

To the Chair and Members
of the
LICENSING SUB-COMMITTEE

Mrs P A Brown
742224
PAB/ED – R82/49

24 June 2005

Dear Sir/Madam

A meeting of the **LICENSING COMMITTEE** will be held in the **ST GEORGE'S CHURCH HALL, CHERRY ORCHARD, NEWCASTLE** on **MONDAY, 4 JULY 2005** at **10.30pm**.

A G E N D A

Detail of the procedure to be followed by the Sub-Committee together with Guidance Notes relating to Human Rights Act 1988 are attached.

Yours faithfully

D A DIMOCK

Head of Legal and
Democratic Services

Officers will be in attendance prior to the meeting for informal discussions on agenda items.

GUIDANCE NOTES

HUMAN RIGHTS ACT 1998

In considering allegations against Members you should have regard to the provisions of the Human Rights Act 1998 which embody the rules of natural justice.

Rights and Freedoms to be considered when determining matters

ARTICLE 6: RIGHT TO A FAIR TRIAL

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly, but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
 - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
 - (b) to have adequate time and facilities for the preparation of his defence;
 - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means, to pay for legal assistance, to be given it free when the interests of justice so require;
 - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

ARTICLE 8: RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 10: FREEDOM OF EXPRESSION

1. Everyone has the right to freedom of expression. These rights shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of

health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

ARTICLE 14: PROHIBITION OF DISCRIMINATION

The enjoyment of the rights and freedoms set fourth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

NB This is not a substantive right, but comes into play if other rights are likely to have been infringed. The prohibition is wide, but not exhaustive

ARTICLE 1: OF THE FIRST PROTOCOL PROTECTION OF PROPERTY

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

NOTE In this context it is particularly important for members to observe the rule against bias and to ensure that the Member complained against receives a fair hearing by an impartial tribunal.

PROCEDURE TO BE FOLLOWED BY THE LICENSING SUB-COMMITTEE

NOTE:

All hearings will normally be held in public. However, the Licensing Sub-Committee may exclude the public from all or part of a hearing where it considers that the public interest in so doing outweighs the public interest in the hearing or that part of the hearing taking place in public. A party or that party's representatives may be treated as a member of the public and therefore excluded from the meeting for all or part of the hearing, and all parties have the right to be represented and to call witnesses.

The Clerk to the Committee will have the right to ask questions on behalf of the Committee of any party to the proceedings.

PROCEDURE:

1. The Chair of the Sub-Committee will open the meeting and introduce the members of the committee and call upon the parties to identify themselves and their representatives and to identify any witnesses they intend to call.
2. The Chair of the Sub-Committee will call upon the Clerk to the Committee to explain to the parties the procedures which will be followed at the hearing. Unless the Chair directs otherwise, each party will normally have a maximum period of one hour in which to give further information and call any witnesses in support of their case. In every case, all parties will have an equal maximum period.
3. The Chair of the Sub-Committee will then normally call upon the person who has made a relevant representation against the grant of an application to provide evidence in support of their representation.
4. The applicant will then have an opportunity to question that person.
5. Members of the Sub-Committee will then have the opportunity to question that person.
6. The person making the representations will then call any witness in support of their representation.
7. The applicant will then have the opportunity to question that witness.
8. Members of the Sub-Committee will have the opportunity to question that witness.
9. The applicant will then have the opportunity to give evidence in response to the application.
10. The person making the representations will have the opportunity to question the applicant.
11. Members of the Sub-Committee will have the opportunity to question the applicant.
12. The applicant will call any witness in support of their application.
13. The person making representations will have the right to question that witness.
14. Members of the Sub-Committee will have the right to question that witness.

15. The applicant will have the opportunity to address the Sub-Committee.
16. The person making representations will have the right to address the Sub-Committee.
17. All parties will then leave the room while the Sub-Committee consider their decision.
18. The Sub-Committee will normally make their determination at the conclusion of the hearing, but when this is not possible, will make its determination within the period of five working days beginning with the day on which the hearing was held.

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

**CHIEF OFFICERS' REPORT TO THE
LICENSING SUB-COMMITTEE**

4 July 2005

1. **APPLICATION FOR THE CONVERSION TO A PREMISES LICENCE WITH
VARIATION IN RESPECT OF PREMISES KNOWN AS WULSTAN,
DIMSDALE PARADE EAST, WOLSTANTON**

1. **Details of Application**

- (a) Applicant: Spirit Group Limited
- (b) Premises: Wulstan, Dimsdale Parade East
- (c) Application for: Premises Licence. (Copy of application form attached as Appendix A). Blue paper).
- (d) Proposed licensable activities: Sale by retail of alcohol, provision of regulated entertainment (music indoors only), provision of late night refreshment.
- (e) Proposed hours of licensable activities:
- | | |
|----------------------|----------------------------------|
| Sunday to Wednesday | 10.00 to 24.00 |
| Thursday to Saturday | 10.00 to 01.00 morning following |
- (f) Other proposed opening hours: A further hour on St Davids Day, St Patricks Day and St Andrews Day, with seven days notice and agreement with the police
A further hour for statutory bank holiday weekend periods (Friday, Saturday, Sunday and Monday) and on the Thursday before Good Friday and on Christmas Eve. Also on occasions of local, national or international significance or for charitable events the finish time to be extended by one hour with seven days notice and agreement with the police.
- (g) Designated premises supervisor: Catherine Poynton
- (h) Location: This premises is located along Dimsdale Parade East, between Marsh Way and Silverdale Road. The area is made up of predominantly residential properties. The closest noise sensitive premises are located at Marsh Way, and to the rear of the premises along Albert Terrace.

