

LICENSING AND APPEALS SUB-COMMITTEE

28th September 2005

**PRESENT:-**

**Members of the Licensing and Appeals Sub-Committee**

Councillors Southern and Whyman M.B.E. (Labour Group) and Councillor Atkin (Conservative Group).

**District Council Representatives**

J. Tsoi (Legal Adviser to the Sub-Committee), P. Spencer (Democratic Services), A. Kaur (Legal Officer), M. Sunter and J. Salter (Licensing).

**Non-Council Attendees**

P. Birks and S. Charlton (Netherseal Parish Council), R. Arthur, C. Arthur, P. King, J. Jones, M. Riley, M. Buckingham, P. Buckingham and P. Fitzpatrick (Interested Parties), S. Jackson, S. Louch, A. Wood and D. Wood (Hollybush Inn, 15 Main Street, Netherseal).

LA/34. **APPOINTMENT OF CHAIR**

**RESOLVED:-**

***That Councillor B. Whyman M.B.E. be appointed Chair for the Meeting.***

**MATTER DELEGATED TO COMMITTEE**

LA/35. **APPLICATION FOR A PREMISES LICENCE AT THE HOLLYBUSH INN, 15 MAIN STREET, NETHERSEAL**

Following introductions, the Licensing Enforcement Officer was invited to present his report, which had been circulated with the Agenda. The Chair reminded those present that the Sub-Committee needed to determine such applications with regard to the Licensing Objectives. There might be other issues raised during the Hearing, which were outside the Sub-Committee's remit. The Chair outlined the application and with regard to the service of alcohol, he clarified the times being sought, including a request for the New Year period. With regard to refreshment, he explained the requested extension and this was concurrent with the timings for service of alcohol and those relating to regulated entertainment. Following a question from Mr. P. King, the Licensing Enforcement Officer confirmed there was no current Public Entertainment Licence for these premises. There was a discussion about playing recorded music, live acoustic performances and the use of microphones. The Chair reminded that there were other mechanisms available to pursue concerns on the current operation of the public house.

On behalf of Netherseal Parish Council, Mr. Birks submitted a representation. He was concerned about the short notice given of the hearing and this view was supported by the applicant. Officers advised that the Agenda for the meeting had been issued some eight days previously. Mr. Birks also complained about the exclusion of certain representations. The

Licensing Enforcement Officer replied that those documents received by the Council had been included within the circulated papers. Mr. Birks appreciated the clarification regarding playing amplified music and would report this back to the Parish Council. He explained that there had been a number of changes of publican at these premises in recent years. The premises were not used by the majority of residents and it was not felt in the best interests of local residents to allow the extension to opening hours sought. He referred to reported incidents of disorder. The Parish Council did not feel this was needed in a quiet village, and there was no demand for extended opening hours. However, he wished to point out that the Parish Council was not against the development of the business.

Mr. Arthur lived adjacent to the public house and he referred to anti-social behaviour and disturbances. He was concerned about the ability of the Police to respond to such issues. He referred to the current entertainment provided at the premises and felt that the longer opening hours would cause more disruption to residents. With regard to the measures proposed by the applicant to mitigate against noise problems, he suggested that double glazed windows be installed and that the entertainment be moved to another room within the public house, given the close proximity to his premises. He also suggested the use of a noise monitoring system to address the current problems. He concluded that the proposals to monitor vibration of the premises' wooden beams proved how loud the entertainment was currently. In summary, he urged the Committee to reject this application and to implement the proposals he had suggested. The Chair replied that without prejudice, these views would be considered, but it was becoming practice for many public houses to seek similar opening hours. With regard to the current noise problems, these could be pursued through the Council's Environmental Health Division and the Police, but they could not be considered as part of the application.

Mrs. Jones, who lived at 1 Dog Lane, Netherseal agreed with the points made by Mr. Arthur, but was concerned that moving the entertainment to the other room would make it nearer to her property.

