

DURHAM COUNTY COUNCIL

At a Meeting of **Statutory Licensing Sub-Committee** held in Council Chamber - County Hall, Durham on **Tuesday 19 March 2019 at 10.00 am**

Present:

Councillor C Carr (Chairman)

Members of the Committee:

Councillors P Atkinson, J Blakey and M Wilson

Also Present:

Councillor J Blakey

C Hazell (Council's Solicitor)

K Robson (Senior Licensing Officer)

Pickled Parson

J Taylor (Applicant's Agent)

M Jolly (Licensee)

K Anderson (Employee)

Cllr G Willis (Sedgefield Town Council)

M Carr (Other Person)

MRH Stonebridge Service Station

R Botkai (Applicant's Agent)

P Deevy (Area Manager)

Councillor D Clegg (Brandon & Byshottles Parish Council)

1 Apologies for Absence

Apologies for absence were received from Councillor J Maitland.

2 Substitute Members

There were no substitute members in attendance.

3 Declarations of Interest

There were no declarations of interest.

4 Minutes

The minutes of the meetings held on 13 November 2018, 22 January 2019 and 5 February 2019 were agreed as a correct record and signed by the Chairman.

5 Application for the Variation of a Premises Licence - The Pickled Parson, 1-2 The Square, Sedgefield

Members: Councillor C Carr (Chairman), P Atkinson and M Wilson

Councillor Carr confirmed that he was no relation to Mr Carr who had made representations.

The Committee considered the report of the Corporate Director of Regeneration and Local Services regarding an application for the variation of a premises licence for The Pickled Parson, 1-2 The Square, Sedgefield (for copy of report, see file of minutes).

A copy of the application and supporting documents had been circulated to Members together with copies of the representations received and responses from responsible authorities.

The Senior Licensing Officer presented the report and advised Members that the Statutory Licensing Sub-Committee had determined a variation application of the 7 September 2018 where Members stipulated conditions to be attached to the licence one of those conditions was in relation to the removal of the benches outside the premises. The applicant submitted a minor variation application to remove this condition on 13 November 2018 which was refused by the Licensing Department following comments in opposition to the proposal. A full variation application was submitted on 24 January 2019 to remove the condition in relation to the benches outside the premises.

Durham Constabulary, County Durham & Darlington Fire Rescue Service, Durham County Council's Public Health Department, Durham County Council's Environmental Health Department and Durham County Council's Planning Department responded to the consultation with no comments.

Three letters of representation had been received, two in opposition, namely Sedgefield Town Council and Mr Carr and one from Councillor Makepeace who stated he had no objection to the application.

Mr Carr, an other person was invited to address the Sub-Committee. He referred to his letter of objection which he wished to expand on. He indicated that The Pickled Parson was in the centre of the village green in an elevated position with residential properties surrounding as shown on the circulated plans. Due to the location of the premises noise echoed, late in the evening. There were currently six benches located outside the premises and there was room for additional benches which were not contained or fenced off making it impossible to control when the premises were closed. Members of the public could congregate on the benches making noise which impacted on people sleeping in the vicinity. He then referred to the previous

hearing where the applicant agreed to remove the benches at closing time. Other premises that had benches located outside that caused a nuisance once removed the problems were solved. Since the premises licence was approved there had not been the weather to sit outside but as the weather was improving people would sit outside the premises.

Councillor Wills speaking on behalf of Sedgefield Town Council stated that Pickled Parson was in a prominent position on the village green and referred to the location plan where it was clear that the square stands on its own giving it a position where noise travels. The Pickled Parson was also located within a small short walk from other drinking establishments and there were 12 points of sale of alcohol in the area. Six and a half months ago the Sub-Committee agreed taking into consideration the licensing objectives and the concern of local residents to place a condition on the licence to remove the benches into safe storage after opening hours which was a reasonable condition to prevent public nuisance. She then referred to the Town Council's written representation and reference to Durham County Council's Statement of Licensing Policy, in particular section 9.3 that refers to external structures and the applicant was expected to offer measures and the Council would normally expect them to be removed before the premises close and the Town Council had been subject to public nuisance over numerous years. The temptation for people to sit at benches unsupervised was most concerning as there was no supervision when the premises were closed. The Town Council were unsure of the management situation as there was no flat, so they were not assured that someone would be available to deal with any issues. The Licensing Sub-Committee agreed that this was a reasonable condition and was the suggestion of the Applicant, the opening hours were not affected by this condition, they had reasonable opening hours and only off sales ceased at 10.00 pm. Other businesses had café licences to their frontage on the highway, but this application was on a village green and this condition was a reasonable compromise to minimise the impact on local residents and for the prevention of crime and disorder.

