

FINAL



**Democratic Services**

Civic Hall  
Leeds LS1 1UR

Orchid Pubs Operations Limited  
Park Mill  
Burydell Lane  
Park Street  
St Albans  
AL2 2HB

Contact: Helen Gray  
Tel: (0113) 247 4355  
Fax: (0113) 395 1599  
Email: [helen.gray@leeds.gov.uk](mailto:helen.gray@leeds.gov.uk)  
Our Ref: A61/HG  
Your Ref: Podger decision

Date : 3 July 2007

**APPLICATION FOR THE VARIATION OF A PREMISES LICENCE AT: PODGER HOTEL”,  
NINELANDS LANE, GARFORTH, LEEDS LS25 1NT**

On 25<sup>th</sup> June 2007 the Licensing Sub Committee heard an application made by Orchid Pubs Operations Limited, Park Mill, Burydell Lane, Park Street, St Albans AL2 2HB for the variation of a premises licence at the Podger Hotel, Garforth.

The applicant sought to **remove** the condition attached to the existing premise licence which states that “Patrons shall not be allowed to use the beer garden or external drinking area after 23:20 hours”.

It should be noted that all existing licensable activities and hours of operation remain unchanged by this application.

This letter represents the formal decision of the Sub Committee in respect of the application.

**Preliminary Procedural Issues**

The Sub Committee considered preliminary matters of a purely procedural nature. There were no declarations of interest made.

Prior to the hearing the Sub Committee had considered the Licensing Officers Report containing the application as submitted and written representations received from the following local residents: Mrs M Elmieh; Mr S Ackroyd; Mrs K Ackroyd; Mr R Reading; C & P Hanlon; Mrs A North; Miss S Dove; H & M Brown; Mr R A George; Mr D & Mrs D Simpson, plus 5 anonymous submissions

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The Sub Committee noted that not all the interested parties attended the hearing, and resolved to take their written submissions into consideration and proceed with the hearing. The Sub Committee permitted each party 10 minutes in which to make their case. This time limit was imposed having regard to the relevant Regulations and in the interests of consistency and the efficiency of business.

The Sub Committee then went on to consider the application.

### The Hearing

The following interested parties attended the hearing:

Ms Helen Audsley on behalf of Orchid Pubs Limited.

Mr Mark Lamb, Area Manager

Mr Mark Quarmby, Manager and DPS of the Podger Hotel

Local ward Councillor T Murray

Local ward Councillor M Dobson (observing)

In determining the application the Sub Committee took into account the written submissions contained within the report. These had been circulated to the Parties prior to the hearing.

After considering the evidence and submissions the Sub Committee needed to satisfy itself that granting the application to vary Licence would promote the licensing objectives.

In reaching this decision the Sub Committee had regard to the provisions of the Licensing Act 2003, guidance under Section 182 of that Act and the Council's own Licensing Policy.

In particular the Sub Committee took into account Sections 34 & 35 of the Act because these were the most relevant to the application and Chapter 7 of the Guidance relating to the prevention of crime and disorder, public nuisance and public safety.

The Sub Committee then went on to consider the following paragraphs of the Licensing Policy as the Sub Committee took the view these paragraphs had bearing on the application.

11:05 to 11:10      Crime & Disorder

11:11 to 11:22      Public Safety

11:23 to 11:28      Public Nuisance

The Sub Committee noted that the following agreement had been reached between the applicant and West Yorkshire Police (WYP) regarding an amendment to the condition in question in order to address the prevention of crime and disorder objective as follows:

**“Patrons consuming alcohol or food shall not be allowed to use the beer garden or any other external area after 23:30 hours”**

The Sub Committee further noted that even though this measure had been agreed between the parties, it did not supersede the decision of the Sub Committee.

Just prior to the commencement of the hearing, the Chair of the Sub Committee requested the applicant indicate on the map included within the Licensing Officers report exactly where the beer garden was situated in relation to the premises. Mr Quarmby highlighted the area in

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question and this was tabled to the Sub Committee and the interested parties in attendance and retained by the Clerk

The Sub Committee began by considering the representation made by local ward Councillor T Murray. Councillor Murray explained that a local resident, Mr Simpson who had made a written submission, had requested Councillor Dobson to attend the hearing and speak on his behalf. However since that request, Councillor Dobson had been nominated to sit on the Licensing Committee, and he therefore had asked Councillor Murray to attend in order to avoid any suggestion of bias.

Moving on, Councillor Murray stated that at the time of the change to the licensing regime in 2005, local residents had many concerns and worries. Since the original decision made in 2005, the local residents had generally been happy about the management and activities of the pub. At that time a condition was attached to the premise licence which prevented late night use of the external areas around the pub, and this was felt to have worked well.

This application to vary that condition had therefore come as a surprise and led the local residents to question the need to change. Councillor Murray stated main concerns of the local residents were those of noise and disruption, and that although these problems had not materialised so far, it was felt that they would if this application was granted.

He noted that WYP had no concerns regarding the sale of food or alcohol at the later hour, and conceded that the residents probably wouldn't either, however they would have concerns about noise and disturbance at the later hours associated with patrons using the external areas. Councillor Murray concluded by referring to the map with the external area/beer garden highlighted upon it and reiterated that these areas were close to local residents, and were close enough to cause significant disturbance to them.

