

## **DURHAM COUNTY COUNCIL**

At a Meeting of **Statutory Licensing Sub-Committee** held in Committee Room 2, County Hall, Durham on **Thursday 12 January 2017 at 11.30 am**

### **Present:**

**Councillor C Carr (Chairman)**

### **Members of the Committee:**

Councillors I Jewell and P May

### **Also Present:**

Cllr B Kellett

Y Raine – Senior Licensing Officer

K Coulson-Patel – Solicitor DCC

M Foster – Mincoff Solicitors, applicant's representative

T R Robson – TRJ Licensing Agents

D Anderson – Applicant

D Clark – Bar Manager

J Cook – other person

M Harvey – other person

A Hartley – other person

I Davies – other person

E Henley – other person

A Penny – other person

I Penny – other person

### **1 Apologies for Absence**

There were no apologies for absence.

### **2 Substitute Members**

There were no substitute Members.

### **3 Declarations of Interest**

There were no declarations of interest.

#### **4 Application to Vary a Premises Licence - Edmundbyers Youth Hostel, Edmundbyers, Consett**

The Committee considered a report of the Corporate Director of Adult and Health Services regarding an application to vary a Premises Licence in respect of Edmundbyers Youth Hostel (for copy see file of Minutes).

A copy of the application and supporting documents had been circulated to Members, together with additional information supplied by the applicant and objectors since the report had been published.

Prior to the commencement of the business the Chairman asked the applicant and objectors to nominate spokespersons to address the Sub-Committee. The Sub-Committee had read all the information that had been provided to them and were familiar with all aspects of the application. This was agreed by all parties. Mr Cook, other person would be given the opportunity to speak separately in support of the application.

The Senior Licensing Officer presented the report and referred Members to the plans on display which showed the existing licensed areas of the premises and the internal layout.

Questions were invited of the Senior Licensing Officer. Councillor Carr asked if the hours requested for the sale of alcohol included 30 minutes drinking up time. Mr Foster, the applicant's representative confirmed that it did not as the premises were open 24 hours.

The Chairman also noted that the Planning Authority had commented on the application but that this did not constitute an objection to the application.

Mrs Henley, other person questioned whether the Notice of Application had been correctly published and was informed that it had been served in line with the provisions of the Licensing Act. The Notice had been displayed correctly and had been published in a local newspaper, in accordance with statutory requirements.

At this point all parties present were invited to examine the maps on display, and were shown the areas already licensed in black and the area applied for which was edged in red. Mr Foster advised that the warden's flat was currently licensed but was not in use and there were no intentions for it to be used for licensable purposes in the future.

Following a question from Councillor Jewell about the garage area and the double doors, Mr Foster advised that there had not been any complaints of noise under the TENs. The double garage doors led to a single door and window which were single glazed. This was shown in a photograph in the applicant's Bundle of Evidence. The garage doors could not be removed as they were part of the listed building.

Mrs Penny made the point that when the doors were open noise was constant but Mr T Robson, Licensing Agent made the point that the heavy duty curtain across the internal door and window was an effective sound deadener.

The objectors to the application were invited to make representation. In the first instance Mrs Henley referred to Licensing Guidance and 'in the vicinity'. She advised that some supporters to the application were not residents of the village.

Mr Foster clarified that the Guidance Mrs Henley referred to had been updated and the vicinity test had been removed.

Referring to the applicant's bundle Mrs Henley made reference to the Wednesbury Principles and the Thwaites case and was encouraged that the applicant was willing to apply the principle of reasonableness.

Mrs Henley noted that there were no representations from Responsible Authorities and therefore did not consider that full notifications could have been made. The Chairman assured Mrs Henley that as with every application Responsible Authorities had been consulted and had chosen not to make representation.

Residents considered that the application to vary the Premises Licence was an indication that the licence holder wanted to change the style of operation.

With regard to tourism Mrs Henley did not believe that a small bar with a crowd density of 2 persons per sq/m around a bend from the centre of the village could contribute any more than it already did as a youth hostel. The addition of the bar may impact upon the local pub resulting in a potential reduction in employment at that venue. When the public house closed this had an impact on the village; the current owner was new and supported the community hall with catering; there was symbiosis. The landlord did not have significant trade on several nights of the week and if the public house was forced to limit its offering the community would suffer.

