

LICENSING SUB-COMMITTEE C

A meeting of the Licensing Sub-Committee C was held on 10 March 2015.

PRESENT: Councillors Taylor, (Chair), Hudson and Mawston

ALSO IN ATTENDANCE: Representing the Applicant:
Sarah Taylor
Emma Thomas

Representative from Nunthorpe Parish Council:
K Tomlinson

Councillor B Thompson
Councillor P Sanderson

OFFICERS: C Cunningham, T Hodgkinson, S Lightwing

APOLOGIES FOR ABSENCE There were no apologies for absence.

DECLARATIONS OF INTERESTS

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

14/10 **APPLICATION FOR PREMISES LICENCE - THE VINTAGE INN, GREYTOWERS FARM, NUNTHORPE, MIDDLESBROUGH TS7 0NF**

A report of the Assistant Director of Economic Development had been circulated outlining an application for a Premises Licence in respect of the Vintage Inn, Greytowers Farm, Nunthorpe, Middlesbrough, TS7 0NF - Ref No: PR0253.

Summary of Proposed Licensable Activities

Recorded Music: 11.00 am to 12 midnight daily.
Supply of Alcohol: 11.00 am to 12 midnight daily.
Late Night Refreshment: 11.00 pm to 12 midnight daily.

Full details of the application and accompanying operating schedule had been reproduced at Appendix 1 to the report.

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

The Principal Licensing Officer presented the report in relation to an application for a Premises Licence in respect of the Vintage Inn, Greytowers Farm, Nunthorpe, Middlesbrough, received on 18 December 2014, as outlined above.

The application was in relation to premises that had not yet been built. The proposed location of the premises was detailed on the plan attached at Appendix 2. The Applicant had advised that the premises would operate as a Vintage Inn Country Pub and Restaurant. The premises were located close to proposed residential premises alongside Poole Roundabout in Nunthorpe.

A number of additional conditions had been agreed with the Environmental Health Officer in relation to keeping windows and doors closed whilst entertainment was taking place and with the Police in relation to the installation of digital colour CCTV, the details of which were attached to the submitted report.

The application had been properly made and served on all statutory authorities and applicant had advertised the application, as required by the Licensing Act 2003, in the Evening Gazette on 23 December 2015.

On 13 January 2015 a representation was received from Nunthorpe Parish Council, objecting to the application on the grounds of the prevention of public nuisance. A copy of the representation was attached at Appendix 3 to the submitted report. Following receipt of the representation the Applicant offered a further condition upon the basis that the Parish Council withdrew their objection. That condition was as follows: There shall be no new customers admitted to the premises after 23:00 hours.

The condition was considered by the Parish Council who then advised that they did not wish to withdraw their representation.

Members were referred to the relevant sections of the Council's Licensing Policy and were advised that the Committee could grant the application, subject to conditions consistent with the operating schedule and mandatory conditions if applicable, grant the application subject to the addition of new conditions, or reject the whole or part of the application.

The Chair invited the Applicant's Solicitor to present the Applicant's case to the Committee.

The Applicant

The Applicant's Solicitor advised Members that 2 acres had been set aside for the public house as part of a 100 acre site being developed by David Wilson Development. The Developer wanted a high end brand public house and a number of other operators were turned down. Mitchells and Butlers Leisure Retail Limited operated a range of different brands including Toby Carvery, Harvesters and Vintage Inns. The Company operated 1700 premises all over the country and had many proven procedures and policies in place which would be instilled in the new Greytowers premises.

Local pubs which were the Vintage Inn brand included the Old Farmhouse and the Tawny Owl, both of which were located near to Darlington, approximately 12 and 14 miles away respectively. Both pubs operated until midnight and no issues had been reported. The nearest Mitchells and Butlers pubs to Nunthorpe were the Pied Piper, approximately 1.1 miles away and the Toby Carvery, approximately 2.6 miles away. Both pubs also had midnight closing.

The Vintage Inn brand was a country pub and restaurant and that was how it would operate. A copy of the food and drinks menu and some photographs showing the brand had been provided to the Committee.

