

## LICENSING SUB COMMITTEE

23 JANUARY 2018

Present: County Councillor Williams(Chairperson)

County Councillors Goddard and Jacobsen

### 1 : DECLARATIONS OF INTEREST

No declarations of interests were received.

### 2 : APPLICATION FOR THE VARIATION OF A PREMISES LICENCE - PULSE MARDI GRAS - CCCP01433

Applicant: Carl Ryan, Director, Licensee Management 1 Ltd  
Philip Kolvin QC, on behalf of Mr Ryan  
Matthew Phipps, Solicitor on behalf of Mr Ryan  
Richard Imlach  
Darrell Butterworth , Licensing and Security Compliance Consultant

#### Responsible

Authorities: Richard Cole, Counsel on behalf of South Wales Police  
PC Tim Davies, South Wales Police  
Sgt Justin Hardwick, South Wales Police

Gerald Gouriet QC, on behalf of the Licensing Authority  
Rhys Morgan, Licensing Authority

#### Other

Persons: Leo Charalambides, Counsel on behalf Jurys Inns  
Billy McCabe, Deputy Manager, Jurys Inns

Councillor Chris Weaver, Ward Councillor Cathays

An application to vary a Premises Licence has been received from Licensee Management 1 Limited in respect of Pulse Night Club Mardi Gras Street Party, Churchill Way, Cardiff, CF10 2DW.

The applicant has applied for the following:

1 To extend the permitted hours as follows:

#### Opening Hours:

Friday	From 11:00 until 06:30 the following morning	no current permission
Saturday	From 11:00 until 06:30 the following morning	an increase from 04:30
Sunday	From 11:00 until 02:30 the following morning	an increase from 00:30

Sunday proceeding Bank Holiday Monday until 06:30 the following morning

An additional hour to be permitted immediately following on from the start of British Summer Time at the end of permitted hours that morning (to make up for the hour the premises will otherwise lose when the clocks go forward).

New Year's Eve From 11:00 until 06:30 the following morning

Boxing Day From 11:00 until 06:30 the following morning

Plays (indoors and outdoors), Sale of Alcohol, Exhibition of Films (indoors and outdoors), Indoor Sporting Event, Boxing or Wrestling Entertainment (indoors and outdoors), Live Music (indoors and outdoors), Entertainment of a Similar Description (indoors and outdoors):

Friday	From 11:00 until 06:00 the following morning	no current permission
Saturday	From 11:00 until 06:00 the following morning	an increase from 04:00
Sunday	From 11:00 until 02:00 the following morning	an increase from 00:00

Sunday proceeding Bank Holiday Monday until 06:00 the following morning.

An additional hour to be permitted immediately following on from the start of British Summer Time at the end of permitted hours that morning (to make up for the hour the premises will otherwise lose when the clocks go forward).

New Year's Eve From 11:00 until 06:30 the following morning

Boxing Day From 11:00 until 06:30 the following morning

Late Night Refreshment (indoors & outdoors):

Friday	From 23:00 until 05:00 the following morning	no current permission
Saturday	From 23:00 until 05:00 the following morning	an increase from 04:00
Sunday	From 23:00 until 02:00 the following morning	an increase from 00:00

An additional hour to be permitted immediately following on from the start of British Summer Time at the end of permitted hours that morning (to make up for the hour the premises will otherwise lose when the clocks go forward).

Sunday proceeding Bank Holiday Monday until 05:00 the following morning.

New Year's Eve From 23:00 until 05:00 the following morning

Boxing Day From 11:00 until 06:00 the following morning

A copy of the current conditions had been supplied. The application requested a variation to those conditions:

## Annex 2:

- Condition 15 To be amended to state ' the provision of all regulated entertainment of the band stand area in Churchill Way/Queen Street shall terminate at 01:00'
- Condition 17 To be amended to state 'Adult supervision will be required for persons under the age of 18 after 20:00'

## Annex 3:

- Condition 1 To be amended to state 'the premises licence is granted for 5 such individual events per year, lasting a maximum of 72 per hours per event. Boxing Day and New Year's Eve are permitted in addition to these 5 events.'
- Condition 2 To be amended to state 'the police will be notified in writing at least 56 days prior to any event taking place ('the notice'). The police have an absolute veto over any event. However, if the police do not provide a written response exercising their veto within 7 days of receipt of the notice, then tacit consent shall apply. Any police response will set out their reasons in full for the exercise of their veto.'

