



Democratic Services

Governance Services
4th Floor West
Civic Hall
Leeds LS1 1UR

Contact: Laura Pilgrim
Tel: (0113) 247 4359
Fax: (0113) 395 1599
Email: laura.pilgrim@leeds.gov.uk
Our Ref:
Your Ref:

7 February 2008

APPLICATION FOR THE GRANT OF A PREMISES LICENCE: PREMISES FORMERLY KNOWN AS “LEEDS DISTRICT FREE GARDENERS CLUB”, STONEY ROCK LANE, BURMANTOFTS, LEEDS, LS9 7TZ

On the Monday 3rd December 2007 the Licensing Sub-Committee heard an application brought by Mr. J. S. Teja, 327 Chapeltown Road, Leeds, LS7 3LL for the grant of a premises licence in respect of the premises formerly known as “Leeds District Free Gardeners Club”, Stoney Rock Lane, Burmantofts, Leeds, LS9 7TZ.

The applicant sought the following:

The proposed licensable activities were:

- A Plays
- B Live Music
- F Recorded Music
- J Provisions of Facilities for Dancing
- K Provision of Facilities for Entertainments of a Similar Description to that falling within (I) or (J)
- L Late Night Refreshment
- M Supply of Alcohol

The proposed hours of licensable activities were:

A, B, F, K and M

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Monday to Sunday 11:00 hours to 01:00 hours

L - Late Night Refreshment

Monday to Sunday 23:00 hours to 01:00 hours

The applicant also sought the following non-standard timings:

An additional hour every Friday, Saturday, Sunday and Monday for every Bank Holiday Weekend and an additional hour every Christmas Eve and Boxing Day.

The proposed hours the premises will be open to the public were:

Monday to Sunday 11:00 hours to 01:30 hours

The hours the premises would be open to the public would reflect the proposed non-standard timings.

The Sub-Committee noted that the applicant had reached an agreement with West Yorkshire Police with regard to their objection. The applicant had agreed the following

The proposed hours of licensable activities were:

A, B, F, K and M

Monday to Sunday 11:00 hours to 00:00 hours

Late Night Refreshment

Monday to Sunday 23:00 hours to 00:00 hours

There will be no non-standard timings.

The premises will open to the public:

Monday to Sunday 11:00 hours to 00:30 hours

The following conditions had also been agreed to be included in the premises licence operating schedule:

1. The premises to adopt a Check 21 proof of age scheme in accordance with guidance issued by West Yorkshire Police.
2. The Designated Premises Supervisor shall maintain an Incident Report Register in which staff must record any incident which has occurred on the premises.
3. The Incident Report Register must be retained on the premises for a period of one year, taken from the date of the last entry , and include the following:
 - a. Consecutively numbered pages.
 - b. The date and time of the incident.
 - c. The nature of the incident.

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- d. The full name/s of staff involved, including SIA badge numbers of any door staff, and to whom the incident was reported, including names of any Police Officers who attended the scene and the details of any witnesses.
 - e. Any notes relevant to the incident.
 - f. Incident Report Registers shall be produced for immediate inspection upon request for a Police Officer or Council Enforcement Officer.
4. Door staff to be employed from a reputable and well established company.
 5. The DPS must maintain a Daily Record Register for door staff. This is to be completed on a daily basis by the door staff when they commence and finish their duty. The register will contain numbered pages, the full name and SIA badge number of each person on duty and the employer of that person.
 6. Participate in the local Pub Watch scheme of licensing association (where one exists) that is recognized by West Yorkshire Police.
 7. A policy for searching customers at the entrance to the premises will be adopted.
 8. The DPS must inform West Yorkshire Police of any search resulting in the seizure of drugs or offensive weapons.
 9. Operate an effective CCTV system, both inside and outside the premises, and maintain this in accordance with guidelines issues by West Yorkshire Police.
 10. Implementation of a dispersal policy agreed with West Yorkshire Police.
 11. CCTV recording to be retained for no less than 31 days and system to record during all operating hours.

The applicant had also reached an agreement with LCC Health and Safety in relation to the application. The applicant had agreed the following:

1. Electrical installations will be inspected on a periodic basis (at least every three years or at a frequency specified in writing) by a suitable qualified and competent person. If use, any temporary electrical wiring and distributions will also be inspected. Inspection records/certificate will be kept. There will be made available at the request of an authorised officer.