The Applicant's Representative added that the Vintage Inn brand was a country pub with rural, rustic charm both internally and externally. The pub would be an amenity for the community and family orientated with mother and baby groups and other family events. Vintage Inn pubs were also popular with more elderly people for coffee and cake and were not popular with young drinkers. There were 189 Vintage Inn pubs across the country.

The Applicant's Representative was responsible for the licensing of all those pubs and stated that they were not the sort of place to attract young drinkers, crime and disorder was not an issue and there had not been any enforcement measures taken. The Company always sought to work with local residents as they were usually their main customers.

The Company was also Cask Mark accredited. The pubs were closely managed and operated and there were Designated Area Managers in place. Mitchells and Butlers had a dedicated team that focused on licensing issues to ensure that all responsibilities were met. Vintage Inns were very welcoming pubs with log fires and a bright environment for people to come and enjoy a nice meal.

The Applicant's Solicitor referred to the Planning Report and highlighted that the nearest property to the rear car park would be 35 metres away and from the front entrance would be 70 metres away. The Planning Application initially granted opening hours from 11 am to 11 pm. The Applicant was later granted a temporary extension to 12.30 pm closing for a six month period for deliveries. The Planning Committee did not feel the extension of one and a half hours would affect the amenity of the area. It was therefore in the Company's interests to

ensure that the initial six months' trading period was trouble free.

Regarding recorded music, the Parish Council's objection had referenced a public nuisance. The Applicant applied for music for all licence applications in case a music event was required. This was because there was a grey area in law as to what was background music. It was stressed that with this style of pub there would not be high level music, just low level background music and therefore there should not be any issues with public nuisance from music. There had not been any problems reported across the country from people living near premises in relation to music in Vintage Inn pubs. A condition had been agreed that the doors and windows would be closed if recorded music was played or for any one off music events.

A condition with regard to CCTV had also been agreed with the Police. The Company had offered a condition to try and resolve the Parish Council's objection which was that no more customers would be admitted after 11.00 pm. The Applicant did not feel this was needed because generally most customers would have left the premises by that time anyway. The Parish Council's representation stated that other premises in the area closed at 11.00 pm. However, The Southern Cross, The Rudds Arms, Tennis World and Nunthorpe and Marton Recreation Club all had midnight closing hours.

The Applicant looked to Environmental Health and the Police to provide guidance and conditions, which they had done in respect of the application. The Applicant's Solicitor quoted the Licensing Act 2003 paragraphs 9.1.5 and 9.1.3, which stated that the Licensing Authority was encouraged to take guidance from the responsible authorities as to whether there were any issues locally. Both the Environmental Health Officer and Police were happy with the hours and that they were appropriate and reasonable. Other premises in the area had 12 midnight closing and each case should be taken on its merit. There was no evidence that Vintage Inns had any problems in other areas of the country and since 2005 the standard trading hours had always been 10 am to 12 midnight. The Applicant had amended the opening time to 11 am in line with local planning requirements and had been granted 12.30 pm closing by the Planning and Development Committee on a temporary basis.

The Applicant's Solicitor referred to Case Law, a copy of which had been provided to the Committee and read out Paragraph 63 which related to the summing up of the District Judge in the case provided. In this case the Applicant's evidence was the fact that there had not been any problems up and down the country with a similar brand, in similar locations.

The Applicant's Solicitor reiterated that if there were any operating issues during the first six months then the premises licence could be reviewed by the Planning and Development Committee. The Applicant's Solicitor stated that the Guidance at paragraph 30.44 encouraged the Committee to consider the hours applied for and not restrict the hours. Standard hours had not caused any problems in the Company's other premises and it would therefore not be proportionate to restrict the closing time to 11 pm.

The Applicant's Solicitor stated that the Company wanted a good working relationship with residents and a point of contact would always be available.

The Chair asked about the new houses that would be built and was informed that the pub would be facing the roundabout, as would the Beer Garden, therefore any potential noise should be at the front of the premises and away from residential dwellings.