The following agreements were reached between the parties:

- The application in relation to Pulse Night Club Mardi Gras Street Party would be heard first, followed by the two applications in respect of Pulse Night Club and Café Bar, and finally the two applications in respect of Park Lane Fish and Chips;
- Mr Gerald Gouriet QC representing the Licensing Authority would address the sub-committee in the first instance;
- The application in respect of the Pulse Night Club Mardi Gras Street Party, Church Way, Cardiff is located in an area covered by the Cumulative Impact Policy.

## Responsible Authority Representations

Gerald Gouriet QC addressed the Sub Committee on behalf of the Licensing Authority. Members were referred to the case of R. (on the application of Westminster City Council) v Middlesex Crown Court and Chorion plc [2002] EWHC 1104 (Admin); and specifically to the reasons for cumulative impact policies which mean that Licensing Committees consider problems which may not be related to any specific premises or conduct of an specific licensee and which may be some distance from the premises. He specifically referred to paragraphs 23 and 24 of the judgement and specifically to the fact that the Committee must consider the reasons for the policy and that it is for the applicant to persuade the Committee as to why there should be a departure from the policy.

Members were also referred to the Cumulative Impact Policy and the Statement of Licensing Policy 2016 – 2021 and asked to consider whether or not the applicants have successfully demonstrated that the premises will not add to the negative cumulative impact on one or more of the licensing objectives. It was submitted that

there has been no attempt by the Applicant, in the operating schedule, to address the effects of the Policy.

Mr Gouriet QC also referred Members to the Event Plan which provided details of the provisional site capacity, namely 3300, with ticket availability being 2250 outdoors, together with 650 in Pulse Night Club and submitted that Members cannot be satisfied that there will not be any negative cumulative impact.

Richard Cole, Counsel on behalf of South Wales Police, adopted the submissions made on behalf of the Licensing Authority and confirmed their objection to the granting of the application.

Mr Phillip Kolvin QC who appeared on behalf of the applicant confirmed that although the applicant had raised an objection to the evidence from South Wales Police prior to the hearing as the application had previously been adjourned and a large amount of documentation produced last week, the applicant did not wish to raise any technical points about admissibility of this evidence and so that the applicant therefore consented to the admission of the police evidence received before the hearing.

Tony Bowley, Licensing Officer provided Members with a number of reported police instances which could be linked to previous street parties; and with details of a number of reported incidents as a result of the cumulative impact of previous street parties, but when responding to questions indicated there was no direct evidence linking the incidents with Street Party just that they occurred in the vicinity, ie, Churchill Way.

Members were referred to Appendix 1 of the South Wales Police evidence by Mr Kolvin QC and were advised that there were no outcomes provided in relation to the 12 incidents recorded. He explained that only 1 of the incidents referred to the street party; one incident was recorded on a date that street party did not take place; one incident referred to the Chapel; 2 referred to Kings Bar; 1 to a 'licensed premises'; and 4 incidents refer to Pulse.

With reference to Appendix 2 of the South Wales Police evidence, Mr Kolvin QC submitted that any occurrences of crime/disorder in the city centre on street party dates had been included in the evidence bundle and gave the example of an incident occurring on North Road at the Blackweir Tavern and someone having an asthma attack being included.

PC Tim Davies advised Members that a number of additional conditions had been suggested, including a designated area for alcohol sales to which any persons under 18 would not be allowed access; CCTV coverage; and that body cameras are worn by security staff. A large number of other licensed premises security staff and the police are now using body cameras. Whilst the additional condition in relation to the designated area for alcohol was agreed the others were not. PC Davies referred to the absolute veto the Police have over the event and the fact that the applicants are seeking to amend the condition so that the police have 7 days in which to respond to notice of the event. PC Davies submitted that, bearing in mind the number of agencies that have to be contacted in respect of an event of this nature, it is not possible to obtain responses within 7 days.

