

LICENSING SUB COMMITTEE

22 FEBRUARY 2019

Present: Councillor Mackie(Chairperson)
Councillors Lancaster and Sattar

50 : DECLARATIONS OF INTEREST

No declarations of interest were received.

51 : APPLICATION FOR THE VARIATION OF A PREMISES LICENCE - OLD HAVANA, ST MARY STREET

Applicants: Dai Wigley represented by Bill Parry

Responsible Authorities: Rhys Morgan, Cardiff Council Licensing
Tony Bowley, South Wales Police

The Application

An application for variation of a Premises Licence was received from Old Havana (Cardiff) Ltd in respect of Old Havana, 6 High Street, Cardiff.

The applicant applied to vary the licence as follows:

- (i) To vary the layout of the premises in accordance with plans supplied by the applicant.
- (ii) To add live music and recorded music as a licensable activity.
- (iii) To extend the permitted hours as follows:

The sale by retail of alcohol for consumption on and off the premises:
Monday to Sunday 09:00 to 01:30

The provision of regulated entertainment in the form of live and recorded music:
Monday to Sunday 09:00 to 01:30

The provision of late night refreshment (indoors and outdoors):
Monday to Sunday 23:00 to 01:30

Responsible Authority Representations

Tony Bowley advised Members that South Wales Police were objecting to the application as the premises were located within the cumulative impact zone. The correlation between the availability of alcohol and the incidence of crime was well known and there was a large amount of crime and anti-social behaviour in the City Centre. The application sought to vary the hours for the sale of alcohol and late night refreshment and also resulted in a doubling of the capacity of the premises.

Mr Bowley stated that the applicants have liaised with South Wales Police and if the Committee was minded to grant the application then applicant has agreed to accept the conditions set out in the written representations received from South Wales Police.

Responding to a question from the Committee, Tony Bowley advised that the police statistics presented as evidence related to a period of six months. The statistic demonstrated that between 0000 and 0100 there were 35 crimes recorded in the whole of the City Centre.

Rhys Morgan addressed the Sub Committee. Members were advised that the premises were located within the Council's cumulative impact zone and as such there was a rebuttable presumption that applications for new licences or variations of existing licences would be refused. In order for the licence to be granted the applicants would need to demonstrate that there would be no negative impact upon the licensing objectives. Rhys Morgan stated that the Operating Schedule submitted as part of the application did not address the cumulative impact policy and there were no additional measures proposed and given the operating style of the premises, some additional measure may have been suitable.

It was noted that the applicants have accepted the conditions suggested by both South Wales Police and Pollution Control. Therefore it was for the Sub Committee to consider whether the premises would be able to operate without adversely affecting the licensing objectives.

Members noted that the variation to the layout of the premises resulted in a doubling of the capacity. The applicants stated that the premises were refurbished and the fire risk assessment now allowed for a 200 person capacity. The footprint of the premises was unchanged but the layout of the premises allowed for a free flow of movement with pinchpoints having been removed.

Applicants Representations

Mr Bill Parry presented the application. Mr Parry stated that he would first like to address the representations received and then explain how the operation would work.

Referring to the representations received from South Wales Police, Mr Parry said that should the conditions be accepted then they would be appropriate and proportionate and would allow for the licensing objectives to be promoted. The applicant were happy to accept all the conditions. Similarly, the applicant agreed all the conditions set out in the written representations from Pollution Control.

Referring to concerns regarding the capacity of the premises, Mr Parry stated that on any given weekend there would be a certain amount of people in the City Centre and there would be no increase in the total number if the application was granted.

Mr Dai Wakeley referred to the plan of the premises and provided information about how the premises would operate. The premises would have a Cuban theme and the intention was to mimic a famous Cuban bar. A full food offering would be provided until 2300 hours. Table service would be provided and the premises would operate

as a restaurant. A total of 92 covers could be accommodated. Members were advised that the premises has been open for 3 weeks, although the operators have run a similar premises in Swansea.

Members were invited to ask questions. A Member asked was any furniture removed from the premises as any point during the evening which resulted in a 'changeover point' from a restaurant to a bar. Mr Bill Parry advised that the external area is closed down at 2300 but the remainder of the premises stays the same. It was not intended to convert the premises to a vertical drinking establishment. The Swansea premises operates as a restaurant until 0300.