In relation to a query regarding access, it was explained that the entrance would be from the roundabout and a new road would be built. There was also a footpath to the left hand side of the pub. The closest property to the rear car park would be 35 metres and the closest to the front entrance would be 70 metres. The Applicant's representative stated that dispersal from the pub would be staggered as the majority of customers came to eat and then left. People generally did not come to Vintage Inns to have a lot to drink.

The Parish Council representative asked the Applicant what assurances could be given that there would be no public nuisance. The general view of Nunthorpe residents was that they would be reasonably happy with the proposals if customers behaved in the way the Applicant stated they would. The Parish Council representative added that some safeguards should be

in place to ensure that these issues were addressed properly. The representative asked how the Applicant could ensure that the pub would not attract young drinkers rather than families. It was also highlighted that the nearest residential dwelling would be 35 metres away and this was not a big distance.

The Parish Council representative stated residents' concerns in relation to the 12 midnight closing and asked why this pub should be treated as an exception, when Middlesbrough's Policy was for 11 pm closing.

The Applicant's representative responded explaining that the core element and the nature of the business was not one to attract that demographic and young age group. The Applicant's representative stated that she dealt with the reality every day in 189 premises and records proved that there had been no issues or enforcement.

It was highlighted that the pub might not necessarily trade until 12.00 pm but it gave the Company some flexibility.

The Applicant's representative also referred to a letter of support received from the Greytowers Farm Interim Residents Association Organiser which stated that current residents expressed support for the development. In addition, it was highlighted that the Developer wanted a high quality pub on the site.

A Member asked the Nunthorpe Ward Councillor whether there were any issues with The Brunton Arms, another pub in Nunthorpe. The Ward Councillor stated that the car park had been closed and that it was not a very busy pub.

In response to a Member's query regarding the capacity for the pub, it was explained that the numbers would not be known until the premises was built and a Fire Risk Assessment was completed. The main part of the building would be set out for eating with tables and chairs and there would generally be 100 to 150 covers. The Applicant's Solicitor agreed to try and find out the projected capacity for the Committee.

The Chair asked what the food prices were likely to be. The Applicant's representative gave an example of Sunday Lunch being £10 and added that there might also be some special offers during the week.

The Applicant's Representative was asked to clarify her experience of dispersal. The Applicant's Solicitor replied that one of the conditions on the application form was that notices requesting customers to leave quietly would be displayed at all exits from the premises. Management and staff were trained to make sure customers were not making too much noise as they left the premises. Based on other Vintage Inns throughout the country the Company had not experienced any problems with dispersal. Car parking provision would be within the premises and accessed via a new road from the nearby roundabout. The pub would stop serving food at 9.30 pm and most people would probably leave by 11 pm.

A Member asked the Applicant's representative to expand on the "Become Our Friends" logo which was shown on the submitted documentation.

The Applicant's Representative explained that it was a marketing tool and people who signed up to "Become Our Friend" would receive a newsletter advertising any offers or promotions or discounts on food or specialist theme evenings.

Ward Councillor for Nunthorpe

The Ward Councillor highlighted that the pub was in a conservation area and such areas within in Middlesbrough were treated differently than in other areas. The Ward Councillor stated that the distances from the car park to the residential properties were of concern. If the Committee was minded to allow 12 midnight closing, by the time people left the pub it would be 12.30 pm and there would inevitably be some noise from both customers and staff.

The Ward Councillor commented that she felt the letter of support from the Greytowers Farm

Interim Residents Association Organiser was irrelevant.

The Ward Councillor highlighted that two years ago, the Planning and Development Committee gave permission for 297 homes to be built at Greytowers Village. Phase 1 was under construction and the houses were in great demand. Phase 2 of the development was for larger and more expensive housing and the Councillor was concerned that a pub/restaurant with a busy car park might prejudice completion of the second phase. The Ward Councillor suggested that the Developer might request that the original 5 and 6 bedroom homes were reduced to 4 bedroom homes in order to sell them. The Ward Councillor reiterated that her main concern was the noise issue.

