

LICENSING SUB COMMITTEE

3 JANUARY 2020

Present: Councillor Mackie(Chairperson)
Councillors Derbyshire and Ford

29 : DECLARATIONS OF INTEREST

None received.

30 : APPLICATION FOR THE GRANT OF A PREMISES LICENCE - MCDONALDS, TY GLAS AVENUE

Applicants: McDonalds Restaurants – Ralph Parker
(Franchisee), represented by Sarah Clover

Interested Others: Dr Ruth Morgan – Resident
Cheryl Williams – Cardiff & Vale Health Board
Councillor Shaun Jenkins, Ward Councillor
Jason Howe – Resident
Alison McClarg Bateman - Resident

The Application

An application for the grant of a Premises Licence has been received from McDonalds Restaurants Limited in respect of McDonalds Restaurants, Ty Glas Avenue, Llanishen, Cardiff, CF14 5DX.

The applicant has applied for the following:

(1) In respect of the following licensable activities:

(i) The provision of late night refreshment (indoors and outdoors)

(2) Description of Premises (as stated by applicant): “The premises will operate as a restaurant selling food and non-alcoholic drinks for consumption on and off the premises”

(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:

Monday to Sunday: 24 hours a day, 7 days a week

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

a) The provision of late night refreshment (indoors and outdoors):

Monday to Sunday: 23:00 to 05:00 hours

A representation had been received from South Wales Police in respect of this application. The conditions suggested by the Police have been agreed and the objection has therefore been withdrawn.

Representations had also been received from Public Health Wales, a number of local residents and local Ward Councillors in respect of this application.

Responsible Authorities Representations

Cheryl Williams outlined the Cardiff & Vale Health Board's objections under prevention of public nuisance because of the disturbance to local residents, particularly those who overlook the restaurant with their windows and balconies. It was stated that noise travel more at night and on health grounds noise disturbance can have a significant impact on sleep, which impacts greatly on people's Health and Wellbeing. It was stated that good sleep is vital for mental and physical wellbeing and impacts greatly on day to day functioning. Many issues caused by poor sleep were outlined. It was noted that flats close to the restaurant are retirement flats and that older people are more prone to wakefulness at night anyway and this would disturb them further. In summary the objection was prevention of public nuisance due to sleep disturbance.

Other Person's Representations

Councillor Shaun Jenkins addressed the Sub Committee stating this was an issue of significant local interest, and he would be focussing his objection on noise and other nuisances to residents. He referred to the statutory guidance on light pollution which should be adhered to. He considered that refusing this application would strike the right balance and provide some relief from the intensive lighting 24 hours a day. He noted that the closest residents are just 18 metres away from the restaurant, and he considered that this was closer than any other McDonalds in Cardiff to residential units. Councillor Jenkins wished to table some information on this but an objection was made by the Applicants barrister under Regulation 18. Councillor Jenkins continued saying that other restaurants have sound and light barriers such as trees and sound boards, whilst this one does not. He considered that the noise from patrons, patrons vehicles, car stereos, car doors and people gathering etc. would impact greatly on residents during these hours and that the terminal hour currently in place was more than sufficient. He concluded by saying he was objecting due to the negative impact of noise pollution late at night which would undermine the prevention of public nuisance licensing objective.

Dr Ruth Morgan addressed the Sub Committee, explaining that Llanishen was a peaceful, pleasant suburb of Cardiff; Llanishen High Street was close by and was a village with local amenities and is a vibrant local community. Dr Morgan referred to the current terminal hour and stated that the lights inside and in the car park are sometimes left on longer than 11pm and is having a significant impact on the sleep of vulnerable people. Dr Morgan explained that over 40 local residents had asked her to represent them at the meeting today, many of those residents were also in attendance observing today. Dr Morgan stated that the residents were of varied backgrounds, many professional and have made a valuable contribution to society and communities.

Dr Morgan highlighted that the map appended to the report did not show the Llys Isan development, even though people had moved into the development in May 2019.

Dr Morgan explained that the objection was in relation to all 4 licensing objectives and that the Council's Statement of Licensing Policy refers to detailed consideration to be given to all relevant representations received.

Dr Morgan outlined the objection in relation to the licensing objectives. In relation to Protection of Children from Harm – it was stated that there are many children in the area, the Primary school is on the same road. Since the restaurant opened residents have observed children from the High School walking across busy roads and gathering at McDonald's. Children in their mid-teens have been observed on bikes and foot late at night at the restaurant and residents are concerned that it will become a magnet for the vulnerable, with the potential for drugs and crime as well as fast food and poor diet choices and habits.