The premises consist of one large bar area and several seating areas for patrons. The premises are used for the sale of alcohol and food. One seating area is exclusively for customers who are eating a meal. There is an outside patio area as well as an outside children's play area.

There is one main entrance which leads directly to the patio. There is a large car park surrounding the premises. This is adjacent to the residential properties at Marsh Way and Albert Terrace. There currently is lighting around the outside of the premises. This lighting consists of low wattage street lights which illuminate the car park, patio and play area.

2. Conversion application

The premises have traded as a public house for many years without conditions additional to those laid out in the Licensing Act 1964. They are entitled to a premises licence for the sale of alcohol with the previous permitted hours (10.00 to 23.00) becoming conditions of the new licence.

3. Under the provisions of the Licensing Act 1964 music is lawfully given in premises licensed for the sale of intoxicating drink by broadcast or by recorded sound or by not more than two performers without the need for a Public Entertainment Licence. However, under the Licensing Act 2003 applicants must apply for a variation to their licence to allow regulated entertainment if they wish to play recorded music, other than background music, or if they wish to allow any live music.

4. Variation Application

The application is for variation of a Premises Licence during the transitional period under Schedule 8 Paragraph 7(b) of the Licensing Act 2003. The application seeks the provision of regulated entertainment namely recorded music, karaoke and live music (limited to two performers); the provision of late night refreshment; an extension of operating hours to 1.00 on the mornings following Sunday to Wednesday, 2.00am on the mornings following Thursday to Saturday.

5. Steps proposed by applicant to promote the licensing objectives in respect of the variation application

General

Premises will respect the Spirit Groups approach to responsible drinking.

Crime and disorder:

Introducing Security Industry Authority approved door supervisors

Zero tolerance towards illegal drugs will be enforced at all times

When disc jockeys are used they will

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|-------------------|---|
| | request that customers leave quietly All instances of crime and disorder will be reported to the police and will be kept in an incident log book |
| Public safety: | Reviews of health and safety policy to ensure public safety Free drinking water at all times |
| Public nuisance: | Additional patrols by members of staff, internally and externally to limit noise pollution when entertainment is being provided Notices may be displayed asking customers to respect neighbours when leaving the premises Soft drinks and non-alcoholic refreshment will be available if decide to stay open between cessation of supply of alcohol and closure of the premises |
| Child protection: | When children allowed on the premises entertainment offered will be suitable for young persons Children will be required to be supervised by accompanying adults at all times No smoking area will be provided Soft drinks and non-alcoholic drinks will be available Recognised proof of age policy will be enforced |

6. Consultation.

The responsible authorities have been notified of the application. The applicant has advertised the application, as required, by way of poster in the window and by advert in a local newspaper. The following relevant representations have been received:-

(a) Responsible Authorities

- (i) Environmental Protection Officer – The Environmental Protection Division have concerns about possible noise disturbance as a result of amplified music and from people leaving the premises at closing time. (Copy of the response attached as Appendix B). (Pink paper).
- (ii) Staffordshire Police:- Have raised concerns over the measures to prevent crime and disorder and for the protection of children from harm (Copy of the response attached as Appendix C). (Cream paper).

(b) Interested parties

There have been no letters of concern from any other interested parties in respect of this application:

7. Policy Considerations

(a) Licensing Objectives

The Licensing Act 2003 requires the Council to carry out its various licensing functions so as to promote the following four licensing objectives:-

- (i) the prevention of crime and disorder
- (ii) public safety
- (iii) the prevention of public nuisance
- (iv) the protection of children from harm

(b) Policy Statement

The Licensing Act 2003 required the Council to publish a "Statement of Licensing Policy" that set out the policies the Council will generally apply to promote the licensing objectives when making decisions on applications made under the Act.

The Council made a number of policy decisions in its Statement of Licensing Policy. The following policy decisions are relevant to this application:-

- (i) Paragraph 2.9 – Trading hours;
- (ii) Paragraph 2.10 and 4.3 Protection of Children from Harm
- (ii) Paragraph 2.11 Illegal sales of Age Restricted Goods
- (iii) Paragraph 2.15 and 4.1 Public Safety
- (iv) Paragraph 4.4 Prevention of crime and disorder
- (v) Paragraph 3.13 Cumulative impact

(c) Statutory Guidance

- (i) National guidance regarding the control of areas outside the premises is laid down in paragraph 3.11; and
- (ii) National Guidance regarding licensing hours is laid out in paragraphs 3.29 and 3.30.

Copies of the Council's Statement of Licensing Policy and the Government's Statutory Guidance will be available at the Sub-Committee meeting.

8. Comments

The Sub-Committee must grant the conversion application with grandfather rights.

In making their decision on the variation, the Sub-Committee are also obliged to have regard to Statutory Guidance and the Council's own Statement of Licensing Policy. The Sub-Committee must also have regard to all the representations made and the evidence they hear. However, the Sub-Committee must disregard any objections that do not relate to the promotion of the four licensing objectives.

The Sub-Committee must take such of the following steps as they consider necessary for the promotion of the licensing objectives as set out in paragraph 7(a) above:-

- (a) Grant the application as requested; or
- (b) Modify the conditions of the licence, by altering or omitting or adding to them; or
- (c) Reject the whole or part of the application.

The Sub-Committee are asked to note that they may not modify the conditions or reject the whole or part of the application merely because they consider it desirable to do so. It must actually be necessary in order to promote the licensing objectives.

9. Conditions

If the sub committee are minded to grant the application with no modification or no additional conditions then the conditions to be attached to the licence taken from the operating schedule are at Appendix D – grey paper.