

DURHAM COUNTY COUNCIL

At a Meeting of **Statutory Licensing Sub-Committee** held remotely via Microsoft Teams on **Tuesday 23 March 2021 at 1.30 pm**

Present:

Councillor P Crathorne (Chair)

Members of the Committee:

Councillors J Blakey, L Brown and D Hicks

Also Present:

Mrs G Proud (Council's Solicitor)

Ms H Johnson (Licensing Team Leader)

Mr Frankland (Applicant)

Councillor Wallage (on behalf of West Rainton Parish Council – Other Persons)

1 Apologies for Absence

Apologies for absence were received from Councillor D Bell.

2 Substitute Members

Councillor J Blakey was present as substitute for Councillor D Bell.

3 Declarations of Interest

There were no declarations of interest.

4 Application for the Grant of a Premises Licence - The Three Horseshoes, Pit House Lane, Leamside, Durham

The Chair welcomed everyone to the meeting and explained that only three Members would be deliberating the application.

The Council's Solicitor explained why only three Members deliberated the application and ran through the procedure for the meeting.

The Sub-Committee considered the report of the Corporate Director of Neighbourhoods and Climate Change regarding an application for the grant

of a premises licence for the Three Horseshoes, Pit House Lane, Leamside, Durham (for copy of report, see file of minutes).

A copy of the application and location plan had been circulated together with additional information provided by the Applicant.

The Licensing Team Leader presented the report and advised the Sub-Committee that the premises had operated under an existing premises licence for many years.

The Licensing Team Leader then advised the Sub-Committee that two of the letters of support provided by the Applicant had not been circulated as they had been unable to be verified.

Members were advised that the licensing authority had received responses from Durham Constabulary, County Durham and Darlington Fire and Rescue Service, Durham Safeguarding Children Partnership all with no comments on the application.

Mediation had taken place between the applicant and Durham County Council Environment Health, where it was agreed to amend Recorded Music to indoors only.

The licensing authority had received one letter in opposition to the application from West Rainton Parish Council.

The Licensing Team Leader outlined the options open to the Sub-Committee and advised that a copy of the existing premises licence was available if members required details of the activities on the current licence.

All parties were given the opportunity to ask questions of the Licensing Team Leader.

Mr Frankland, the Applicant asked if the hours on the existing licence could be shared, so that the Sub-Committee were aware of the changes they were proposing.

Councillor Wallage on behalf of West Rainton Parish Council was invited to address the Sub-Committee.

Councillor Wallage indicated that when the parish submitted their representation, they did not realise it would be dealt with as an objection. The reason for their submission was to raise some concerns and apologised if the applicant saw this as an outright objection. The timescales involved led them to this position if they wanted their letter to be considered.

When the parish saw the proposal, it was just a snapshot of the hours of the proposed licensing activities in isolation. Their main concern was the outdoor music which they understood had now been amended following mediation. The parish didn't often deal with licensing applications unlike planning applications that they deal with often and could see all the information on the planning portal. They captured in their representation what they understood to be the existing licensing conditions but when they first considered the application, they were looking at the new premises licence in isolation and their overall opinion at the time was that the hours seemed quite excessive.

They had now gained more information and changes had been made to the outdoor music which was their main concern. In comparison to other licences that were out for consultation at the time, the hours on the application seemed very broad and that inevitably led to some concerns about potential noise disturbance due to the array of times that had been proposed. She asked why some changes had been made and was this due to the changes made to the premises, in particular the change from 10.00 am to 7.00 am for recorded music and the change around the supply of alcohol that extended the hours to 12.30 am.

Members and Officers were given the opportunity to ask Councillor Wallage questions on her representation.

The Licensing Team Leader clarified that when they received the representation from the Parish Council they did clarify if they wanted the authority to treat it as a representation. The parish had confirmed that it was to be treated as an objection.