In relation to Prevention of Crime and Disorder, Dr Morgan noted that the Police representations had raised certain matters, such as door security wearing body cameras and a manager or member of staff patrolling the area to disperse anyone gathering. The applicant had agreed to these and the objections had been withdrawn. Dr Morgan considered that there must be concerns about Crime and Disorder for these issues to be raised by the Police. It was noted that McDonald's cannot sell alcohol, but Dr Morgan quoted from the policy saying that intoxicated people often go to fast food outlets. Dr Morgan explained that there were 2 licensed premises in close proximity to McDonalds, it was likely people would gather there as it would be the only late night restaurant open.

In relation to Prevention of Public Nuisance, Dr Morgan explained that this was of great concern to residents. Dr Morgan outlined the concerns as noise from cars, car doors, and people talking as they walk along to the premises, who possibly may be intoxicated and boisterous. This would be worse in the summer months when windows needed to be open at night. Dr Morgan reiterated the concerns of the Health Board in that disturbed sleep can increase anxiety and have other health impacts. Light pollution was another concern, and this also impacts on sleep disturbance. Dr Morgan wished to table photographs showing the light impact inside the flats but Ms Clover objected to this under Regulation 18 as they had not been submitted previously. Dr Morgan verbally described the photographs and explained the impact of the lights from cars, the restaurant and the signage on residents. Dr Morgan referred to paragraph 2.20 of the Statutory Guidance in relation to controlling light pollution. She considered that the lights would cause sleep disturbance and have a negative impact on elderly and vulnerable residents. Another issue under Public Nuisance was Litter, Dr Morgan referred to Cardiff Council's Local Development Plan (LDP) in relation to A3 use and noise and litter. She stated that Llanishen was a village designated as a local centre by Cardiff Council and the LDP encourages restricting closing times in local centres. Dr Morgan considered that increased litter could mean increased rats and seagulls which also increases noise. She added that residents have already experienced discarded food and litter in the local area. Residents have also had to report incidents to the Police in the last few weeks, including young people gathering in the private development and benches turned over. Dr Morgan considered that extending the hours would mean incidents such as these would increase.

In conclusion Dr Morgan made reference to Cardiff Council's Statement of Licensing Policy, page 35 in relation to residential properties, page 9 in relation to applicants

engaging with local residents on operating schedules and page 36 in relation to licence holders engaging with local businesses and residents. Dr Morgan was disappointed that this had not happened and felt that there could have been constructive engagement with McDonalds.

Members noted that this premises had been licensed previously and asked if the flats which were built later on had been sound proofed. Dr Morgan said they had been built to a high standard but you could still hear road noise inside when the windows are closed. Members noted that residents had bought the properties next to the road and opposite a pub, so were aware of noise issues. Dr Morgan agreed but reiterated that previously, any disturbance was only until 11pm and there had been no issues.

Jason Howe addressed the Sub Committee to outline his objections. He stated that he was concerned about the risk of Crime and Disorder and cars driving fast and illegally on the Ty Glas Industrial Estate. He considered that 24 hour opening would attract more of this and create a haven in a residential area. He noted that the impact of increased litter had been immediate. Mr Howe considered that the vast majority of residents were against the opening of the restaurant and those who were not, did not want 24 hour opening. He noted the proximity to the retirement flats and vulnerable people as well as the proximity to the primary school. Mr Howe referred to the Wellbeing and Future Generations Act in relation to Air Quality, Healthy Choices and Behaviours and Noise and Light Pollution, local mental health, obesity and fast food outlets and planning in Cardiff. He considered that granting this application would undermine everything the Act seeks to address.

Alison McClarg Bateman addressed the Sub Committee, stating that she has looked at recent applications and in comparison this application has attracted significant representations. She considered this had been a steep learning curve as a lay person. She wished to see a period of grace under the current operating schedule to monitor the impact on residents, particularly in the summer months. In conclusion Ms McClarg Bateman noted that the local police had not been able to control consequences of alcohol in local pubs.

Applicants Representations

Sarah Clover addressed the Sub Committee, stating that McDonald's is already there and operating from 5am until 11pm, which doesn't need a licence. Licensing objectives are only relevant from 11pm to 5am and only 2 licensing objectives are engaged. She understood the local opposition and the fear of the unknown; stressing that for all the fear and catastrophising, historically McDonald's don't get called back for review because the issues rarely materialise. Ms Clover explained that the franchisee is Mr Ralph Parker who runs Hunky Dory Restaurants Ltd and had 7 other McDonalds in Cardiff all with 24/7 licences. She added it has been possible to balance this with responsible authorities and conditions and other area are much more challenging. Ms Clover added that Mr Parker is hugely experienced in managing premises and has worked with McDonalds for 34 years including being a Franchisee for 14 years. He employs 910 people in Cardiff, in Llanishen there will be over 100 mainly part time jobs, 80 of which are there already. He is passionate about being a good neighbour in all localities; he has consulted with stakeholders and regularly engages with litter picks City Wide, he also with charities and the homeless.