On employment, residents were not making representations against the original licence or resisting the sale of alcohol and there were therefore still additional employment opportunities for the premises. The original building under the 2007 licence could serve alcohol in the dining area as long as they were sympathetic to the resident children's hours for eating, for example, and in line with the existing hours of operation at worst.

One of the supporters to the proposals was a competing inn with a catering operation approximately 2 miles away and could provide 'covers' for the new operation, thereby potentially having a vested interest in the premises.

Residents had complained to the Planning Department who were investigating a potential offence.

Mrs Henley believed that Torte, Statute and Case Law supported their case, particularly the Health and Safety at Work Act and the Human Rights Act. The Torte of Nuisance made reference to 'being materially and significantly affected'. Mr and Mrs Penny could be affected by the variation of the licence, as could be seen in their submissions.

The premises was located on a dangerous road and there had been traffic accidents in the location, including an accident where a girl had been severely injured leaving the premises.

Residents had produced a newspaper article for circulation at the meeting but the applicant's representative objected to its late submission on the day of the hearing. Mrs K Coulson-Patel clarified that residents had submitted other late representations but these had been received the day before the hearing and had been taken into account, however those that had been submitted on the day had not been agreed by the applicant and could not be considered.

Mrs Penny then addressed the Sub-Committee and read from her statement included in the additional bundle provided by residents.

She had noticed that changes were being made to the garage with a bar area created, but at no point was a public bar mentioned. Having been away she had come home to find signage on the public highway advertising 'Bar Open'. Her home now looked directly into a public bar and as a consequence her privacy had been invaded. She had spoken with the Licencing Authority on 7 November 2016 and subsequently the applicant had sought Temporary Event Notices (TENs) for the garage bar. Mrs Penny was very concerned that there had been no consultations with village residents and the Parish Meeting. Prior to the TENs being sought, alcohol had been sold in an unlicensed area, which had been verbally confirmed by customers. Already functions had caused a detrimental impact to village residents. A wedding reception in September 2016 included tee pees at the rear of the property and created noise until 04:00 in the morning. The law had already been flaunted and residents were concerned that more functions would be held, and that a precedent had been set by the applicant to further develop this public bar.

Having lived opposite the youth hostel in Edmundbyers for 34 years she was now confronted with a public bar. She appreciated that a licence was granted back in 2007 to the Youth Hostel Association, but this was part of their nationwide development, with the intention being for the sale of alcohol to residents. Objections nevertheless were put in and the licencing authority sought amendments, however no alcohol was sold on the premises. The building had been a youth hostel since 1933 and was one of the oldest in the country. As a youth hostel the clientele were a completely different demographic to those who used a public bar. The access door to the hostel had never been an issue, but now the garage doors were virtually always open from before 10:00 in the morning to as late as 11:00 at night with more cars parking outside the building on a dangerous bend of the road, and outside our own house, where in the past the Police had raised issues about parking near to a junction.

Mrs Penny understood that the applicant had invested money in the alterations but she strongly objected to the garage operating as a public bar. Already customers had been seen congregating to smoke and drink outside of the garage and it had also been witnessed on at least one occasion a customer urinating to the side of the garage on the dividing fence between the premises. Mrs Penny was concerned that there would be more noise and disturbance if the bar continued to be accessed through the glass door. This huge glass wall, with an inset door was highly visible,

as the original garage doors were virtually continually left open, spoiling the frontage of this grade 2 listed building.

The room above the garage had always been for residential use, a lounge/bedroom for the warden of the hostel. This room looked directly onto her property and into her bedroom. She appreciated that this area was already licensed. Where her husband sat looked directly into the bar area.

Edmundbyers was a very small village which already had a public house to serve the community and transient visitors. Quite a few residents were worried about the public nuisance which may result from a public bar operating from the youth hostel garage and how this new venture would be further developed.

Mr Foster then addressed the Sub-Committee on behalf of the applicant. He commenced by taking the Sub-Committee through the application which was principally to extend the licensed areas to the garage and corridor, as shown in red on the plans on display. Contained within the Bundle of Evidence were proposed conditions for agreement; these were robust conditions which should address any concerns. This was not an application to extend hours or to add licensable activities, and although he appreciated the concerns of residents regarding the upstairs room he assured them that it would continue to be used as a flat.