Sgt Hardwick attempted to make reference to an analysis and comparison of the number of police incidents on street party event days as opposed to non-event days. Mr Kolvin QC on behalf of the applicant objected to the admissions of this evidence, as it was new evidence and the applicant did not consent to its admission. Miss Price referred the Committee to Regulation 16 of the Licensing Act 2003 (Hearings) Regulations 2005 which allow parties to address the Committee to provide clarification, Regulation 17 which allows Committee members to ask any questions of the parties, but agreed with Mr Kolvin QC that Regulation 18 prevented the admission of new evidence unless all parties consented. The evidence was therefore not admitted before the Committee and they simply asked questions of the officers to provide clarification.

### Other Persons Representations

Leo Charalambides, Counsel on behalf of Jurys Inns adopted the previous submissions made, and further submitted that the applicant has failed to act in accordance with the Licensing Act Section 182 Guidance, and has failed to address the Cumulative Impact Policy in the operating schedule. Members were advised that requests for meetings with the applicant in relation to Pulse have been made previously without any response.

It is submitted that all that has been provided is a skeleton outline of increased hours required and no detail as to the type of events which would take place.

Mr Charambides submitted that rather than demonstrating there will be no adverse effect on the cumulative impact they have demonstrated the opposite.

Responding to questions, Billy McCabe, Deputy Manager, Jurys Inns advised Members that when there is to be an event guests are warned that the hotel will be both exceptionally busy and noisy. In March 2017 a Noise Log was introduced to record any instances/complaints at the Hotel and rather than contact the Police contact is made with the Environmental Health Officer (EHO).

Chris Weaver, Ward Councillor for Cathays, which includes the City Centre, Churchill Way and Queen Street, addressed the Sub Committee on behalf of the residents. He is aware that residents of Landmark Place are disturbed by the Street Party Events when they take place on a Saturday night, however, if an extra day is granted it will result in a prolonged period of sleep disturbance.

Responding to questions he advised that he was elected in May of 2012 and began receiving complaints in 2013, residents were aware that the permission had been granted for such events. Complaints have been raised at PACT meetings. Correspondence was sent to residents informing them of this application.

### Applicants Representations

Phillip Kolvin QC presented the application. Some brief background details were provided to the Sub Committee in relation to the applicant – his experience and commitment to the City.

Mr Kolvin QC confirmed that the applicant accepted the following;

- A cumulative impact policy (CIP) applies to the City Centre of Cardiff;
- The CIP applies to these applications;
- There is therefore a rebuttable presumption;
- The rebuttable presumption means that unless the applicant can show that there will be no addition to the negative cumulative impact, then the application should be refused or should be subject to certain limitations;
- The cumulative impact is the in area and not just related to the premises themselves;
- The policy is not absolute and therefore if the applicant shows that the application is unlikely to add to the negative cumulative impact then the application can be granted;

Mr Kolvin QC made specific reference to the fact that the Committee can agree the application subject to whichever limitations they feel are appropriate.

Members were advised that each application related to a variation of an existing licence, each application had to be considered on its own merits and that there were a number of options open to the Sub Committee by way of resolution; to grant the application; the limit what has been applied for; or to refuse the application.

Members were advised that there had not been a great deal of information in the application/Operating Schedule but the example event plan demonstrated that the additional hours requested would not add to the negative cumulative impact on one or more of the licensing objectives as licences for the various premises were already in existence.

Responding to questions in relation to the nuisance aspect Members were advised that no abatement notice had been served on the street party since the noticed served in 2008, and that there have been no objections received from Environmental Health.

Whilst it was accepted that all the premises were within the cumulative impact area, the policy was not absolute. It was important for the Committee to note that all of the venues were well known. Members were also reminded that if the application were to be refused it would be necessary to show that the grant of the application would undermine the licensing objectives.

Members were advised that Pulse is an LGBT venue, and that the street party caters largely to that community and that it is submitted that the authority has to demonstrate a rigorous consideration of the public sector equality duty, although the weight given to that duty is a matter for the Sub Committee.