Rhys Morgan asked whether the applicants would agree to accept a condition which limits 70% of the available floorspace to tables and chairs and for waitress service to be offered from drinks. Mr Parry stated that this would not allow for customers to order a drink at the bar whilst waiting for a table. The operators would prefer to have flexibility, whilst operating as a restaurant.

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 agreed.

52 : URGENT ITEMS (IF ANY)

RESOLVED – That the Committee agreed to consider an additional report so that the statutory timescales for consideration of the matter could be maintained.

53 : APPLICATION FOR THE VARIATION OF A PREMISES LICENCE -
CFELEVEN, CATHEDRAL ROAD

Applicants: Jason Hamer represented by John Wallsgrove

Interested Parties: Councillors Iona Gordon and Caro Wild
David Britton and Stuart Field, local residents

The Application

An application for variation of a Premises Licence was received from Jason Hamer in respect of CFEleven, 151 Cathedral Road, Cardiff.

The applicant has applied to vary the licence as follows:

To amend Condition 2 to read:

"The outdoor area at the front to be included in the premises licence is not to be used by customers for the consumption of beverages after 21:00 hours and in the outdoor area at the rear after 23:00 hours".

The condition currently states:

"The outdoor areas at the front and rear to be included in the premises licence is not to be used by customers after 21:00 hours for the consumption of beverages".

Interested Party Representations

Councillor Caro Wild addressed the Sub Committee. Cllr Wild stated that he was frustrated to be at the hearing. At an earlier meeting he considered that a reasonable compromise had been agreed and to bring back a further application was disrespectful in his view.

The premises were located in a residential area and music and drinking in external areas causes a nuisance. Councillor Wild stated that he is supportive of local businesses, but this application goes too far. A compromise is needed and he would be happy to negotiate between businesses and residents. However, this application represents an unreasonable request.

Councillor Gordon agreed with her ward colleague and considered that there was too short a time between the Sub Committee's earlier decision and the current application. The premises was a former guest house which serve drinks to guests indoors. However, more recently the premises has 'mutated' from a small hotel to a full scale public house. The premises are located at the residential end of Cathedral road where large Victorian houses for the centre piece of the conservation area. Councillor Gordon considered that local families and children are faced with anxiety as the application does not uphold the licence objectives or the prevention of crime and disorder and the prevention of public nuisance.

Councillor Gordon stated that Cardiff Council's own Statement of Licensing Policy suggests that a terminal hour of 2100 hours is appropriate for the use of external areas at licensed premises in residential areas. The Sub Committee was urged to seriously consider this and refuse the application.

Simon Field addressed the Sub Committee. Mr Field stated that the policy framework set by UK Government stated that the authority should not depart from its Statement of Licensing Policy unless it is in the interests of supporting the licensing objectives. In these circumstances it was difficult to see how the licensing objectives would be promoted and to depart from the policy would be a breach.

Mr Field stated that he lived in Cathedral Road and his bedrooms overlook the external terrace area. The area was substantial and was covered and heated. Last summer increases in noise levels were clearly audible and it would not have been possible to sleep if the use of the premises was permitted to 2300 hours. Other residents would also be affected.

Mr David Britton addressed the Sub Committee. Mr Britton stated that nuisance extends beyond noise nuisance. If you are unable to enjoy your garden, then that is a nuisance. If you are anxious then that is a nuisance. Mr Britton considered that there was no overriding reason for the Sub Committee's previous decision to be broken.

Applicants Representations

Mr John Wallsgrove presented the application. Members were advised that the application sought to extend the use of the external area until 2300 hours. Mr

Wallsgrove accepted that the previous application impose a condition limiting the use of the external area to 2100 hours. The applicants was aware of the Council's policy in this area but it was not correct to say that the policy could only be overridden unless a positive impact could be demonstrated.

Furthermore, Mr Wallsgrove considered that the only licensing objective which was relevant for Members determination is the prevention of public nuisance.

Responding to criticism that the application was made early following the Committee's previous decision, Mr Wallsgrove stated that the applicants were not content with the previous decision and could have appealed. Following numerous complaints from customers and having reviewed their options the applicants decided to bring forward a new application. Members were asked to noted that there were other premises in the vicinity where the use of external areas was permitted until 2300 hours.