Nunthorpe Parish Council Representative

The Parish Council Representative highlighted the ongoing problems in the car park of the Marton and Nunthorpe Club nearby, which appeared to be unsolvable.

The Parish Council Representative did not feel he had received reassurance about how potential noise problems might be resolved. Potentially there could be noise from customers, staff, cars starting up and engines revving. Concern was also raised that the issue of the pub's capacity had not been answered.

The Representative's main issue was that it was a new pub and certain safeguards that local people should have did not appear to be being applied. Since the Middlesbrough Policy was for 11 pm closing time in residential areas, the Representative felt that this application should not be treated as an exception.

Applicant's Solicitor

The Applicant's Solicitor clarified that David Wilson was the Developer for the whole site and the Developer wanted a pub as part of the site. The Applicant's Solicitor stated that she took on board the comments on the distance of dwellings from the car park but this was a planning issue and not a licensing issue. Whilst 11 pm closing was in Middlesbrough's Policy there were other premises in the area which had 12 midnight closing.

Summing Up

Ward Councillor

The Ward Councillor disagreed with the Applicant's Solicitor regarding Phase 2 of the development and stated that Developers often applied to change the planning consent.

The Applicant

The Applicant's Solicitor reiterated that Mitchells and Butlers had other premises in the locality that operated successfully. The Company was mindful of the fact that Middlesbrough's Policy stated 11.00 pm closing but dialogue with the authorities, the circumstances of the Policy, and the measurements in place were enough to state that this was an exception. Referring to the Guidance, the evidence was the fact that this brand had been operated at 189 premises and worked successfully without any problems. Each case had to be taken on its own merits when making any decision. Any plan to restrict the hours had to be necessary. The Applicant's Solicitor urged the Committee to bear this in mind.

The Applicant had made the offer of last admission at 11.00 pm but the Parish Council had rejected it. The Applicant did not feel it was a necessary or appropriate condition as it was unlikely that customers would arrive at the premises at that time, however it had been a condition they were prepared to make.

The Applicant went on to outline the advantages of the premises and that it would be operated by a large company with lots of experience and various levels of management. Mitchells and Butlers was an independent operator with its own policies, procedures and experienced management as well as extensive training for staff to ensure there was no underage drinking

and noise disturbance.

With regard to the concerns for crime and disorder and possible noise levels, the Applicant had agreed conditions with the Environmental Health Officer and the Police which they had deemed appropriate. Neither had objected to the hours. The Applicant had conceded an extra hour in the morning in line with local planning recommendations. The pub had temporary planning permission to open until 12.30 pm. The Applicant's Solicitor concluded that it was in the Applicant's interests to ensure that the pub was managed effectively.

DECISION

The Application was considered on its own merits and consideration was given to:-

1. The Licensing Act 2003 and amended Government Guidance issued under Section 182 of the Act.
2. Middlesbrough Council's Licensing Policy.
3. The case presented by the Applicant.
4. The relevant representations made by the Parish Council's representatives.

The Committee decided to grant the application for a premises licence subject to the hours being restricted in respect of the licensable activities from 11.00am to 11.00pm daily and subject to the conditions specified in the operating schedule modified by the following amended and additional conditions agreed by the police and environmental health:-

- Other than for access and egress, inner doors and windows shall be kept closed when recorded music (other than background music) is played within the premises.
- A digital colour CCTV system with recording equipment shall be installed and maintained to cover internal areas of the premises in consultation with and in accordance with reasonable requirements of Cleveland Police licensing department.
- The CCTV system shall record at all times and the recordings shall be retained for a period of 31 days. Upon reasonable request of the police or other responsible authorities a copy of the CCTV footage shall be available on disc.
- An incident book shall be kept at the Premises at all times and used to record any incidents that occur at the premises. The incident book shall be made available on request of the police or other responsible authority.

The reasons for the decision to reduce the proposed hours that the licensable activities can take place from up to 12 midnight to 11.00 pm daily are as follows.

The Committee considered the Guidance at paragraph 13.43 in that the Government acknowledged that different licensing approaches may be appropriate for the promotion of the Licensing objectives in different areas and the licensing authority through its policy was best placed to make decisions regarding licensing hours.