Mr Kolvin QC advised that Members have to weigh up the factors, bearing in mind that the street party application is in the centre of a vibrant capital city. Members do not have to be sure beyond doubt; it is a question of whether there will or won't be an unacceptable increase to the impact being experienced.

The Mardi Gras Street Party has been a well-managed event operating for the last decade, working under the terms of a street closure order. The existing licence conditions - imposed by the Sub Committee and the Magistrates' Court on appeal promote the licensing objectives, for example, the number of door supervisions, an acceptable level of sound, the police having a complete veto over the event and that

the operating plan has to submitted to the Safety Group Advisory Panel. Members have been provided with a copy of the most recent operating plan. Rhys Morgan, on behalf of the Licensing Authority outlined the role of the Advisory Panel and confirmed that they had no decision making power.

Mr Kolvin QC suggested that the Sub Committee may wish to consider a licence condition that would require formal consultation with local residents prior to the street parties

Members were advised that the event is fenced; there have been no noise complaints have been received since 2008; temporary event notices have been used previously to extend hours.

Members were provided with an outline of the application:

- to permit the street party to occur on a Friday night – which mirrors the Pride event;
- to extend the hours on a Saturday and Sunday night; and
- to extend the hours on the Sunday proceeding Bank Holiday Monday; and
- to amend a number of the conditions previously agreed.

Mr Kolvin QC advised that in relation to further conditions requested by the Police 2 were capable of agreement, however, the requirement for body cameras to be work and CCTV cameras to be installed could not be agreed. He submitted that in relation to the body cameras it felt that this could deter those from the LBGT community from attending such an event and further there were already CCTV cameras in the area.

Responding to questions the applicant indicated that all manner of people attend the event, but that the specific concern in relation to body cameras relates to those of the LBGT community who attend who were still not 'out' and they would therefore be uncomfortable in an environment where body cameras would be worn. Adding further CCTV cameras could be considered to be disproportionate.

Mr Kolvin QC made a number of suggestions to the Sub Committee regarding what limitations could be made to satisfy that the application wouldn't add to the cumulative impact. This included adding conditions such as liaising with residents, limiting additional Sunday hours to only bank holiday weekend, limiting the additional Friday-Sunday hours only on 'Pride' events. He also suggested middle ground for the body camera condition and advised this could perhaps be limited to just the head doorman.

### Summing Up

#### Responsible Authorities

Mr Gouriet QC reminded the Sub-Committee that it was for applicant to successfully demonstrate that the application would not add to the negative cumulative impact on the licensing objectives.

He advised that there was a world of difference between being kept awake until 4am and being kept awake until 6am.

Richard Cole reiterated the point about the Cumulative Impact, stating that the police have to police the event. The application should be refused, but if not consideration should be given to imposing the conditions requested by South Wales Police.

### Other Persons

Mr Charalambides advised the Sub Committee that it was unacceptable for the applicant's Counsel to 'haggle' conditions, particularly as the events are already managed by conditions and that they really didn't have a plan.

### Applicant

Mr Kolvin stated that it was a happy and friendly event for the LGBT community, there had been no issues at this event in the last decade, or under the Temporary Event notices and that the benefit of this application is that it provides a safe place after the Pride event.

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 policy, refused the application.

### 3 : APPLICATION FOR THE VARIATION OF A PREMISES LICENCE - PULSE NIGHTCLUB - CCCP01608

It was noted that the same parties were present for this application.

The application was withdrawn at the request of Mr Kolvin QC of behalf of the applicant.

### 4 : APPLICATION FOR THE VARIATION OF A PREMISES LICENCE - PULSE CAFE BAR - CCCP01611

It was noted that the same parties were present for this application.

The application was withdrawn at the request of Mr Kolvin QC of behalf of the applicant.

### 5 : APPLICATION FOR THE VARIATION OF A PREMISES LICENCE - PARC LANE FISH AND CHIPS - CCCP01906 & CCP01917

It was noted that the same parties were present for this application.

Applications to vary the two Premises Licences has been received from Parc Lane Trading Limited in respect of Parc Lane Fish & Chips, 105-107 Queen Street, Cardiff, CF10 2BG.