Other conditions which had been proposed by LCC Health and Safety existed in the Operational Schedule of the Premises Licence.

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. The Sub-Committee agreed that the procedure for the hearing would not be varied. The Sub-Committee then decided to exclude the public from that part of the meeting where Members would deliberate on the application as presented. This would allow them to have a full and frank discussion on all matters put before them and this fact outweighed the public interest in not doing so.

Prior to the hearing that Sub-Committee had considered the Licensing Officers report which included a copy of the application as submitted. The report also included written representations received from West Yorkshire Police (WYP), Leeds City Council Environmental Health Services, Leeds City Council Environmental Health and Safety Team, Mr. K. Abbott, Mrs. P. Abbott, Joanne Amps, Edgar Anderson, Elizabeth Anderson, Gerald

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Ashun, S. D. Butterfield, K. Butterfield, A. Dillingworth, L. Collinson, M. Copsey, F. Consale. K. Cox, Hazel Cox, April Constigan, N. Dickinson, James Doherty, Mr. E. Dransfield, Mrs. W. Dransfield, Colleen Dunn, Julie Emsley, Julianne Esguera, Russell Fletcher, Amelia Flett, M. Gager, E. Gale, Judith Glaingan, Brian Glover, Christine Glover, Sandra Glover, A. Hancock. Emma Hartley, Patricia Hartley, J. Hodgson, L. Joy, Albert Judson, Jean Judson, Elizabeth Langton, Kathleen Leitch, Sandra Mackay, Steven Massey, M. Moore, J. Morris, B. Morris, Patrick Murphy, Mrs. C. Newsome, M. E. Ingham, P. Capitano, June O'Neill, G. Payne, F. Pickersgill, M. Rank. Mr. Stephen Rayner, Mrs. Lynne Rayner, Hazel Rayner, John Edward Roebuck, Karen Roebuck, Irene Scales, John Scales, Karen Schrober, John Seaton, Mark Anthony Sharlette, J. M. Stead, Mrs. Carol Temple, Brian Wrigglesworth, Mary Wilson, Martyn Wood, Darrell Xavier and Patricia Yeardley

The Sub-Committee then went on to consider the application

The Hearing

The following interested parties attended the hearing:

- Mr. Teja, the applicant
- Ms. Janet Roan, club secretary
- Mr. John Coen, solicitor to the applicant
- Richard Hodgeson, solicitor to the applicant
- Mr. Richard Bilsborough, LCC Environmental Health Services
- Ms. Claire Copley, LCC Health and Safety
- Mr. Phil Jackson, LCC Health and Safety
- Cllr. Hollingswoth, ward councillor on behalf of L. Joy
- Mrs. W. Dransfield, objector

In determining the application the Sub-Committee took into account the written submissions from the responsible authorities contained within the report and the Notices of Hearing. These had been circulated to the parties prior to the hearing.

After considering the evidence and submissions the Sub-Committee would need to satisfy itself that granting the variation would promote the licensing objectives.

In reaching its 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 17 & 18 of the Act because these were the most relevant to the application and Chapter 2 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 that these paragraphs had a bearing on the applications:

11:05 to 11:10	Crime & Disorder
11:11 to 11:22	Public Safety
11:23 to 11:28	Public Nuisance

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Responsible Authorities

Environmental Health Services

The Sub-Committee was advised that the applicant had reached an agreement with LCC Environmental Health Services on the following conditions:

Noise and Vibration

- 1) Noise from the premises shall be inaudible at the nearest noise sensitive premises (i) after 23:00 hours and (ii) at any time when entertainments, as defined by paragraph 2 of schedule 1 of the Licensing Act 2003, takes place on more than 30 occasions per year. (This is likely to require doors and windows to be kept closed during entertainment and may necessitate an alternative form of ventilation during hot weather).
- 2) No bottles shall be placed in the external receptacle after 23:00 hours to minimise noise disturbance to adjoining properties.
- 3) Ensure that the rating level of noise from plant machinery is inaudible at the most affected noise sensitive premises during the operation of the plant. Plant and machinery shall be regularly serviced and maintained to continue to meet the rating level.
- 4) Clear and legible notices shall be displayed at exits and other circulatory areas requesting patrons to leave the premises having regard to the needs of local residents, in particular emphasising the need to refrain from shouting, slamming car doors sounding horns and loud use of vehicle stereos and anti social behaviour. The activity of persons leaving the premises shall be monitored and they shall be reminded to leave quietly where necessary.