The Council's Solicitor asked if Councillor Wallage could give an indication of how many people had raised concerns on the premise's application.

Councillor Wallage confirmed that there were four councillors in attendance at the parish meeting when the application was considered.

Mr Frankland was then invited to address the Sub-Committee.

Mr Frankland indicated that they had applied for a premises licence which was similar to their current licence that they had held for 15 years. They were applying for recorded music to be played from 7.00 am and an extended alcohol sale until 12.30 am.

The letter of representation from the parish council set out the hours they were applying for that was in line with their current licence. Their representation indicated that the licence was being applied for due to refurbishment which had resulted in an overall increase in the existing licensed areas. He advised the Sub-Committee that the actual licensed areas

on the application had decreased as the extension would be built over the garden that was already licensed and they were giving up the licensed areas upstairs in the private dining rooms.

They had spoken to Environmental Health and their only area of concern was that he inadvertently ticked recorded music to be played inside and outside but they did not have a real need to play recorded music outside and that part of the application was withdrawn.

He referred to the parish making reference to the premises being in a quiet rural location with no public transport, but he was not sure how that related to their licensable activities. The Parish council asked if it was necessary to have a licence for live music indoors and performance of dance from 7.00 am but they had not applied for this, they had applied for live music indoors as on their current licence from 10.00 am and hadn't applied for performance of dance.

He then referred to the earlier start time of 7.00 am for recorded music and indicated that they felt this was necessary as they were converting five rooms upstairs of the premises to bed and breakfast. As they would be serving breakfast from 7.00 am, they wanted to have some background music playing or news on the television. They would also be open to the general public for breakfast so wanted to play background music and not fall foul of the law.

He went on to address the sale of alcohol on and off the premises and their response to the noise from the public house and made reference to the Daniel Thwaites case that conditions should only be applied to a licence with a view to promoting the licensing objectives and real evidence must be presented to support the reasoning for imposing those conditions. He had not heard any evidence, just concerns from the local parish council, they had not had any other objections to the application and stated that the notice had been displayed in their window of the premises for over 28 days and had not caused any concern for local residents or members of the public. Responsible authorities had been consulted and had raised no objections to the application.

He referred to the recommended framework hours appended to the report and that the terminal hours for the sale of alcohol and the provision for late night refreshments and the premises fell into the first category whose framework hours were from 7.00 am until 12.00 midnight on weekdays and from 7.00 am until 1.00 am on weekends. They had asked for 30 mins more on weekdays but asked for 30 mins less on weekends.

He gave further explanation to address concerns and indicated that they were asking for recorded music as already explained and live music would

be ancillary and would not be the main functioning part of the business as they were a destination food house and the restaurant accounted for 80% of their business. Live music would be for events such as bagpipes at New Year and Burns Night, annual carol service in the bar which was to raise money for crisis and food themed nights with background live music. They did not intend to have live bands, it was to support other events.

He then referred to the off sale of alcohol and indicated that they were not an off licence and had asked for this as they sold beer to be taken away by people such as those staying at the Grange Caravan and Camping Club. They also had local residents who used the premises to purchase a bottle of wine to take away. They were heavily into real ale and were past winners of the campaign for real ales North East pub of the year award that they had won four times - that put them as one of the top 14 pubs for real ale in the country. They had their own microbrewery and often got people asking if they could take some of the ales home.

Their new venture into a bed and breakfast was new to them and they did not know what to expect. They had decided not to include mini bars in the rooms, but residents may ask if they could take a drink to their room and had asked for this to be 12.30 am. He reiterated that they were not an off licence and did not sell alcohol in bulk and did not actively promote off sales of alcohol from the premises. There was a local petrol station in West Rainton that had a 24-hour licence for off sales of alcohol so they had no need for this and could not compete with such an outlet.