She had looked at the Daniel Thwaites case and the decision to impose restrictions which was based on speculation rather than evidence which was not the case with this condition. The benches being large and cumbersome was not a matter for this sub-committee as small manageable benches could be purchased. As the condition had only being imposed for a short time over the winter months they did not know if the benches would create anti-social behaviour, but they thought it would over the summer months. Residents were concerned of the effects of noise internally and externally from off sales which would encourage drinking outside. The suggestion that the condition was imposed due to the confusion with another premises was highly unlikely, and they would ask that the application to remove the condition be refused.

Mr Taylor, the Applicant's agent indicated that it was a simple decision to be made. A considerable amount of money had been invested into the property and the type of clientele would not participate in anti-social behaviour. They offered food and had nine letting rooms which was important revenue for the business which had high occupancy rates. The manager lived above the premises and the last thing the business would want was people outside of the premises which would have a detrimental impact on residents of the public house and the manager.

He then indicated that the ground was uneven, and they were unable to purchase fold away furniture as the ground was not sturdy enough for them to be in situ. There had been no reports of anti-social behaviour and they had no storage facilities for the benches. The outside seating was important for the business to flourish and at no point had there been any issues at the benches, they had agreed to reduce the times for off sales and signage had been erected to ask patrons to respect neighbours. He stated that no anti-social behaviour had taken place, he was mindful of the licensing objectives, but the benches had no adverse effects.

Mr Jolly, the Licensee referred to the reference made to the adjoining properties and advised that they had put in sound proofing in the residents housing. He then referred to the Impeccable Pig which they also owned and had recently undergone a two million refurbishment which was within 100 metres of the Pickled Parson. There were eight venues in the area that all did what they did which was serve food and anti-social behaviour had nothing to do with their patrons.

The gathering of youths happened at the bus stop, he regularly talked to PC Lamb at the pub watch meetings who was on top of the anti-social behaviour. He stayed on site 90% of the time and he slept with a window open which was single glazing so he could hear any conversations, so any issues would be dealt with. The benches had been in place over the entire summer and there had been no complaints of anti-social behaviour. The town was populating, and their venue had a good name and was a go to venue. Hardwick Hall Hotel was currently undergoing a refurbishment and the ethos of the environment was a happy place and the benches were not causing any issues.

The Chairman asked why they had made an offer to remove the benches and why should the sub-committee remove this condition.

Mr Taylor responded that the last meeting was lengthy, and reference had been made to speaking to neighbours who may want a condition to remove the benches, but they did not offer this as a condition. He was surprised to learn that it was a condition and had submitted an application for a minor variation to remove this condition.

The Chairman indicated that this condition tendered to be standard where there were outside benches. He knew the area well and there are occasions where people would use the benches when the venue was closed which would cause problems in the area. He had spoken to the Police who did not know why you were asking for the condition to be removed. He indicated that it was their decision to buy heavy tables and asked why they could not replace the benches with ones that could be taken away.

Mr Taylor responded that the surface was uneven, and the benches had been cut to fit into the space. There was a Health and Safety risk if the benches were not stable, there was no storage to bring the benches inside the property and foldable benches would not be stable and safe.

The Chairman asked why it was essential to have tables outside.

Mr Taylor indicated that the outside area was essential to any licencing particularly if the weather was good. No outside area would have a detrimental impact on the business and they did not want to upset any patrons in their letting rooms as it was a good source of revenue and more and more premises were trying to utilise the outside space.

Councillor Atkinson appreciated what they were saying that the benches were heavy and that they had spent a lot of money on the premises. He asked why they could not purchase lighter outside furniture as they could do some work to the front of the premises to make the ground stable.

Councillor Blakey indicated that she knew the area well and the Police were fully on board to ensure that anti-social behaviour would not happen again this summer and asked if they had CCTV in the outside area.

Mr Jolly indicated that they currently had CCTV at the doorway where you could see out the front of the premises, but they could install CCTV where the benches were located.

Councillor Blakey indicated that she sat on the panel when the application was considered, and the condition was imposed as a compromise for the benches. She asked what action they would take if there was ant-social behaviour at the benches.

Mr Jolly responded that he would initially deal with the incident himself and call in services if required.

Councillor Blakey asked if they would consider removing the benches at any time due to anti-social behaviour.

Mr Jolly responded they would never let it get to that point.

Mr Taylor indicated that their business procedures were regularly reviewed and were about managing scenarios to prevent issues arising. The question was difficult to answer as no incidents had occurred, but Mr Jolly worked closely with the police.

The Chairman asked if they had considered the condition being removed so that no benches were allowed.

Mr Jolly responded that they had considered every aspect.

Clarification was sought on the number of benches and the time of usage. Members were advised that there were six benches that were in use until the premises closed at 11.00 pm.