Odour

- 6) Ensure that the premises are operated so as to prevent the emission of odours which are a nuisance at nearby premises or to persons in the immediate area.

The applicant had not reached an agreement with LCC Environmental Health in relation to condition 5:

- 5) The opening hours of the premises shall be limited to 11:00 to 00:30 on Fridays/Saturdays, 11:00 to 23:30 Monday to Thursday and 11:00 to 23:00 on Sundays, except for Christmas Eve and Boxing Day where the hours shall extend from 11:00 to 01:00.

Mr. Richard Bilsborough, LCC Environmental Health Services, advised the Sub-Committee that he still wished to continue with the objection in relation to the opening hours. The premises was in close proximity to a number of noise sensitive premises at the rear, side and front of the building local residents were mostly vulnerable and elderly. There had been problems with regard to public nuisance in the nearby area to 01:30 hours. There was potential to cause nuisance to local residents when the premises was open, when patrons left the premises, with car doors slamming and patrons shouting. A nearby premises closed to

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the public during the week at 23:30 hours and local residents faced an additional hour of noise nuisance every night if the application was granted. These reasons were the impetus behind the objection to the premises opening to 00:00 hours.

Objectors

The Sub-Committee went on to consider the representation made by Mrs. Dransfield who had objected in writing to the premises licence. Mrs. Dransfield informed the Sub-Committee that she felt that 01:00 hours was too late for the premises to close and that 23:00 hours was a more appropriate time for the premises to close. There was a mixture of people living nearby the premises including many elderly people and young families who would be disturbed if the premises were open too late.

In the question which to Mrs. Dransfield the following issues were discussed:

- Mrs. Dransfield's house was not located on the map included in the Licensing Officer's report however Mrs. Dransfield indicated the general area her premises was located (facing onto Stoney Rock Lane). The Sub-Committee was informed that there was another licensable premises, 'The Sportsman', in between Mrs. Dransfield's home and the premises.
- There had previously been issues with noise and fireworks from the 'Sportsman' which closed at 23:00 hours.
- Mrs. Dransfield believed the Leeds District Free Gardeners Club had been closed for a few weeks.

A request was made by Councillor Hollingsworth to speak on behalf of a local resident, L. Joy, who was unable to attend the hearing. The Sub-Committee heard representations from Mr. Coen that the Sub-Committee's procedure rules only allowed for Councillors to attend and where they had made a written representation personally or had the written permission of an objector to speak on their behalf. Mr. Coen added that Councillor Hollingsworth had not complied to either of these two requirements. Whilst the letter of objection from L. Joy seemed to be a form of petition which had been signed by a number of local residents Mr. Coen was unaware of the nature of the concerns the Councillor had and that it was not possible to prepare an adequate response to any of the Councillors' comments. Mr. Coen was asked as to whether he felt that the applicant would get a fair hearing if Councillor Hollingsworth was allowed to speak. Mr. Coen advised that the applicant was entitled to a 'fair playing field' and to know in advance the details of the objections against them. The Legal Adviser informed the Sub-Committee that regulations allowed Councillors to speak where they had made an objection or had written permission from an objector to speak on their behalf. Councillor Hollingsworth was therefore not allowed to make any representations on the applications but was allowed to remain in the room.

Applicant

The Sub-Committee then went on to consider representations from Mr. Coen on behalf of the applicant. Mr. Coen informed the Sub-Committee that the premises had been closed for the previous four to five weeks. The premises currently benefited from a Club Premises Licence which allowed the premises to serve alcohol everyday between 11:00 hours to 23:00 hours with a half hour drinking up time. Mr. Coen advised the Sub-Committee that he was not familiar with other details which related to the Club Premises Licence.