Mr Wallsgrove stated that Enforcement Officers attended the premises on more than a dozen occasions. No breaches have been reported and no representations were received from any responsible authority. Only one unsubstantiated complaint relating to karaoke was received. CCTV footage was offered to Enforcement Officers. Mr Wallsgrove described this as a false allegation.

Members were asked to give weight to the fact that no responsible authorities were present and no representations had been received. The responsible authorities are experts in their chosen field and there was no credible evidence to suggest that the application would have an adverse impact.

Members were advised that a series of events have been held at the premises under Temporary Event Notices. The use of the external area was extended to 2300 hours. No complaints were received and there is no mention of these events in the written representations received.

The Sub Committee is permitted to consider the application on its merits and grant the application as an exception.

A local resident stated that it was not true to suggest that no enforcement action had resulted from the visits by Enforcement Officers as warning were issued to the applicants on a number of occasions. Mr Wallsgrove advised that on one occasion Mr Hamer was using the external area with a number of friends and these activities were not licensable. On a second occasion staff at the premises were in the process of asking people to move inside. Mr Wallsgrove reiterated that no representations were received from Pollution Control.

Councillor Gordon stated that Environmental Health officers only attend a premises if they are responding to an issue being reported. Claire Hartrey of Cardiff Licensing clarified that the enforcement visits conducted were made by officers of the Licensing Team and not officers from Environmental Health.

Mr Wallsgrove submitted a collection of photographs depicting the external areas used by other licenced premises in the area. It was noted that these premises were long-standing public houses. Mr Wallsgrove considered that it was relevant the

external area was used during Temporary Event Notices and no complaints were received. It was therefore unfair that these premises were being singled out and were not permitted to use the external area beyond 2100 hours.

Mr Wallsgrove stated that the Statement of Licensing Policy was not absolute and the application must be considered on its merits. The applicants have put forward credible evidence and the Secretary of State's guidance carries equal weight in that the Sub Committee must look to the responsible authority representations, or lack of. If the Sub Committee is to depart from the guidance then they must provide a reason.

A local resident stated that it was unfair to compare Temporary Event Notices held in November and December with the condition applied for. The external area is not likely to be used much in the Winter months and local residents primary concern is the use of the area during the Summer. Mr Wallsgrove stated that the TENs were held in December in the run up to Christmas when the premises were at their busiest. The external area is covered and this acts as a barrier to noise breakout. He suggested that the evidence put forward was good evidence that there was no nuisance.

The applicant were asked whether they has sought to consult with local residents prior to submitting their latest application. Mr Hamer stated that there was no need to consult as the outcome of any consultation was predictable. He was also unaware of any concerns.

Summing Up

Councillor Gordon stated that 6 months ago the Sub Committee decided that a 2100 hour cut off time was appropriate for the external area. Nothing has changed and the Sub Committee was urged to protect residents and refuse the application.

Councillor Wild stated that there was clearly public concern regarding the application and it was unreasonable to grant such an application in a residential area.

David Britton stated that the other businesses mentioned by the applicants are long established or are at the business end of Cathedral Road. These premises have been operating for 2 years and are surrounded by residents.

Stuart Field stated that the policy exists to protect residents and any extention beyond the 2100 hours cut off would be unacceptable. The fact that there are no complaints overestimates the savviness of residents, who may expect that the Licensing Sub Committee hearing to be their opportunity to make representations.

Mr Wallsgrove stated that it was not unreasonable to assume that because Environmental Health had not made a representation then there would be no nuisance caused by allowing the application. The Statement of Licensing Policy allows for the application to be granted on its merits. There have been no complaints made relating to the Temporary Events Notices at the premises. No Environmental Health representation were received and the authorities have the power to review the premises licence which is adequate protection for local residents.

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 REFUSED the application.

The Sub Committee gave weight to local resident's written and oral submissions that state that they are already disturbed by noise from the rear external area. In particular the Sub Committee gave weight to Mr Field's submission today in which he described how his property overlooks the premises (as do other residential properties) and he can hear the noise from the external area. We accept his submission that allowing the area to open until 23:00 would exacerbate the noise problem and make it difficult to sleep.

The Sub Committee therefore resolved that there was no reason to depart from the suggestion in Council's Statement of Licensing Act Policy that the terminal hour for external areas in close proximity to residential properties does not exceed 21:00.

The meeting terminated at 1.00 pm