The Sub Committee moved to ask questions of Councillor Murray, and noted that although there were no questions from the Members, they did permit Ms Audsley on behalf of the applicant to ask one. Ms Audsley enquired whether the local councillors and residents were aware that after 1 July 2007 when the new smoking legislation preventing smoking in public areas came into force, patrons who did smoke would be entitled to leave the premises anyway and smoke anywhere outside if they wanted. This could include smoking on the pavement, the car park or the public highway and thus they would be outside of the premises and away from the licensee's control

Councillor Murray responded that he was and commented that his concerns were based on the possible numbers of smokers making use of the designated areas at a later hour, he had concerns about the numbers and the hours asked for. He added that it was too early in the legislation change to predict whether smokers would be out there in large or small numbers, but if they were; it would be the noise they generated which would create big problems

The Sub Committee then moved to hear the submission made on behalf of the applicant by Ms H Audsley. Ms Audsley described the premise as a community pub, and this application had been made as a result of the smoking ban. The application had been discussed with both WYP and LCC Environmental Health Services and as a result the application had been amended to ensure patrons could only use the external areas for smoking, and not to drink or eat as well.

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Ms Audsley pointed out it wasn't a question of whether they would or would not go outside to smoke; patrons who smoked would have to go outside after 1 July 2007. This application was about the applicant being allowed to give a sensible smoking solution in the light of that – namely a designated area outside the premises which was easily monitored by staff.

Ms Audsley added that it would be difficult for staff to monitor smokers as they intended to do outside the premises without the designated area, as those patrons would therefore be allowed to go anywhere outside to smoke. She highlighted the fact that would be likely to make use of the car park, adding that currently the licence allowed patrons to take their drinks into the car park. This application therefore best addressed the solution.

The Sub Committee noted that the area to the front of the premises appeared to be a greater distance from local residents. Mr Quarmby responded that he would be happy to designate that area; however they had applied for the two areas in order to prevent the possibility of one large group of patrons congregating in just one area. With two designated areas there would be two smaller groups. He also added that there were proposals to include heating and lighting, plus a garden area in the rear site however the relevant planning application had yet to be determined.

Councillor Murray at this point was allowed to comment and ask a question regarding the planning application which he understood to be for a pagoda type building. Mr Quarmby confirmed this pagoda would be erected to the rear area. Councillor Murray then moved to discuss the planning application in more detail, namely the hours of usage, but was reminded by the Sub Committee that the outcome of a planning application was not a matter for the licensing authority. The Legal Adviser clarified that in any event, the use of the pagoda within the external area would require both applications to be approved.

Moving on, Ms Audsley provided the following information in reply to further questions from the Sub Committee

- if the application was refused, patrons who smoke would be free to go outside and use any external area, either within the boundary of the pub or not, to smoke. It was likely that they would use the car park surrounding the pub, which was bollarded from the pavement and it was likely they would use the bollards as seats.
- She confirmed the area to the front of the premises was further away from local residents and reiterated the applicants offer to accept a usage of just the front area (and removal of the rear area from any permission) if the Sub Committee wished
- She confirmed the premises was a busy pub with a mixture of customers and there were a number of smokers amongst the clientele
- With regards to built structures, Mr Quarmby stated there was a covered area to the front already which would provide shelter, heat and light. The pagoda intended for the rear area was really to be an extension of the beer garden

Councillor Murray further commented that he did appreciate why the application had been made. As Councillor Murray had been allowed to comment again, Ms Audsley was afforded the opportunity to respond. She stated that the Company did have experience of managing non smoking premises and already operated "dining pubs" which were entirely non-smoking. She stated that where a smoking area was provided, patrons would make use of it, but she highlighted the fact that they had to finish their drinks or leave them behind with friends in order to go out for a smoke. Furthermore she suggested that the addition of seats to the

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designated areas allowed better control of the number of smokers as they tended to wait for seat to become free before going outside.

### **The Decision**

The Sub Committee had regard to the written and verbal submissions made by the representative of the local residents and carefully considered the verbal representations made on behalf of the applicant and the current licensee in support of the application. The Sub Committee noted the agreement made with WYP about the suggested condition made to mitigate against possible incidences of crime and disorder.

Members were satisfied that this measure would address any perceived concerns local residents may have with regards to noise and disturbance. However for the avoidance of doubt, the Sub Committee decided there was further action the authority could take to further control the use of the designated smoking areas

The Sub Committee therefore resolved to grant the application, but to impose a condition in order to provide further clarity and control as follows

It should be noted that the existing hours for the licensable activities at the premises are not affected by this application.

### **Conditions**

- The request to vary the existing Premise Licence to remove the existing condition which states “ Patrons shall not be allowed to use the beer garden or external drinking area after 23:20 hours” be granted

That condition shall be replaced with the following:

- “Patrons consuming alcohol and/or food, or carrying on any other licensable activity, shall not be allowed to use the beer garden or any external area after 23.30, and shall not be allowed to use any external area for any purpose after 23.30 Monday to Wednesday, 00.30 Thursday to Saturday and 23.00 Sunday. In respect of Bank Holidays no external area shall be used for any purpose after the time when the public house ceases to be open to the public.

There is a right of appeal to the Magistrates Court should you be dissatisfied with the decision made by the Sub Committee. You must make this appeal within 21 days of this letter reaching you.

Appeals should be addressed to the Magistrates Court at:

Clerk to the Justices

Leeds Magistrates Court

Westgate

Leeds

LS1 3JP

and accompanied by a copy of this decision letter and the court fee of £75.00.

Yours faithfully,

**Helen Gray**

**Clerk to the Licensing Sub Committee**