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Mr. Teja, the applicant, was currently in the process of spending between £50,000 and £80,000 to refurbish the premises to ensure that the premises was an asset to the area and not an eyesore as it currently was. The applicant had taken into consideration the concerns of the responsible authorities and local residents and decreased the hours the premises would be open to the public to 00:30 hours and the removal of all non-standard timings from the application. The Sub-Committee had already noted that the applicant had reached agreements with West Yorkshire Police, LCC Health and Safety Team and with LCC Environmental Health Services on all but one condition which related to the times the premises would be open to the public.

The premises aimed to have a mixed clientele of local residents of different ages and was likely to employ six to eight staff generating employment in the area. Food would be sold throughout the day everyday and entertainment would be provided mostly on the weekend. Mr. Teja had experience in taking over similar premises which were failing and turning them around.

In relation to the outstanding objection with LCC Environmental Health Services Mr. Coen informed the Sub-Committee that the only issue the applicant had was with the proposed times the officers required the premises to close between Sunday and Thursday every week. The proposed time that for Sunday, 22:30 plus a half hour 'drinking up' time was most unusual in Mr. Coen's view.

In addressing a point raised regarding the opening hours of a nearby premises, 'The Sportsman' Mr. Coen drew Member's attentions to paragraph 1.15 of the Guidance which stated that every application should be dealt with on its own merits. In his opinion, the opening hours of another premises were academic and not relevant to the application before Members.

The Sub-Committee was reminded by Mr. Coen that according the agreements reached with Environmental Health Services noise would be inaudible at the nearest noise sensitive premises after 23:00 hours. The premises licence could be reviewed under section 51 of the Licensing Act 2003 if issues arose. Instead of restricting the hours the premises was open incase there was a noise nuisance there were pieces of legislation, such as the Clean Air and Neighbourhoods Act 2005 and the Environmental Protection Act 1990 which could be used to pursue the applicant in the event of a noise nuisance. In order for the premises to have a reasonable chance of success the premises needed to be able to stay open to 00:00 hours and the Sub-Committee was reminded that the premises would not be a nightclub. It was the intention of the applicant to have entertainment on the weekend and for the premises to be an asset to the local community.

In the questions which followed to the applicant the following issues were addressed:

- The premises, like all other premises, only had 1 Designated Premises Supervisor (DPS). When this person was not available another member of staff would be in charge of the premises.
- Mr. Coen was unsure of the capacity of the premises but advised that the car park had approximately 20 to 25 parking spaces for patrons.
- There were to be no licensable activities outside the premises however, patrons would have to use the external area if they wished to smoke.

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- In response to a question which related to other legislation Environmental Health Services were able to use to address noise nuisance Mr. Bilsborough advised that these other powers were often cumbersome and that it was advisable to prevent the noise nuisance happening in the first place. As the application stood Mr. Bilsborough felt that it was important to prevent public nuisance before it started. In the event that there is public nuisance in relation to noise Environmental Health Officers and not the police would be called to deal with the problem.
- Section 80 of the Environmental Protection Act 1990 gave officers the power to deal with all statutory nuisances. The Environmental Health Team would receive a complaint from a member of the public and would then assess the noise levels at the premises and how it affected any part of the premises e.g. the bedroom late at night. If a nuisance was found to have occurred officers would issue an Abatement Notice which was a legal document which advised the person responsible for the premises that they were causing a statutory nuisance. Officers would have to receive a further complaint regarding noise at the premises and assess the noise levels at the complainants house. If a statutory nuisance was identified the local authority would be able to pursue the premises.
- When The Environmental Health Services Team received complaint regarding noise officers would check the premises licence to identify any appropriate conditions to the premises licence and would then assess the noise using the statutory nuisance procedure. Officers would use all pieces of legislation which were relevant and available to them in dealing with complaints.
- Mrs. Dransfield informed the Sub-Committee that there were already concerns regarding noise from other sources in the area such as the nearby secondary school which had 1100 pupils. There was also noise from ambulances which had previously taken place during the day but had now extended all the way through the night.
- Mr Coen acknowledged that it would be easier for officers to take action under the Licensing Act 2003 however with the agreed condition that noise should be inaudible at the nearest noise sensitive premises this would prevent public nuisance. Mr. Coen also submitted that the school was not close the premises in question.
- The premises was currently an eyesore and the premises to work as a viable business the premises would need to have the option of staying open to 00:00 hours. It was probable that the premises would not open to 00:00 during the week if there was insufficient custom.
- Members of the Sub-Committee were reminded by Mr. Coen that the police had not objected to the premises opening to 00:00 hours on grounds of public nuisance.