In this particular location he has spoken to the manager of the McCarthy and Stone development .

Ms Clover stated that the baseline for decision making is the attitude of the responsible authorities and anxieties have to be scrutinised against responsible authorities concerns on the licensing objectives. She added that the Police are the 'go to' responsible authority for crime and disorder and that Environmental Health are for Public Nuisance. Ms Clover considered that if there were genuine concerns then they would be represented by the responsible authority whose remit it is for that licensing objective. It was stressed that Environmental Health had no representations because they had received no complaints.

Ms Clover considered that most of the representations from residents were not legally admissible in relation to children eating and attending there. The previous licence had some parity with this application so there was the opportunity to test the impacts such as alcohol, food, cars, noise and odours. She added that dispersal would have been until midnight as normal and the lights would have been seen until that time.

In relation to Planning for change of use, Ms Clover considered that all concerns had been explored and the application had passed and although not bound by it, it is persuasive and courts would consider it. The responsible authorities are satisfied on both occasions which is significant in itself. She added that Planning does not restrict the hours, it is for 24/7, and she stressed that this is not a second bite of the cherry to object to the original planning application.

Ms Clover considered that this is a busy suburban area, and would have been the same when McCarthy and Stone built the retirement flats; the development itself is responsible to protect the residents, and would have complied with everything the Council required of them. In relation to traffic, Ms Clover said it is an industrial park so the opportunity for people to gather in car parks etc. is already there. McDonalds cannot prevent this but can mitigate this by means of lighting, patrols, security etc.

In relation to incidents with young people gathering in the private development, Ms Clover stated it had been school holidays, it was dark by 11pm anyway, so noise and lights from people, cars, car doors etc. can already be observed up until 11pm. She added that any issues would have been reported to the responsible authorities, local ward members etc.

Ms Clover stated that the removal of the hedge was a Council requirement due to a drainage issue. She added that there were things that could be done in relation to lighting, screening, mitigation etc. Ms Clover also stressed that the representations had all been submitted before the restaurant had opened so are not based on experience.

Ms Clover explained that conditions can only be placed if there is a licence to attach them to; the restaurant could open 24/7 now serving non-hot food if they wished. She added this was not a cumulative impact area and there are only a couple of licence premises close by, so the cumulative impact is entirely absent. Regarding the congregation of youths, mitigating controls by McDonalds, such as patrols, CCTV, monitoring, litter picks through the night etc. would help this. Ms Clover noted that there had been no reports of disturbance to sleep made.

In relation to noise, Ms Clover stated that the night time hours of trade in suburban areas are not busy and the application was being made for consistency, reliability and reputation. The hours would service night workers, emergency services staff, shift workers etc., which was notable but a limited market. McDonalds want consistency and parity with other locations..

Ms Clover stated that there are no restrictions on lighting in the area and that lighting was required for effective CCTV. In relation to litter, Ms Clover explained that people culturally associate litter and McDonalds; at Llanishen there are currently 3 litter patrols – morning, afternoon and evening, this would increase to 4 with 1 at night if granted. It's a comprehensive litter pick, so all litter is collected.

Ms Clover considered it was a balance exercise, not a reason to refuse. Obesity and Public Health are not licensing objectives and the restaurant is extant in any case. McDonalds provide healthy choices and choices made for children should be under parental controls.

Ms Clover reiterated that the only licensing objectives that are engaged are Prevention of Crime and Disorder and Prevention of Public Nuisance.

Mr Ralph Parker addressed the Sub Committee, explaining that he was a local businessman who employs over 900 people in Cardiff, he has been a franchisee for 14 years and was passionate about being a good neighbour. He works closely with the Police and always agrees conditions proposed. He engages with stakeholders, works with litter groups, the Wallich, Foodbanks etc. He has genuine connections with Cardiff and has family living in Cardiff. Since being in Cardiff he has won various awards including Love Where you Live and FAW Grassroots Restaurant of the Year. He has met local Councillors and introduced himself and his team to the manager of the retirement flats, who had not informed him of any complaints. He will continue to reach out and mitigate if necessary.

Ms Clover stated that the licensing regime is permissive in nature and that there was always the opportunity to review the licence, the decision should be made on empirical evidence rather than future looking speculation that will not come to pass.

The Chairperson invited questions at this point in the proceedings.

Councillor Jenkins asked if, of the 7 other restaurants in Cardiff if any others were as close to residential properties. Mr Parker stated that the city centre ones have residents around them; the drive thru's tend to be in more suburban areas. Councillor Jenkins asked if this particular location presents unique challenges and Mr Parker answered No.

Councillor Jenkins referred to the term used 'fear of the unknown' and considered that some elements had already been tested. He asked if, from submissions heard today, the applicant would agree that there have already been impacts. Ms Clover stated that it was up to the Sub Committee to decide that.