In accordance with Paragraph 13.44 of the Guidance Middlesbrough's Licensing Policy clearly states that in predominantly residential premises the licensing authority will normally expect all licensable activities to cease at 11.00 pm.

It explains that hours of 12.00 midnight and beyond will be more favourably considered for premises located:-

- a. In predominantly commercial areas, such as the town centre, and
- b. where there is a high level of accessibility to public transport services, and
- c. where there is an appropriate amount of car parking, readily accessible to the premises, and
- d. the applicant is taking appropriate steps to comply with the objective of preventing public nuisance.

The reason for this policy is stated, in summary, to be that residential areas are sensitive to the impact of noise generated by licensable activities especially by patrons departing either on foot or in cars which is particularly intrusive at night when ambient noise levels are much

lower. In residential areas, where ambient noise level is lower later at night, noise disturbance from activities becomes more probable.

This policy was made after consultation with the various responsible authorities, the trade and residents and is in place to protect residential areas from disturbance from premises passed 11.00 pm as the risk of disturbance to local residents is greater when licensable activities continue late into the night and into the early hours.

The Committee considered that the premises are in a predominantly residential area and do not meet the criteria in the policy for premises to be considered for hours of 12 am and beyond.

The Applicant advised the Committee that in accordance with the guidance and paragraph 63 of the judgment in *Daniel Thwaites Plc v Wirral Borough Magistrates Court 2008* the Committee should consider the evidence that Environmental Health and the Police were satisfied with the hours subject to the addition of conditions and the Applicant's evidence including evidence relating to other premises.

The Committee considered that Environmental Health as a responsible authority dealt with potential noise disturbance by music emanating from the premises by requiring a condition to close the windows and doors when music other than background music is being played. The Committee also considered that the police were satisfied the addition of the CCTV condition would meet the prevention of crime and disorder objectives.

The Committee noted that the Premises, unlike the premises in the Thwaites case, are new premises and therefore the Committee is obliged to assess the risk of potential nuisance caused by the activities and take steps where appropriate to do so. The Committee also considered that agreement by the Police and Environmental Health did not preclude the Committee from considering the concerns raised by the Parish Council on behalf of residents about the potential disturbance by customers at the premises or leaving the premises at midnight and later.

The Committee noted the information from the Applicant that there have been no problems of nuisance or disturbance in other Premises with the same theme, however, considered that those premises may differ in location and impact. Also the Applicant advised the Committee the theme or style of the Premises is not aimed at young adult customers or those who are likely to cause a disturbance. However, the Committee considered that where premises are open late customers will potentially leave later.

The Committee considered that the premises will be a new public house. It is situated in the middle of an existing residential area and residential development with residential houses in close proximity. There are no other licensed premises or commercial premises in that particular vicinity. The Committee therefore considered that patrons would be likely to exit on foot through the residential areas in addition to leaving by car or taxi. There is also an outside area where patrons can drink and eat for the duration of the permitted hours. The applicant could not supply the capacity for the premises but advised a rough estimate of seating capacity.

Therefore due to the Premises' particular location, the provision for drinking alcohol and eating during the outside area and the likelihood of patrons exiting into residential areas the Committee considered it was not appropriate for the promotion of the prevention of public nuisance for the premises to carry out the activities as late as midnight with the premises closing even later.

The Committee considered it is likely that, despite notices on the premises advising customers to leave quietly or management systems in place, the potential noise emanated by customers leaving at midnight or after or drinking or eating in the outside area up to this time is likely to cause an unacceptable and disproportionate disturbance to local residents in a quiet residential area late at night and into the early hours of the morning.

The Committee recognised the benefit of a public house to the area in the style offered by the

applicant with the controls and management procedures proposed and therefore agrees to the activities at the premises to be provided to 11.00 pm daily as set out in the Council's policy and for the promotion of the licensing objectives.

The Committee noted the concerns of residents regarding the development of the area however could not take such concerns into consideration as they are not relevant to the licensing objectives.