The Decision

The Sub-Committee discussed the application in a closed session and received legal advice on the options open to them with regard to the application. Members noted the written submissions objecting to the variation. The representations made by the applicant in support of the application were also taken into consideration by the Sub-Committee.

After careful consideration the decision of the Sub-Committee was to grant the premises licence in the following terms:

The licensable activities will be:

A Plays

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- B Live Music
- F Recorded Music
- J Provisions of Facilities for Dancing
- K Provision of Facilities for Entertainments of a Similar Description to that falling within (I) or (J)
- L Late Night Refreshment
- M Supply of Alcohol

The hours of licensable activities will be:

A, B, F, K and M

Monday to Sunday 11:00 hours to 00:00 hours

Late Night Refreshment

Monday to Sunday 23:00 hours to 00:00 hours

There will be no non-standard timings.

The premises will open to the public:

Monday to Sunday 11:00 hours to 00:30 hours

The grant of the Premises Licence was subject to the inclusion of the agreements reached with all responsible authorities being included in the operating schedule:

West Yorkshire Police

1. The premises to adopt a Check 21 proof of age scheme in accordance with guidance issued by West Yorkshire Police.
2. The Designated Premises Supervisor shall maintain an Incident Report Register in which staff must record any incident which has occurred on the premises.
3. The Incident Report Register must be retained on the premises for a period of one year, taken from the date of the last entry , and include the following:
 - a. Consecutively numbered pages
 - b. The date and time of the incident
 - c. The nature of the incident
 - d. The full name/s of staff involved, including SIA badge numbers of any door staff, and to whom the incident was reported, including names of any Police Officers who attended the scene and the details of any witnesses.
 - e. Any notes relevant to the incident
 - f. Incident Report Registers shall be produced for immediate inspection upon request for a Police Officer or Council Enforcement Officer.
4. Door staff to be employed from a reputable and well established company.
5. The DPS must maintain a Daily Record Register for door staff. This is to be completed on a daily basis by the door staff when they commence and finish their duty. The register will contain numbered pages, the full name and SIA badge number of each person on duty and the employer of that person.

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6. Participate in the local Pub Watch scheme of licensing association (where one exists) that is recognized by West Yorkshire Police.
7. A policy for searching customers at the entrance to the premises will be adopted.
8. The DPS must inform West Yorkshire Police of any search resulting in the seizure of drugs or offensive weapons.
9. Implementation of a dispersal policy agreed with West Yorkshire Police.
10. Operate an effective CCTV system, both inside and outside the premises, and maintain this in accordance with guidelines issues by West Yorkshire Police
11. CCTV recording to be retained for no less than 31 days and system to record during all operating hours.

Health and Safety

1. Electrical installations will be inspected on a periodic basis (at least every three years or at a frequency specified in writing) by a suitable qualified and competent person. If use, any temporary electrical wiring and distributions will also be inspected. Inspection records/certificate will be kept. There will be made available at the request of an authorised officer.

Environmental Health Services

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2. No bottles shall be placed in the external receptacle after 23:00 hours to minimise noise disturbance to adjoining properties.
3. Ensure that the rating level of noise from plant machinery is inaudible at the most affected noise sensitive premises during the operation of the plant. Plant and machinery shall be regularly serviced and maintained to continue to meet the rating level.
4. Clear and legible notices shall be displayed at exits and other circulatory areas requesting patrons to leave the premises having regard to the needs of local residents, in particular emphasising the need to refrain from shouting, slamming car doors sounding horns and loud use of vehicle stereos and anti social behaviour. The activity of persons leaving the premises shall be monitored and they shall be reminded to leave quietly where necessary.

Odour

5. Ensure that the premises are operated so as to prevent the emission of odours which are a nuisance at nearby premises or to persons in the immediate area.

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In making its decision the Sub-Committee was satisfied that the grant of the licence with the imposed conditions was in line with the Council's own Licensing Policy and the provisions of the Licensing Act 2003.

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 £400.00 if you are the premises licence holder and £200.00 for all other parties. Cheques should be made payable to HMCS.

Yours sincerely

Laura Pilgrim
Governance Services Officer