Councillor Wills raised concerns that there was no supervision when the premises closed and if the benches stayed in situ then anyone could use them, even people from other venues. The manager does not live on site but stays 90% of the time so how can supervision be constant. There was no evidence to show that the ground

of the outside area was uneven, and the village green was the responsibility of the Town Council and was maintained.

The Chairman indicated that the benches could be used by anyone which was a concern and was why he had asked if they had considered not having any benches. The condition to remove the benches was offered by the Applicant.

Mr Taylor referred to the previous hearing where the words used were that they may wish to consider taking benches in and consider talking to neighbours which was a misunderstanding possibly on his behalf.

The Chairman indicated that he had spoken to the Solicitor who was present at the last meeting who had indicated that the minutes were accurate, and the notice of decision was clear. The Chairman at the last hearing also checked the notice of decision before signing to ensure accuracy.

Mr Carr indicated that a lot of money had been spent on the building, but other venues also have a lot of money spent on them but don't have benches outside. He was not personally objecting to the benches, but they should be removed on an evening and no other benches were outside of premises.

The Chairman invited all parties to sum up.

Mr Jolly indicated that he only stayed on site 90% of the time but they did always have a night manager on site.

At 10.50 am the Sub-Committee **Resolved** to retire to deliberate the application in private.

After re-convening at 10.55 am the Chairman delivered the Sub-Committee's decision. In reaching their decision the Sub-Committee had taken into account the report of the Senior Licensing Officer, the written and verbal representation of Other Persons and written representations from responsible authorities. Members had also taken into account 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 refused.

6 Application for the Variation of a Premises Licence - MRH Stonebridge, Stonebridge Service Station, Durham

Members: Councillor C Carr (Chairman), P Atkinson and M Wilson

The Committee considered the report of the Corporate Director of Regeneration and Local Services regarding an application for the variation in respect of MRH Stonebridge, Stonebridge Service Station (for copy of report, see file of minutes).

A copy of the application and location plan had been circulated together with copies of the representation received and responses from responsible authorities.

The Senior Licensing Officer presented the report and advised Members that the variation was to include the sale of alcohol for consumption off the premises 24-hours daily and to include two conditions and to make alterations to the premises.

Durham County Council's Local Safeguarding Children Board, Durham County Council's Environmental Health Department, County Durham and Darlington Fire and Rescue Service responded to the consultation with no comments.

Durham Constabulary had entered into mediation and the Applicant had agreed the additional conditions, details of which had been circulated.

One representation had been received from Brandon & Byshottles Parish Council in opposition to the application.

Councillor Clegg speaking on behalf of Brandon & Byshottles Parish Council indicated that the parish council had decided to submit an objection due to public safety as the premises were located on a busy road on the A690. The side that the premises was located had not footpath and the only other outlet near the premises was Tesco and Sainsbury's. The location of the premises invited people to cross a busy stretch of the road which was a hazard, there was also a bus lane with vehicles entering and exiting and moving around the forecourt. With regard to the prevention of public nuisance the premises would attract people from surrounding areas when other stores were closed. New houses were located on the A690 and there were properties in both directions, so the continuous movement of people would be disruptive for people in the area. He then referred to the prevention of crime and disorder and that the forecourt would attract people during the day and night in the surrounding area and they would ask that the application be refused.

The Chairman asked if the parish had had sight of the mediation document.

Councillor Clegg confirmed that the parish council had seen the mediation document and their objection remained.

Mr Botaki the Applicant's Agent indicated that the petrol station already had a premises licence to sell late night refreshments and they were looking to vary the licence to allow the sale of alcohol. Malhurst had recently merged with Motor Fuel Group who currently had 502 24-hours a day licensed petrol stations in England and Wales so what the Applicant was asking for was not unusual and the company had lots of experience running these types of premises. He had spoken to Durham Constabulary and mediated some conditions including a night pay window from 23:00 to 06:00 which was how almost all of their stores operated and the preference of the police. The Application had been served on all responsible authorities and no objections had been received from any responsible authorities or residents.

The premises were situated with a field at either side and across the road was a high fence that divided the housing estate. He was currently dealing with 160 application and most are agreed with a few been heard by a panel which tended to be those premises located in the middle of houses. The application had been

advertised in the usual way and none of the residents had objected. The policy allowed shops to match trading hours with opening hours.

He referred to the concerns from the parish council and their safety concerns, but he had never come across any safety issues and his company also represented Rontec who had 300 sites all of which have a 24-hour licences and no traffic related issues had been brought to his attention and Durham Constabulary had not raised any issues.