The applicant has applied for the following:

- 1 To extend the permitted hours for the sale of alcohol as follows:  
Monday – Sunday from 11:00 to 00:00 (current permission 11:00 to 23:00) and to permit an additional hour at the start of British Summer Time.
- 2 To extend the permission for late night refreshment between Sunday and Thursday from 23:00 to 05:00  
The premises proposes to open to the public 24 hours a day, 7 days a week.
- 3 To amend condition (4) to:  
All drinks will be served in non-glass vessels after 23:00 on designated major event days in Cardiff City Centre and also when events are taking place in Churchill Way whilst the road closure is in place.  
Condition currently states: 'All drinks will be served in non-glass vessels'.  
To remove condition (1) which states: Premises Licence CCCP/01873 will be surrendered upon the satisfactory grant of this licence (this request only applies to application CCCP/01906).

As agreed previously in the proceedings the two applications in respect of Parc Lane Fish and Chips were heard together.

#### Responsible Authority Representations

Gerald Gouriet QC addressed the Sub Committee on behalf of the Licensing Authority.

Members were referred to the Statement of Licensing Policy 2016–2021 and in particular to information provided that the presence of takeaways/fast food outlets slows down the dispersal of people out of the City Centre and submitted that the premises would become an 'attraction' and that there was no reason to suppose that the increased hours would not lead to an increase in the number of people on the street and as a consequence the rate of dispersal is likely to be effected.

Mr Gouriet QC referred to the example given by Darrell Butterworth that a loud woman went into the chip shop at 5am and then quietened down once inside the premises. Mr Gouriet QC explained that this demonstrated that the chip shop was an 'attraction', as if hadn't been there the woman making the noise wouldn't have been there. He advised that it was drawing people into the area who wouldn't have been there otherwise.

Members were advised that there is a greater ambient noise during the course of the week which would result in an increase noise sensitivity.

Richard Cole, on behalf of South Wales Police also expressed concern that it would become an attraction should the premises open 24 hours a day 7 days a week.

PC Tim Davies that there are currently two premises licences although one is not operating at the present time.

PC Tim Davies explained about the positioning of the policing teams in the area, and explained that additional resources are brought in from the suburbs to police the city

centre on a Friday and Saturday night. He advised that the majority of the police finish at 4am, and the Alcohol Treatment Centre in the city centre ends at 5am.

Details of a number of reported incidents in the vicinity had been provided, Mr Kolvin QC on behalf of the application advised that there were 6 incidents in a 19 months period.

Members were advised by PC Tim Davies that McDonalds is currently open 24 hours a day and that whilst Burger King is also able to trade for 24 hours, they choose not to. Officers were stationed outside of McDonalds on a Friday and Saturday because of the number of reported incidents although the number of incidents has decreased. It has not been necessary to have officers stationed outside the Fish & Chip shop, but the applicant did request a police presence in the area of Queen Street/Churchill Way.

Responding to a question from Mr Kolvin QC Mr Bowley advised that South Wales Police did object to the previous application in respect of the Friday and Saturday night in October 2013 and whilst there has only been 6 incidents in 19 months, those figures could not have been predicted. It was accepted that Parc Lane's record of incidents is a good one.

#### Other Parties Representations

Mr Charalambides reminded Members of the Section 182 Licensing Act 2003 guidance in relation to undertaking a proper assessment of the evidence and identify the risks and the bland and uninformative information contained in the operating schedule.

Responding to questions Members were advised that if the hotel is not running at capacity rooms in the vicinity of the Fish & Chip shop are not allocated. There has previously been a complaint from the occupier of Room 116 who asked to be moved because of the noise and the smell.

Councillor Weaver, Ward Councillor reiterated that this increase in hours would be a substantial increase of both noise and litter during the course of the week and in the circumstances does violate the CIP and Licensing Policy.

Cllr Weaver stated that although this premises is further away from the residents in Churchill Way, it would attract more people into the general vicinity.

#### Applicant's Representations

Mr Kolvin QC expressed surprise at the ferocity of the objections being raised. The premises are heavily licensed with good CCTV coverage, the use of polycarbs, security staff are employed after 11.00 pm, membership of the licenced premises forum and regular litter patrols.