The premises had been a youth hostel since the 1930s but had been through a number of changes of use as detailed in the bundle. The premises had been licensed since 2007 prior to Mr Anderson purchasing the premises in 2014. The applicant intended to operate the business alongside the caravan park and the bar area which would make these business proposals more viable. The garage was the most secure part of the building and was the reason for choosing this location for the bar.

The business employed Mrs Debora Clark as Manager and there were part-time members of staff running the bar. The bar was mostly wet led with 3 gas fed barrels and 1 cask beer, a selection of spirits and a double-fridge with mixers and wines. A small wireless radio provided background music.

In the land surrounding the premises there was a copse of trees with barbecue areas, a shed for bikes and picnic tables.

Mr Anderson was currently the Designated Premises Supervisor (DPS) but the intention was for Mrs Clark to take on the role.

Mr Foster then proceeded to explain how the bar would operate. The bar would be open on Friday and Saturday at this time of year but may be open more during the summer months, depending upon demand. The hours requested would allow flexibility. It was envisaged that the clientele would be local residents and residents of the youth hostel.

There was a 24 hour CCTV system held for 28 days and robust training in place which were included as conditions. The Police had no issues and had no cause to visit the premises, nor had the applicant required their attendance. The Police had

only requested one or two conditions which had been agreed. Mrs Henley in her written representation had suggested that there was a crime wave in the area, but as could be seen in their Bundle of Evidence he had carried out crime mapping which disputed that. There had been no suggestion of any crimes linked to the youth hostel or the pub in the village.

Environmental Health were not concerned about the proposals and had not received any complaints about the premises, as confirmed in e-mail correspondence included in the papers.

At this point Dr Cook was asked to address the Sub-Committee in support of the application. He explained that he lived in the local area and used the local public houses, including the premises which he found to be light-hearted and professionally run. He had tried to come up with any disadvantages or detriments to the proposals but could not. He had not witnessed any anti-social behaviour. The vast majority of customers tended to be locals and people were aware that they should leave the premises quietly. Smokers were encouraged to use the rear of the premises. This bar was a different offering to the pub and did not provide food.

Upon questioning by Mr Foster about the wedding, Dr Cook advised that the bar had closed at 12 midnight and he believed the band had stopped at the same time. He did not know if the wedding party had organised this but a lot of the village were in attendance. He left the party about 12.15am so could not verify the complaints about noise until 4am.

Mrs Penny noted that Dr Cook had only lived in the village for a year yet had made a sweeping statement that a lot of residents were at the wedding. Dr Cook advised that they were villagers that he recognised from his visit to the local pub.

After a 10 minute adjournment Mr D Anderson, the applicant was asked to address the Sub-Committee. He explained that he had only ever lived in Edmundbyers and had always worked in and around the village. The youth hostel was a failed business and as with any failed concern a different business model was required. He became the Premises Licence Holder (PLH) in May 2016 and then the DPS, prior to which no alcohol had been served. The garage area was the most appropriate area to be developed as a bar. It could be easily secured and had one heavy duty fire door. Alcohol had been served since the end of September 2016; he had been under the wrong impression that the Premises Licence included that part of the building. The Licensing Enforcement Officer had alerted him of the floor plan and that this room was excluded from the licensable areas of the building. As soon as he had been made aware of this he had operated using TENS.

Upon questioning about the wedding, Mr Anderson explained that it was the wedding of friends who had asked if they could use an area of land for the function. Alcohol had been served from the bar as he was unaware at the time that it was not within the licensable area. The bar ceased trading at 12 midnight. The function was a private function in a marquee and teepees were located at the rear of the building. There was a live band in the marquee but there were guests with their own musical instruments who continued after the band had stopped playing. This was

the first time he had participated in hosting an event of this nature and had learned from it.

He was not aware of any crime or nuisance associated with the premises and until last night no residents had complained. A resident had asked if he proposed to hold rock concerts every weekend to which he had replied that this was not his intention. Unfortunately the concerns appeared to have arisen from the wedding event.

The experience of Debra Clark was outlined to Members; her expertise in licensing was important as it was essential to have a trustworthy DPS.

Mr Anderson would be willing to 'de-licence' the upstairs room; this licensed area had been inherited when he took over the premises. There had been a lot of speculation about the upstairs area but he assured all parties that he had no intention of opening it as a restaurant.