Denise Wood, the licensee of the premises, replied to the points raised by Mr. Birks. She felt he had an interest in this application, due to his involvement in the "Pokey Hole" club operated through the Netherseal St. Peter's Sports Club. Mr. Birks explained the nature of his interest and the Democratic Services Officer provided general information about the declaration of such interests. Mr. Birks declared an interest, but he did not consider this to be prejudicial. Mrs. S. Louch, representing the Hollybush Inn, also commented on Mr. Birks' interest.

On behalf of Neighbourhood Watch, Mr. P. Fitzpatrick made a representation. At a Neighbourhood Watch meeting in August, there had been a discussion about the application for these premises, but the 20 residents present did not support the proposed extension of opening hours. Mr. Fitzpatrick felt the view of the community should be taken into account in determining the application. The Chair noted his further comments that Officers and Members of the District Council did not have the same local knowledge as residents. He explained that the Council's policy was not to include local Ward Members on the Sub-Committee, to ensure an objective decision, based on the legislation and supporting guidance.

Mr. P. Buckingham of 90 Main Street referred to the description of these premises within the application as a traditional public house. He felt the extension to opening hours and public entertainment would change the nature of the premises. He observed that this public house was not well supported by local residents and there seemed no Village-based demand for the application. There were two other licensed premises within the Village. He referred to current nuisance problems and felt these would be exacerbated by the longer opening hours. He referred to the lack of parking facilities at the premises and events caused noise nuisance and disruption. Mr. Buckingham asked for the application to be rejected on this basis. In reply, the applicant made reference to the parking provision at other public houses within the Village.

Mr. King of 28 Church Street, Netherseal supported the views expressed, that this was a quiet Village. He referred to the alternate venue, which provided entertainment and felt that the dynamic of the Village would be altered significantly if this application was approved. There was also a view that the current licence conditions were not being adhered to. The Chair repeated that the current issues could not be considered by the Sub-Committee and should be pursued through either the Police, the Magistrates Court or the Council's Environmental Health Department. Mr. King urged Members to reflect on the wishes of the Village as whole.

The applicant was invited to make her submission. She explained her approach to running this public house, commented on one serious incident at the premises in July and referred Members to the documents circulated. In particular, she referred to the written representation from Mr. Fitzpatrick and sought further information about the proportion of residents that were not in favour of the application. She felt she should have been invited to attend the meeting of Neighbourhood Watch when this was discussed.

Mrs. Wood quoted from the Licensing Guidance, particularly about the proximity of residents that could be considered to have an interest in applications. She explained the type of clientele attracted to the pub, touched on the current entertainment provided and confirmed that the Police had never had to attend the premises. In response to the views of the Parish Council, she noted no previous concerns had ever been reported to her. She challenged its comment that there had been several disturbances at the premises and reiterated that there had been no Police attendance. She challenged the points raised in correspondence from Mr. Buckingham and Mrs. Brown and also took exception to the statements made by the Parish Council about the management of this public house. She wished to receive a written apology from the Parish Council, or would consider taking further action.

Mrs. Wood referred to issues of disturbance and was aware of problems within the vicinity of the public house, but this did not necessarily mean those involved had been customers of the public house. She then referred to the guidance provided under Section 182 of the Licensing Act, particularly those measures that were under the direct control of the publican and those that were beyond her control. She explained the design of the public house and the choice of location for playing music, which she felt would cause the minimum disruption to neighbours. She explained the measures she took to monitor noise outside the public house and referred to a particular incident and exchange with Mr. and Mrs. Arthur. She referred to the adjacent

Leonard Cheshire Home and from discussions with the management of these premises, no complaints had been made by residents.

Mrs. Wood confirmed there was no intention to maximise use of the licence conditions, in terms of public entertainment or the opening hours. The law required a declaration to be made through the operating schedule and it also provided ample measures to protect the public. She took comfort from the powers available, which she felt would give the public confidence.

Mrs. Wood then referred to the opening hours applied for by another public house within the Village. In view of residents' concerns she was happy to reduce the opening hours to that of the other public house. The Chair reminded that this was a matter for her to decide before the Committee determined the application. Consideration was given to the Operating Schedule and Mrs. Wood proposed revised hours of opening, those for the sale of alcohol and for the playing of live or recorded music.