With regard to the suggestion of noise nuisance, they currently had a policy that if a taxi pulled up a member of staff would ask the taxi driver the name of the customer they were collecting and they would endeavour to find the customer to alleviate the taxi having to toot their horn. They asked patrons to leave the premises with respect for their neighbours and leave the premises and car park quietly. The bottle bins were only emptied on the morning so as not to cause any noise disturbance to neighbours.

He had obtained statements from neighbours, two of which could not be verified but six had been verified who had been their neighbours for 15 years and used the facilities. None of the neighbours had reason to have concerns about noise or bad behaviour coming from the Three Horseshoes public house, which was important to them as they lived alongside their neighbours.

The Licensing Team Leader explained that consumption of alcohol was not a licensable activity and they would be covered for the sale of alcohol for consumption off the premises for drinks taken to the Bed and Breakfast rooms. The first floor of the premises had been included in the licensable area, but this was not required if it was purely for the consumption of alcohol unless they intended to provide mini bars. She asked if they wanted to still

include this area in the licence in case in the future, they wanted to look at mini bars.

Mr Frankland responded that the bed and breakfast business was very new to them and they were trying to cover all aspects. The upstairs was part of the plan of the business and indicated if it was easier to include the upstairs under the licensable activities then he would like to include this area as part of the licence.

The Licensing Team Leader confirmed that the application included the Bed and Breakfast rooms that would cover something like a mini bar but Mr Frankland had outlined that this was not his intention and if it was just for the consumption of alcohol then a licence would not be required.

Councillor Wallage thanked Mr Frankland for his explanation of his intentions. When the parish first looked at the application, they did not have the detail of some of the activities that might have changed as a result of the changes to the premises. She referred to the off premises sales and they knew he had a microbrewery on site and had potential for an off-licence and if that was the case the hours seemed very late for that type of activity so it was better to have an understanding of how the licence would be operated on a practical basis. The concern of the parish was the potential and once the licence was granted those activities could change in the future as long as they were within the parameter of which the licence was granted and asked if this was correct.

The Licensing Team Leader confirmed that this was correct and if the license was transferred to somebody else's name into another business they could potentially have live bands seven days a week. If there were any issues, there was a process such as a review of the licence if it was in breach of any of the licensable activities.

Councillor Wallage continued that as their representation had indicated it was the potential for these activities given the range of times associated with the application that concerned them. She commented that there had not been any issues in the past but at the time they submitted their representation there was very little information in the public domain to understand who else had been consulted on the application. In terms of the local residents' views it was helpful that Mr Frankland had got the feedback from local residents. One of the concerns the parish had was with the premises being currently closed when the notice was displayed and how aware were residents of the application. She commented that it was helpful to have a wider appreciation of the intentions of Mr Frankland.

Councillor L Brown referred to Mr Frankland indicating that he was aware of the licensing framework and that his current premises licence for the sale of

alcohol ended at 12 Midnight which was within the licensing framework. She asked why he had applied for an extra 30 mins during the week for the sale of alcohol.

Mr Frankland indicated that they had asked for the extra 30 mins as they were entering a market that they had never been in before which was having accommodation on site. He referred to hotel bars and they did not want to get into this where patrons stayed up a bit later and they wanted to have some kind of control over it, they were not a late night venue and once the restaurant was closed they would generally close anywhere from 10.00 pm onwards. They thought if they had someone staying at the weekend, they would be able to say that they had a 12.30 am licence and ask them to be out of the bar by this time. If this was to be amended to midnight Monday to Thursday, then this would not make a difference as they had not been asked the question and only made application for these times just in case they were asked the question. This would not be something that they would actively promote and currently don't promote with their midnight licence. He commented that New Year's Eve they would usually only have 25 people on the premises at midnight as patrons tended to go home after their meal to celebrate New Year at home. They did not actively stay late; it was just so that they had a time to call time at a final point.