With regard to public nuisance he did not believe the sale of alcohol would disrupt residents as the premises were already open 24-hours, so they did not anticipate any issues. They had no issues with litter as most customers drove to the site and they don't have many walking customers due to the geography of the site, so they did not expect any issues with litter and they were not aware of any crime and disorder at the site.

He had asked the store if they had any current issues and there were no complaints from residents or any contact with responsible authorities. The premises were in a quiet location and the company were aware of their responsibilities and were happy to provide contact details and any issues they would take the necessary steps to address. The act allowed for the application to be reviewed but they would ask if there were any issues if they could please speak to them first to give them the opportunity to address any issues.

He then referred to the Daniel Thwaites case and there was no evidence in the papers that the store would cause any issues just the fear of what might happen.

Councillor Wilson asked the age of staff who would be working at the store and the expected trade.

Mr Botkai responded that the company did not employ anyone under the age of 18 and he did not have any figures on the expected trade.

Councillor Blakey sought clarification if the CCTV covered the whole site and commented that there was a fear of people leaving Durham on an evening calling into the garage to obtain alcohol which would cause a disturbance.

Mr Botkai responded that there was no evidence to suggest that this would happen, it wasn't currently happening as the premises had a late-night refreshments licence. The premises were not going to be a meeting point or hub and they don't expect a quiet area to suddenly become noisy but if anything did happen they could be contacted. He then advised that the CCTV equipment was of good quality in colour that also covered the forecourt and serving hatch and indicated that Members were more than welcome to come and look at the CCTV equipment.

Councillor Wilson sought clarification on the number of staff on site.

Mr Botkai responded that they had two members of staff during the day and one on an evening.

Members discussed the refusal register and how they also liked to see an incident log.

Councillor Clegg indicated that the Applicant had referred to real evidence and asked if they could give a description if it was safe for pedestrians to access to purchase alcohol.

In response to the question, the Applicant advised that the route was safe, and pedestrians currently used the shop, although there was little foot trade due to the isolated location of the premises.

The Council's Solicitor referred to Section 176 of the Licensing Act 2003 and whether any consideration had been given to excluded premises.

Mr Botkai responded that under the previous licensing act you had to prove the use of the premises to obtain a licence and provide primary use data. He referred to the new act and the rewording of Section 176 and that the decision on primary use followed the grant of the licence and was not part of the application process.

The Chairman indicated that records needed to be kept on the types of sales to show the percentage of alcohol sold which would be checked after 12 months.

Mr Botkai responded that this was not appropriate to impose as a condition as it was only used to trigger the question of primary use. The data could be requested at any time.

The Chairman invited all parties to sum up.

Councillor Clegg reiterated what he had said previously regarding the prevention of public nuisance, crime and disorder and public safety. There was not a safe pedestrian access into the petrol station, there was a public house down the road and a bus lane and two roads to cross to access the petrol station. The Parish was concerned which was based on fact and they could not see any benefit of having alcohol sales and he hoped that this was taken into consideration.

Mr Botkai indicated that there was no evidence of any danger on the site and no responsible authorities had raised any issues. The premises were already trading 24-hours a day and suggested that there was no evidence that anyone would be in danger. He asked that the licence be granted based on Section 18 of the Act as there was no evidence to substantiate concerns. Crime and disorder concerns had been addressed with mediation with the police and he asked that the licence be granted, they were aware of their responsibilities and were happy to exchange contact details.

The Chairman asked if there were designated markings around the forecourt so that customers were safe to walk.

Mr Deevy, the Area Manager responded that they did not have designated markings as there was very little foot trade.

At 11.35 am the Sub-Committee Resolved to retire to deliberate the application in private.

After re-convening at 11.45 am the Chairman delivered the Sub-Committee's decision. In reaching their decision the Sub-Committee had taken into account the report of the Senior Licensing Officer, the written and verbal representation of Other Persons and written representations from responsible authorities. Members had also taken into account the Council's Statement of Licensing Policy and Section 182 Guidance issued by the Secretary of State.

The Chairman had indicated that the Sub-Committee had agreed to add a condition that a description of the person be included in the incident book. Following discussions with the Applicant it was agreed not to include this condition.

Resolved: That the Application to vary the Premises Licence be granted as follows with the conditions outlined in the application and that had been agreed with Durham Constabulary:

Licensable Activities	Days and Hours
Late Night Refreshment (indoor and outdoors)	Monday to Sunday 23:00 hours until 05:00 hours
Supply of Alcohol (off sales only)	Monday to Sunday 00:00 hours until 24:00 hours
Opening Hours	Monday to Sunday 00:00 hours until 24:00 hours

The following further condition be imposed to promote the crime and disorder objective:

- A CCTV camera shall be positioned so as to cover customers purchasing alcohol at the point of sale in the premises and at the night pay window.