

## LICENSING SUB COMMITTEE

27 MAY 2016

Present: County Councillor Parry(Chairperson)  
County Councillors Goddard and Murphy

### 50 : DECLARATIONS OF INTEREST

No declarations of interest were received.

### 51 : APPLICATION FOR THE GRANT OF A PREMISES LICENCE - KFC, EXCELSIOR ROAD, GABALFA

Applicants: represented by Mr Matthew Phipps

Responsible Authority: Tony Bowley, South Wales Police  
PC Rob Gunstone, South Wales Police

#### The Application

An application for the Grant of a Premises Licence was received from Kentucky Fried Chicken (GB) Limited in respect of KFC (Excelsior Road), Excelsior Road, Cardiff.

The applicant applied for the following:

(1) In respect of the following licensable activities:

1) The provision of late night refreshment.

(2) Description of Premises (as stated by applicant):

“A well established KFC drive through restaurant with customer seating, service counter, drive through window and vehicle lane.”

(3) Unless otherwise indicated the premises may be open to the public during the following hours and for any hours consequential to the non standard timings:

24 hours, 7 days a week.

(4) To provide licensable activities during the following hours:

1) The provision of late night refreshment: 23:00 to 05:00

#### Responsible Authority Representations

Mr Tony Bowley advised the Sub Committee that South Wales Police were seeking the ‘usual’ CCTV condition. It had not been possible to reach an agreement with the applicant and therefore South Wales Police were objecting to the application on the grounds of all four licensing objectives.

Mr Bowley advised that during his 11 years of experience working in Police licensing there were many instances where CCTV had been used in evidence. CCTV was used during interviews and was presented in Court as evidence. Most licensed premises in the City have a condition of licence relating to CCTV, and since 2010 CCTV is now the main proof of evidence for prosecution of criminal activity.

Since 2011, where appropriate, South Wales Police have sought a uniformed condition, the same condition as is being sought today. The condition has been placed on over 300 premises licences since 2011 and has only been challenged once. South Wales Police considered the condition to be reasonable, proportionate and necessary at these premises. South Wales Police did not seek the condition on all premises. Members were advised that the condition is in place at a variety of different premises supermarkets, public houses, hotels and take-aways.

Mr Bowley referred to the document detailing 111 incidents of crime and disorder at KFC premises in South Wales. Mr Bowley considered that it was reasonable to expect that crime would occur at these premises if the premises licence was granted. Members were also asked to consider the evidence presented of incidents that had occurred in the McDonalds Restaurant which is located opposite the premises.

Mr Bowley stated that South Wales Police had experience 'issues' relating to the collection of CCTV evidence in the majority of the incidents which had occurred at KFC premises. Mr Phipps objected to the statement made by Mr Bowley. Mr Phipps stated that South Wales Police had only provided the list of incidents the days before the hearing, and there had been no indication made that South Wales Police had experience problems with the collection of CCTV. This point was not referenced in any of the representations received previously and, therefore, any reference to it was not legitimate. Mr Bowley agreed not to refer to the point again.

Mr Bowley asked the Sub Committee to consider the representations made by South Wales Police. He considered the standardised condition to be wholly acceptable.

PC Gunstone addressed the Sub Committee. PC Gunstone explained how CCTV is used by South Wales Police when interviewing prisoners in custody. Members were advised that it was important that CCTV evidence be secured as quickly as possible so that officers are able to proceed with their investigations. PC Gunstone explained the term 'the golden hour' which is used to describe the period immediately after an incident and the importance of positive action during this period which is crucial to the prosecution of crimes. The officer stated that CCTV was impartial and it is also used by the CPS when decisions are made whether to prosecute a crime or not.

#### Applicants Representations

Mr Phipps presented that application on behalf of the applicant. Members were advised that the application was seeking to provide late night refreshment. The wording of the CCTV condition being sought by South Wales Police was not agreed and Members were invited to exercise their discretion and consider the condition.

Mr Phipps stated that he was not suggesting that the Sub Committee to decide that CCTV was not required at the premises, although technically Members may conclude that CCTV was not necessary. The applicant was offering to provide CCTV, as they do in all 800-plus premises nationally.