The Council's Solicitor indicated that each application had to be dealt with on the merits of that particular premises and what was asked for at that time. Things may change and that was why there was a review option available to any members of the public, licensing authority and responsible authorities to raise concerns. If the licence was granted in the terms as requested or modified as members may determine, once the licence was in place there was always the possibility for reviews to be brought which could result in further conditions being added to the licence or changes being made.

In summing up, the Licensing Team Leader indicated that the reason for this new application was that the licensing authority's view was that there had been some substantial changes. The same process would be used for a full variation or a new premises licence application in terms of the consultation. This application was classed as a new application due to some substantial changes, in particular an outdoor bar area. She confirmed that the main changes between the existing licence and the new application were recorded music from 7.00 am until midnight, whereas the existing license was 10.00 am until midnight and an additional 30 mins for the sale of alcohol and the opening hours had changed from 10.00 am until midnight and were now requesting 7.00 am until 1.00 am. Mr Frankland was wanting to look at the possibilities of a Bed and Breakfast and the opening hours needed to reflect these and reminded members of the options open to them as detailed in the report.

Councillor Wallage indicated that it had been helpful to hear from Mr Frankland but there was still the potential for activities to change and was their main concern and why they referred to potential disturbance. If there were procedures in place for the licence to be reviewed at a later date should changes occur then she agreed those two minor changes to the current licence were a much better position to when they first looked at this application, particularly relating to the outdoor music from what first appeared to be very excessive and a much greater potential for a disturbance, the amendments made were welcomed.

She was still not sure regarding the extra 30 mins on the sale of alcohol and did not understand why the time needed to be extended and was outside of the recommended guidelines. The parish wished the business well which was a valued asset in the village and there were procedures in place so that the licence could be reviewed and monitored in the future if there were any issues.

Mr Frankland indicated that they were fortunate in some ways to have a lockdown as they had been able to carry out the work on the premises and had invested upwards of £200,000 in the premises to improve the facilities that they had. They had not gained any additional space, but the changes gave them more flexibility and increased the comfort of the space. They were entering into an area of the business that they had not done before, they have not had big live music events in the past but what they had now was a destination food house offering accommodation and wanted to be competitive in that market. They were not going to have big live music festivals in the garden or car park or inside the premises, the licence for music was to stay on the right side of the law so that they could play background music and have some spontaneous live music at short notice where a temporary event notice would be difficult. They wanted to remain flexible and competitive and hopefully the business would thrive.

The Chair thanked everyone for their attendance and at 2.20 pm the Sub-Committee Resolved to retire in private to deliberate the application. Councillors P Crathorne, J Blakey and L Brown retired to make the decision.

In reaching their decision, the Sub-Committee had taken into account the report of the Licensing Team Leader and the written and verbal representations of the Applicant and the written and verbal representations of Other Persons. Members had also considered Durham County Council's Statement of Licensing Policy and Guidance issued Under Section 182 of the Licensing Act 2003.

Resolved: That the Premises Licence be granted as follows:

Licensable Activities	Days & Hours
Live Music (Indoors)	Monday to Sunday 10:00 hrs – 00:00 hrs New Year’s Eve – 10:00 hrs – 03:00 hrs New Year’s Day
Recorded Music (Indoors Only)	Monday to Sunday 07:00 hrs – 00:00 hrs New Year’s Eve 07:00 hrs until 03:00 hrs New Year’s Day.
Anything of a similar description (Indoors)	Monday to Sunday 10:00 hrs – 00:00 hrs New Year’s Eve 10:00 hrs – 03:00 hrs New Year’s Day
Late Night Refreshments (Indoors)	Monday to Sunday 23:00 hrs – 00:00 hrs New Year’s Eve 23:00 hrs – 03:00 hrs New Year’s Day
Sale of Alcohol (on and off sales)	Monday to Thursday 10:00 hrs – 00:00 hrs Friday to Sunday 10:00 hrs – 00:30 hrs New Year’s Eve 10:00 hrs – 03:30 hrs New Year’s Day