Mr Foster then outlined to Members proposed additional conditions that he wished to offer in support of the application which included:-

- Bar area to be closed 30 minutes before the end time for alcohol sales;
- The area in front of the premises will not be used for drinking after 9pm;
- The premises will encourage customers to smoke at the rear of the premises;
- The upstairs room will be 'de-licensed';
- The door and window behind the garage doors will be double-glazed.

Councillor May noted that some residents had commented about privacy and asked if the applicant would consider shaded double-glazing in order that customers in the bar area could not see into neighbouring properties.

Mr Foster advised that this was a planning matter but could be explored, although the visual effect of this may be undesirable.

Councillor Jewell noted that groups of people would be discouraged from congregating outside the premises and asked how this would be enforced. Mr Foster responded that this would be the responsibility of the manager and alcohol would not be served outside after 9pm. However this condition was aimed at the off-licence sales, proxy sales and preventing youths from congregating outside.

In response to a question from Councillor Kellett about ventilation, given that this was a very small area, the Member was informed that the room would be ventilated by a door to the rear of the premises. There would be no noise generated.

Mrs Penny stated that it was clear that the premises was being operated as a youth hostel. Youth hostels were generally used by walkers, cyclists etc who as a rule retired early on an evening. She was concerned that the business was expanding and reverting to a public bar.

In response to a question from Councillor Jewell, Mr Anderson confirmed that the business was listed with the Youth Hostel Association as an associate and he did not want to lose the business this status generated.

Mr T Robson of TRJ Licensing Consultants was invited to address the Sub-Committee. He provided some background to his experience of working in the licensing industry, details of which were included in the Bundle of Evidence supplied by the applicant. He explained that he had worked in Consett and was therefore familiar with the rural nature of the area. Mr Anderson had requested training for his staff members and the report in the Bundle gave details of the training he had provided. He was confident that those trained fully understood the legislation, liabilities, policies and procedures to be complied with. Mr Anderson had asked that the full team be trained to full PLH level and this had been delivered on 8 January 2017. This high standard was encouraging in such a small premises. He was confident that everyone who worked there would run the bar in a socially responsible manner. He sympathised with the residents' concerns but was confident that the licensing objectives would be upheld and the premises would continue to be managed in a safe manner.

In response to a question from Councillor Carr, T Robson advised that the premises already had a refusals register which included the reporting of incidents, and this was included in the Bundle of Evidence.

Councillor Carr asked that the applicant consider the disposal of glass bottles the following morning to reduce the potential impact of noise on residents.

Councillor Jewell asked about the capacity of the premises and was informed that this would be established by Fire Authority in line with Fire Safety Regulations and the premise was required to undertake a Fire Safety Assessment. The staff had been trained on crowd management.

Mrs Henley asked about the change to the running style of the premises if the licence was granted as she was concerned about a repeat of the wedding and teepees on the site. Mr Anderson responded that the function had been a success for those who attended and he did own a lot of neighbouring land so may consider a further function using a TEN, but he would consider local residents and would manage any event differently.

Mrs Henley believed that the light emanating from the double doorway would distract drivers, and although it had been said that the radio was the only source of music, there had been mention of a guitar playing. In relation to crime she had drafted the list of crimes from information supplied by the Police. Mrs Henley asked if a local burglary had been included in the incident book and was informed that as the Police had not attended the premises it had not been necessary to record it.

In response to a further question from Mrs Henley the applicant advised that he intended to erect a CCTV camera above the entrance door.

All parties were invited to sum up.

Residents felt that they had addressed their concerns during their representations and had nothing further to add.



Mr Foster, in summing up, reminded the Sub-Committee that it could not consider matters such as traffic management or planning issues. Members needed to consider the impact of the premises on the licensing objectives. The representations from the Police had been resolved and there had been no comments from Environmental Health. He urged Members to look at the positive impact of the premises; the Licensing Act was a permissive piece of legislation and looked to strike a balance between residents and businesses. There had been positive representations made and letters of support, and many of the concerns of residents appeared to emanate from the wedding in September 2016 and speculation about future events. M Foster referred Members to the ruling in the Thwaites case which ruled that too much weight had been attached to personal reasons. An outcome of the judicial review had been that such issues should not be speculated upon.

This was a low-risk premise and the staff had been fully trained. The premises had got off to a bad start with residents which was regrettable but their objections were about what they feared might happen.