Mr. Arthur made further reference to incidents at the public house, commented on the noise problems and advised that he had been in contact with the Council's Environmental Health Department. Mrs. Jones of 1 Dog Lane spoke of the potential for a change of licensee and the premises licence would be transferred. The Chair accepted this point, but reminded residents of their right to pursue concerns through the various statutory bodies.

Mr. Fitzpatrick pursued the point about residents being in the vicinity of the premises. He felt that this was somewhat different in a Village, where the views of the community should be taken into account. Mr. Arthur provided further comment on the noise problems experienced in September.

At 11.45 a.m. the Sub-Committee retired to consider its decision. At 12.15 p.m. the meeting was reconvened.

In making its decision, the Sub-Committee had regard to South Derbyshire District Council's Licensing Policy, the Guidance issued under Section 182 of the Licensing Act 2003 and the Human Rights Act 1998 and considered carefully all the evidence presented to it.

The Sub-Committee made its decision to promote the four licensing objectives:

- (a) Prevention of Crime and Disorder
- (b) Public Safety
- (c) Prevention of Public Nuisance
- (d) Protection of Children from Harm

The Panel agreed to grant the application for transfer of an existing liquor licence to a premises licence with an application to vary the premises licence, in part only, as follows:-

In relation to the Opening Hours these were to be as follows:-  
(Standard times)

Sunday to Thursday : 09.00am until 23.30pm;

Friday and Saturday : 09.00am until 00.30am

(Non Standard times)

New Years Eve : 09:00am until 01:30am;

New Years Day : 09:00am until 23:30pm

In relation to the Sale of Alcohol, these were to be as follows:-

(Standard times)

Sunday to Thursday : 09.00am until 23.00pm with an additional 30 minutes drinking up time;

Friday and Saturday : 09.00am until 00.00am (midnight) with an additional 30 minutes drinking up time

(Non Standard times)

New Years Eve : 09:00am until 01:00am with an additional 30 minutes drinking up time;

New Years Day : 09:00am until 23:00pm with an additional 30 minutes drinking up time

In relation to Live Music & Recorded Music, these were to be as follows:-

(Standard times)

Sunday to Thursday : 09.00am until 23.00pm ;

Friday and Saturday : 09.00am until 00.00am (midnight);

(Non Standard times)

New Years Eve : 19:00pm until 00:30am;

New Years Day : 19:00pm until 23:00pm

In relation to Late Night Refreshment, these were to be as follows:-

(Standard times)

Monday to Thursday : as per grandfather rights; 11:00am until 23:00pm;

Friday and Saturday : an extension was granted to the current hours from 23:00pm until 00:00am (midnight);

Sunday : as per grandfather rights; 2:00pm until 22:30pm

(Non standard times)

New Years Eve : 12:00pm (midday) until 01:00am;

New Years Day : 12:00pm (midday) until 23:00pm

All variations are subject to the following conditions;

The Applicant shall close windows and doors during live entertainment except for access and egress to and from the premises;

The Applicant shall install a noise limiting cut out device at a decibel rating determined by South Derbyshire District Council Environmental Health Department;

In the event of any conflict between the Decision Notice and grandfather rights in existence, the grandfather rights will take precedence.

Having taken into account the four licensing objectives, the guidance issued under Section 182 of the Licensing Act 2003, the Council's Licensing Policy and the Human Rights Act 1998, the panel sought to balance the interests of the Applicant and the representations made by the Interested Parties.

The panel felt that it was reasonable and proportionate to allow the variation, in part, with amendments subject to the conditions specified which are imposed to specifically address the concerns raised, in particular the prevention of public nuisance.

The Legal Adviser reminded all parties that they could appeal to the Magistrates Court against this decision, within a period of 21 days from receipt of the Decision Notice.

**RESOLVED:-**

***That the Sub-Committee grants the application for a premises licence at the Hollybush Inn, 15 Main Street, Netherseal as set out above.***

B. WHYMAN M.B.E.

CHAIR

The Meeting terminated at 12.35 p.m.