmed that it had not as it had been a minor incident between customers.
- A Member of the Committee expressed concern that the incident had not been recorded. The Police legal representative responded that Sergeant Higgins' first statement had been used at the first Hearing to highlight the level of incidents at the Red Rose. The incident which occurred in March 2009 had not been included as it had been one minor incident, however, there may be further incidents should the additional hour be granted.
- In response to a question, Sergeant Higgins confirmed that the Red Rose had never been in the top ten of pubs relating to crime and disorder in Middlesbrough.
- In response to a query from a Member of the Committee, Sergeant Higgins stated that, in his experience, no matter how well run a premises was, there would always be some level of incidents and the later the premises opened the more incidents there would be.

Summing Up

Councillor McIntyre

Councillor McIntyre, Ward Councillor for Park Ward, summed up by stating that she did not believe that an additional hour, twice a week, would make a significant difference to the premises finances. She acknowledged that the premises were now well run but agreed with the point Sergeant Higgins had made regarding the increase in crime and disorder the later the premises were open. Councillor McIntyre also believed there would be noise disturbance to residents from patrons leaving the premises at a later hour and noise from cars and taxis coming and going.

Cleveland Police

The Police legal representative summed up by stating that since the new DPS and Manager had been installed at the Red Rose, it was now being run in accordance with the four licensing objectives. It was acknowledged that whilst the premises was being managed well, there were concerns that this was partly due to the current restrictions, particularly the sale of alcohol being restricted to 11.00pm.

Mr Irvine had stated he wished to compete on a level playing field with other licensed premises in the vicinity, however, due to the licensing objectives being undermined at the premises in the past, restrictions had been placed on the licence for that reason. The Police considered that granting an additional hour would undermine the licensing objectives as people would drink to excess leading to potential increases in crime and disorder and public nuisance. If incidents did increase, this would lead to increased pressure on Police resources. Reference was made to the Council's Licensing Policy, paragraph 38 in relation to the loss of amenity to local residents.

Mr Irvine

Mr Irvine, current DPS, Red Rose, summed up by stating that he felt those opposing the application were doing so based on the previous DPS of the premises and the levels of trouble at the premises during that time.

Mr Irvine stated that the reason for requesting an additional hour on Fridays and Saturdays was in order to compete on a level playing field with other licensed premises situated in the vicinity. He accepted that the Red Rose was in a residential area but considered that the other licensed premises were also located near to residential properties, however, they were not being restricted in their operation.

Mr Irvine stated that he would be happy to return to Committee in three months' time if Members felt that the premises was not being operated properly. He added that he had used £10,000 of his own money to ensure the premises remained open. He concluded that they wished to attract the right kind of people to the premises and to be given a chance.

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 Council's Legal Representative announced the Committee's decision.

DECISION

ORDERED as follows, in relation to the application to vary the Premises Licence in respect of the Red Rose, Cumberland Road, Middlesbrough, Ref No. MBRO/PR0076:-

1. That the proposed extension of hours for the sale of alcohol until midnight on Fridays and Saturdays be refused.
2. That the condition prohibiting the consumption of alcohol in the external areas of the premises be removed and that eight outdoor tables be permitted for patrons' use up to 9.30pm daily, and located as indicated on the plan circulated at the meeting, with the addition of the following conditions (as agreed with the Police and Noise Team prior to the Hearing):-
 1. That outside drinking is restricted to between 11.00am and 9.30pm.
 2. That the maximum number of tables in the outside area be restricted to 8 (in the area indicated on the plan circulated at the meeting).
 3. That the DPS or other identified responsible member of staff, monitor the outside area whilst outside drinking is taking place, every 30 minutes and deal with any unacceptable behaviour.

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

1. The case presented by the applicant.
2. The representations made at the meeting by Councillor McIntyre, Ward Councillor for Park Ward, on behalf of local residents.
3. The representations made at the meeting by Cleveland Police.
4. The representations made at the meeting by a local resident in support of the application.
5. The four Licensing Objectives of the Licensing Act 2003.
6. Relevant Government Guidance, particularly in relation to:-
 - Crime and Disorder, starting at paragraph 2.1, Annex D.
 - Prevention of Public Nuisance, starting at paragraph 2.32, Annex D.
 - Protection of Children from Harm, starting at paragraph 2.41, Annex D.
7. Middlesbrough Council's Licensing Policy particularly in relation to:-
 - Crime and Disorder, Pages 17 and 19.
 - Prevention of Nuisance, Pages 10 to 16.
 - Protection of Children from Harm, Pages 20 to 22.

Members had made their decision based on the following reasons:-

1. The Committee recognised that there had been a massive improvement in relation to the operation of the premises since the current licence holder and manager had taken over, with virtually no incidents occurring, which was also acknowledged by the Police and local residents.
2. In relation to extending the hours for the sale of alcohol, the Committee considered that it would increase public nuisance in the area, particularly as the premises was in close proximity to residential dwellings.

The applicant was reminded of the right to appeal to the Magistrates Court within 21 days of the date of the decision.