Members were advised that there was 200 KFC operated premises and 600 franchise premises. Not all premises provided licensable activities. The background to the operation of the business was set out in full in the report by Geoffrey Cooper which was circulated prior to the meeting.

Mr Phipps stated that the applicant was proud of their relationship with the police. CCTV images were regularly being provided to police forces across the country in a manner that was consistent with Data Protection legislation. Mr Phipps stated that the use of standardised conditions were not legitimate. It was possible for South Wales Police to view the images recorded by the CCTV system at any time. However, the Data Protection Act makes it illegal for images to be handed over to any third party, without an authorised person considering a request for such images to be handed over. The condition sought by South Wales Police, therefore, would effectively criminalise any member of staff who provided the CCTV images to the police. Mr Phipps stated that there may be instances when refusal to provide CCTV images would be legitimate. However, the conditions requested by South Wales Police would require the applicant to provide the CCTV.

Members were advised that the applicant had data controllers on duty 24 hours a day, seven days a week. Requests for data are processed quickly, but there must be an analysis of the request. Data Protection legislation make it unlawful to provide the CCTV immediately.

Mr Phipps referred to the report of Geoffrey Cooper, Licensing Consultant. Page 10 of the report highlighted that there had been a number of TENs applications, which were not objected to by South Wales Police. These events had taken place without incident. Page 12 of the report quoted statutory guidance on the Licensing Act 2003 which indicated that standardised conditions, such as the one sought by South Wales Police, should be avoided.

The Information Commissions Office – CCTV Installation Guidance states that, in terms of Premises Licence conditions, many model conditions state that CCTV should be provided ‘on request’. This wording does not fit with the provisions of the Data Protection Act 1998 (which requires a prejudice test) and could be seen as contradicting the UK’s obligations to implement the provisions of the European Data Protection Directive.

Furthermore, the Home Office Guidance ‘Surveillance Camera Code of Practice’ issued in 2013 and the latest guidance from the Information Commissioners Office ‘In the Picture: A Data Protection Code of Practice for Surveillance Cameras and Personal Information, make it clear that CCTV systems must be installed and used for a specific purpose. The data controller for any given CCTV system can only release personal data in the form of CCTV images following a proper request and assessment of that request.

Mr Phipps referred to the list of incidents at KFC premises submitted by South Wales Police. No incidents had occurred within the stores. Only 1 incident had occurred between the hours of 2300 hours and 0500 hours. Many of the incidents listed were not criminal offences and had been reported by staff at the premises. Mr Phipps suggested that there was clear evidence that different branches of KFC were dealing with different issues, however, the list submitted by South Wales Police implied that

all KFCs are the same. There was no consideration given to the location of the premises or their operation. The list of incidents in Cardiff even contained two incidents that had occurred in Ebbw Vale.

KFC had received 340 requests for CCT in the past 6 months. 170 of those requests had come from police forces. All requests were considered and the CCTV images were provided. Breda Nikiri, Asset Protection Manager for KFC explained that CCTV images are provided with 24 hours of receipt of any request. There is usually a much shorter response time, but the time taken is dependent on the length of time of the CCTV footage to be provided. The images are burned to a drive on the store's pc remotely and these can then be downloaded onto a USB drive.

Members were reminded that the CCTV condition sought by the applicant expressly provides that CCTV images may be viewed by the police immediately upon request. The disagreement with South Wales Police related solely to the retrieval of those images from the CCTV system.

### In Summary

Both parties were requested to summarise their positions. Mr Bowley stated that the applicant's conditions did not fit in with the South Wales Police standard condition. The precise wording of the condition was vital to enable investigating officers to access the images and it was reasonable to assume that crime would occur if the premises licence was granted.

Mr Phipps stated that the condition offered by the applicant was over and above what was necessary for these premises at this location.

RESOLVED – That the Sub-Committee having considered all the information and in accordance with the requirements of the Licensing Act 2003, the Section 182 Guidance and the Licensing Authority's own Statement of Licensing Policy the Sub Committee granted the application, subject to the conditions offered by the applicant.

### 52 : GAMING MACHINE PERMIT APPLICATION

RESOLVED – That the following variation be granted:

1. Village Inn, Croescadarn Road – 4 Machines

The meeting terminated at 12.30 pm