Objections were made to opening on a Friday/Saturday night, however the hours were granted. They are the busiest nights and as has been seen there have been only 6 incidents in 19 months, with the last one being in the last 9 months. The concerns raised by South Wales Police have not come to fruition. No abatement

notices have been served and there has not been any request for a review following the opening of the premises for 24 hours on a Friday/Saturday.

Mr Kolvin QC advised that the two complaints logs kept by the hotel do not show any complaints of either odour or noise from the premises. A good filtration system was fitted at the time the premises were fitted out.

Mr Kolvin QC outlined the second element of the application; alcohol can only be served with food until 11.00 pm, the request of to extend that by a hour. There have been no allegations that people have been getting drunk at the premises. Mr Kolvin QC outlined the request for all drinks to be served in non-glass vessels after 23:00 on designated major event days in Cardiff City Centre and also when events are taking place in Churchill Way whilst the road closure is in place as opposed to 'all drinks will be served in non-glass vessels. South Wales Police were not prepared to agree to the amendment of the condition in that form but would accept that all drinks will be served in non-glass vessels on major event days.

Darrell Butterworth, Licensing and Security Compliance Consultant advised Members that he had attended at the premises on 30<sup>th</sup> December 2017 and advised that that was a convenient date for him to attend the premises. Responding to a question Mr Butterworth accepted that it would have been a quiet night but not necessarily the quietest.

Members were advised that Mr Butterworth stayed in Room 115 at Jurys Inn, which is directly above the Fish & Chip shop. The only noise heard was emanating from the hotel.

Mr Butterworth stated that the premises were observed throughout the hours of 2100 & 0500, with two visits into the premises; one of which was food. He walked passed the premises on at least 100 occasions. No issues were observed, however, he did observe a rowdy female walk across the square, there were security staff outside the premises, however, her behaviour moderated on entering the Fish & Chip shop. Members were advised that the majority of people eat at the premises. There is a steady stream of people using the Fish & Chip shop throughout the night.

For the sake of clarity Mr Phipps provided member with a history of the applications in respect of the premises and when the variations to the licence had been made.

Responding to questions from Members Carl Ryan indicated that the purpose of the application for the premises was to make money and further serve customers in the City. There is every reason to believe that operating the business 24 hours a day, 7 days a week will be profitable. He advised Members that he believed that the information provided during the hearing was rubbish; the Fish & Chip shop was very well run. Members were informed that people were not directed to the Fish & Chip shop from Pulse.

Mr Kolvin QC confirmed that the Equality Act 2010 does not apply in this case.

## Summing Up

### Responsible Authorities

Mr Gouriet QC reiterated the concerns of the Licensing Authority that extending the hours will result in slowing the dispersal of people in the area and submitted that it is not just those attending the Fish & Chip shop but others that will also be milling around.

Richard Cole referred to the request by the applicant for extra policing, which emphasises the point that there are difficulties, although it has to be accepted that there are a limited number of incidents recorded at the premises; they do involve Door staff. The application should be refused, but if not consideration should be given to imposing the conditions requested by South Wales Police.

### Other Persons

Mr Charalambides advised the Sub Committee to consider whether or not the applicants have successfully demonstrated that the premises will not add to the negative cumulative impact on one or more of the licensing objectives and expressed concern that the applicant considered that the written and oral submissions provided by the parties were rubbish.

Mr Charalambides went on to say the failure to address the CIP speaks volumes. He said that a good record is what is expected of all licensed premises, and that's just the common standard.

### Applicant

Mr Kolvin QC referred to the points made in relation to the CIP during the first application and advised that these premises were operating well and that there has only been one incident recorded in the last 9 months. There is no evidence to show that the Fish & Chip Shop has caused any issues.

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 policy, refused the application but in respect of condition 4 agreed to amend the condition so it states follows:

- All drinks will be served in non-glass vessels on designated major event days in Cardiff City Centre and also when events are taking place in Churchill Way whilst the road closure is in place.'

***This document is available in Welsh / Mae'r ddogfen hon ar gael yn Gymraeg***