If there were any issues with the premises in future there was a mechanism within the legislation for a review of the premises, and there were enforcement powers available outside the licensing regime. This application to vary the Premises Licence had been approached in a responsible manner and additional conditions had been offered to allay fears further.

At 2.30pm the Sub-Committee retired to deliberate the application in private. After re-convening at 2.45pm the Chairman delivered the Sub-Committee's decision. In determining the application Members had taken into account the report of the Senior Licensing Officer, and the verbal and written representations of the applicant, his representatives and other persons. The Sub-Committee had also considered the Council's Statement of Licensing Policy and Section 182 Guidance issued by the Secretary of State.

**Resolved:**

That the application to vary the Premises Licence be granted as follows:-

**General - all four licensing objectives**

The Applicant confirms that general conditions and licensing objectives will be complied by DPS and trained staff all the time.

**Prevention of Crime and Disorder**

- a) A CCTV system shall be installed and will be maintained in proper working order to the satisfaction of, and in connection with, Durham Constabulary. This system shall:
  - i. Be operated by properly trained staff;
  - ii. Be in operation at all times the premises are open to the public;

- iii. Ensure coverage of all public entrances and exits to be the licensed premises;
  - iv. Ensure coverage of such other areas as may be required by the Licensing Authority and Durham Constabulary; and
  - v. Provide continuous recording facilities for each camera to a good standard of clarity.
- b) CCTV recordings shall be retained on disc or otherwise may be put on a disc or otherwise for a period of 28 days, and shall be supplied to the Licensing Authority or Police Officer on reasonable request.
  - c) A refusals book and incident book shall be kept at the premises which are utilised and maintained at all times. Entries shall be authorised by DPS on a regular basis. This book shall be available to the Police on reasonable request.

#### **Protection of children from harm**

- a) For any premises with known associations with heavy or binge or underage drinking, drugs, significant gambling, or any activity or entertainment of a clearly adult or sexual nature, access will not be permitted for children under 18 years.
- b) A refusal register will be kept and endorsed after every sale refused. This should be maintained and will be produced to a relevant officer of the police or other relevant officer of a responsible authority upon request. This is also to include over 18's purchasing alcohol and passing it on to under 18's (proxy sale)
- c) Verification of age - safeguards to be in place to see that alcohol is not served or to be purchased on behalf of under age children. Any premises licence should include a mandatory condition that an age verification policy is operated. Durham Local Safeguarding Children Board recommends and promotes the "challenge 25" standard which requires anyone looking under the age of 25 to produce photographic evidence of proof of age from a passport, driving licence or PASS accredited scheme before any alcohol is supplied. The actions of staff operating the policy to be regularly monitored.
- d) Minimise the risk of proxy sales - the applicant will work with the police to minimise the risk of proxy provision/proxy sales.
- e) Training of staff - all staff responsible for selling age restricted goods to be trained to implement the age verification policy. Staff training to include the risk from proxy sales. Training records for staff to be maintained and refresher training to be provided annually.

- f) Groups of unsupervised young people under the age of 18 will be discouraged from congregating outside of the bar.

### **Prevention of public nuisance**

- a) Doors and windows will be kept closed whenever necessary.
- b) For the final hour of opening the music will be discernibly quieter.
- c) The bar area, as edged red, is to close 30 minutes after the last sale of alcohol.
- d) The outside area at the front of the premises (outside of the bar) is not to be used for drinking after 9pm.
- e) Management and staff at the premises will encourage customers who smoke to use the outside area at the rear of the building for smoking.
- f) Encouraging customers to leave quietly and to be considerate of neighbours.
- g) Double glazing will be installed in the door/window located in the garage recess at the front of the bar area.
- h) All doors and windows, in the bar area, are to be closed during regulated entertainment, except for access and egress.
- i) The premises will not dispose of bottles outside between the hours of 21:00 and 08:00.
- j) Signage will be displayed encouraging customers to leave quietly.
- k) A rubbish bin will be placed outside of the premises and customers will be encouraged to use it. At the end of business staff will ensure that litter is collected from the front of the premises and the immediate vicinity.

### **Public Safety**

- a) There will be signs displayed at the premises warning residents and customers of the proximity of the road and to take care when leaving the premises or crossing the road.

It was agreed that the upstairs area currently licensed will be delicensed.