Members asked if all McDonalds in the UK are 24/7. Ms Clover advised that most were but she had been referring to all of Mr Parkers restaurants.

Members referred to Agent of Change and Ms Clover explained that the building is extant so McCarthy Stone would be the Agent of Change in relation to the Harvester at the time.

Members discussed congregation of young people since the restaurant opened. Ms Clover said that was what she heard in verbal submissions today but that was not the experience of Mr Parker.

Members referred to the offer of mitigation in relation to light and noise. Mr Parker said he would be willing to if he were able. Ms Clover added that Environmental Health also have the powers to look at nuisance issues.

Members discussed the differences between city centre restaurants and this particular location and considered that the challenges were very different, with particular issues here with light and noise. Ms Clover reiterated that the issues were the same as when the Harvester was trading, the only difference being the removal of the hedge; Environmental Health could liaise to see if anything was required to replace the hedge and they also have their own statutory powers to deal with nuisance. Ms Clover stressed that the lesser measure should be tackled rather than draconian measures taken.

Members asked about the turnaround of people and how long they stay. Mr Parker advised that on average it was around half an hour. Members noted that people would have stayed longer than that when it was a Harvester. Ms Clover stated that it was a difference in intensity, and there was no evidence to analyse.

Summing Up

Cheryl Williams summed up by saying that activity in the evening time is normal but people have the right to a peaceful sleep. She explained that she had not submitted an objection to planning as she had understood that planning was not for change of use but for signage etc. She added that other applications have been refused on the grounds of public nuisance and based on the health and wellbeing of local residents.

Councillor Jenkins summed up by saying that this restaurant was uniquely positioned as it was closer to residential units than any other McDonald's in Cardiff. Issues are already being experienced since the restaurant opened and these would be exacerbated with extended opening hours.

Dr Ruth Morgan summed up by saying that other McDonald's restaurants have been refused on the grounds of public nuisance, crime and disorder and she gave examples of these. She added that at Planning there had been a long discussion about the drive through and signage, and there had been a split vote, with the Chair having the deciding vote. Dr Morgan stated that people expect a busy day time but for it to be quieter overnight and the Harvester had closed at 11pm. Dr Morgan expressed her disappointment at the lack of consultation and engagement with local residents, she noted that the manager of the retirement flats had been spoken too, but that she doesn't live there. Dr Morgan welcomed the offer of engagement going forward from Mr Parker.

With regards to noise pollution, Dr Morgan noted that no complaints had been made to date, but point out that during the construction phase the developers had been reprimanded twice by Cardiff Council for working when they shouldn't have been.

She noted that residents are complaining about sleep disturbance. Dr Morgan made reference to the car park, increased traffic and turnaround times especially on busy Friday and Saturday nights, which are already being experienced.

Dr Morgan referred to the traffic headlights impacting on the flats opposite and that the hedge that was there previously did a good job of stopping the glare. She added that the route of the traffic, which had moved closer to the building was in line with a new footpath, and this was causing the glare into the flats windows.

Dr Morgan concluded by saying that there had been 57 representations from residents, 47 of which were from Llys Faith and Llys Isan, and 41 of which she was representing today, which showed the depth of anxiety on this issue. She added that there was no 24/7 economy in the vicinity, it was a residential area and that an increase in the hours would undermine the licensing objectives especially in relation to Crime and Disorder, Public Nuisance and the Protection of Children from Harm and she believed that the application should be refused.

Alison McClarg Bateman summed by saying that she had attended as a lay person and feared for her preparedness compared to the professionals in attendance. She added that the people objecting were real people who know the area and locality. She talked about the uniqueness of the location and reiterated that there was no night time economy in the area. She asked if there could be a period of grace and reflection until after the summer time.

Sarah Clover summed up by saying that Planning did grant a change of use and this was relevant. She considered it was not logical to approach this issue based on proximity, saying it was a mixed-use neighbourhood so there needed to be an element of give and take. McDonald's could look into screens and lighting and residents could consider blinds or curtains.

Ms Clover stated that Environmental Health was a missing and vitally important element. She added that objections to Planning were almost identical to those presented today, adding that evidence given today was future looking. Ms Clover stated that the benefits of granting the licence, such as benefits of choice and employment to local people, had been lost and that there were plenty of people who would welcome a 24/7 McDonalds at this location. It was important to balance the benefits with the suggested impacts, and that all issues raised were capable of reassurance and resolution. She considered the application to be reasonable and proportionate and that there would always be an opportunity for a licence review. Ms Clover recommended that the licence be granted and that engagement with Environmental Health takes place.

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, REFUSED the application.

31 : URGENT ITEMS (IF ANY)

None received.

The meeting terminated at 2.00 pm