

LICENSING SUB COMMITTEE

31 JANUARY 2020

Present: Councillor Derbyshire(Chairperson)
Councillors Asghar Ali and Goddard

32 : DECLARATIONS OF INTEREST

None received.

33 : APPLICATION FOR THE GRANT OF A PREMISES LICENCE - CHILLI FLAMES, ST MARY STREET

Applicants: Mr Tahir Nadeem (TN Ventures Ltd) represented by
Mr Dan Dyson (Barrister)

Responsible Authorities: Tony Bowley, Licensing Officer, South Wales Police
Rhys Morgan, Licensing Officer, Shared Regulatory
Services

An application for the Grant of a Premises Licence has been received from TN Ventures Limited in respect of Chilli Flames, 95 St Mary Street, Cardiff, CF10 1DX.

The applicant has applied for the following:

(1) In respect of licensable activities:

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

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

"Restaurant and takeaway premises on ground floor and basement"

(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: 08:00 to 04:00 hours

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

a) The provision of late night refreshment:

Monday to Sunday: 23:00 to 04:00 hours

Responsible Authority Representations

Mr Bowley explained that this was the first time they had received an application for this particular premises. He explained that PC Gunstone had visited the premises investigating an incident that had taken place outside the premises; he was asking to see the CCTV from Chilli Flames, the employee was unable to play back and provide the CCTV, and when asked was unable to produce the licence. South Wales Police then spoke to the owner, Mr Jamal in Leicester and asked for the licence; he produced the planning consent saying he thought it was all he needed to operate; therefore the business had been selling hot food past 11pm without a licence for 2

years. South Wales Police were not impressed by the fact they had been operating for 2 years in a Cumulative Impact area. Mr Bowley explained that Mr Jamal owns 3 business in Leicester and 8 others across the UK so he knows about obtaining premises licences.

Mr Bowley noted that Mr Nadeem was applying for the licence today and South Wales Police were objecting on licensing objectives Crime and Disorder, Public Safety and Protection of Children from Harm; he added that if the Sub-Committee were minded to grant then the Police would like to see the conditions that they had provided in the appendix to the report.

Public Safety – the basement was not suitable to have customers in it, there was one entrance and exit and a cooking range at the top of the stairs. The Applicant agreed to remove the basement from the application.

Crime and Disorder – Mr Bowley made reference to the saturation policy being based on evidence and referred to page 53 of the Licensing Policy.

Police statistics had been provided up to 31 December 2019; these were for St Mary Street only and none of the roads off it or the arcades. Mr Bowley considered the statistics show that the Police have their work cut out already.

Mr Bowley noted that the applicant had provided a photograph showing the premises and those close by, detailing the licence hours of these neighbouring premises. By way of context Mr Bowley explained that McDonalds, which is opposite the premises had 109 incidents last year and over half of these occurred between 9pm and 6am. He added that the immediate area around the premises have a variety of late night premises and granting this application would contribute to the negative impact on the Cumulative Impact area.

Mr Dyson asked if McDonalds had ever been called in for a review of their licence and was advised that they had not.

Mr Dyson made reference to a recent incident where 2 police officers were assaulted and asked how close the nearest licenced premises were. Mr Bowley explained they would have been approximately 300 metres away.

Mr Dyson asked for clarification on when the CCTV footage had been requested. Mr Bowley explained it would have been within 5 days of the incident happening and as part of the investigation process. Mr Dyson asked, if the CCTV had been operating, would it have assisted the Police and he was advised that it would have.

With reference to the Police statistics, Mr Dyson asked if there was any evidence of incidents relating to individual late night refreshment premises other than McDonalds. Mr Bowley advised that they didn't relate to any individual premises.

Members asked if there had been any incidents at the premises while it has been operating and were advised that there had not been.

Members asked if the Police had seen an incident book at the premises and were advised that the Police were unaware if there was an incident book at the premises.

Mr Rhys Morgan addressed the Sub-Committee and explained that this application was 23:00 hours onwards. He stated that the applicants operating schedule mentions CCTV but nothing more that addresses the Cumulative Impact Policy. The applicant had stressed that there would be no alcohol sales therefore mitigating any alcohol related issues. Mr Morgan referred to page 53 of the policy and evidence from the UHB and others that incidents occur when people gather at late night refreshment premises. Mr Morgan referred to Chapter 8 of the policy and that the premises was in the Red category; he explained that there was a rebuttable presumption that the application would be refused unless the applicant can convince the Sub-Committee that he can overcome the rebuttable presumption and promote the licensing objectives; Mr Morgan considered that no additional measures had been put forward and to be granted, the application would need to be exceptional.

Mr Dyson sought to make a distinction between a take away and a traditional restaurant, he asked that the Sub-Committee looks at the nature of the business operating at the premises, he explained that there was seating for 50 people and the business model was based on a Nando's experience. Mr Morgan referred to page 47 of the policy and what the policy sees as a restaurant, what draws a restaurant outside of the CIP from Red to Amber and Mr Morgan explained that this doesn't apply with the core hours of the application or address any additional steps, so the Policy still applies. Mr Morgan outlined the additional measures that don't apply and when Mr Dyson asked how he knew this Mr Morgan explained that they are not contained in the application.

Mr Dyson noted that each application should be considered on its own merit and the Policy refers to guidelines and are not strict rules.

Applicants Representations

Mr Dyson explained that the application was from T N Ventures, which was a limited company with one Director – Mr Nadeem. Mr Nadeem purchased the business for £240k on 17th December 2019. T N Ventures Ltd was the landlord from 2016 and he had sub-let the premises to the previous occupant before purchasing the business for himself. He added that there had been no complaints or incidents at the premises, which was a Nando's style business, currently operating until 23:00 with seating for 50. He added that Chilli Flames was a franchise across the UK and there was no evidence of public nuisance at the premises.

Mr Dyson explained that the business had moved into what was the Fantasy Lounge, which did sell alcohol, so this premises has effectively reduced the alcohol sales in the Cumulative Impact area. The applicant had provided photographs to show the licenced premises close by and their licence hours.

Mr Dyson noted that most incidents happen on the street and he considered that the business offers a place for people to come in off the street and sit quietly and eat. He added that the business has CCTV which would be of benefit to the Police and as there have been no incidents, he considered that the Police Condition requesting door staff with body cameras was excessive.

Mr Bowley asked who owns and operates the business and was advised that Mr Nadeem owns the business and the lease and was the manager at the business before he purchased it; he is solely in charge, has managed the business for 2 years with no issues and has previously supplied the Police with CCTV when requested.

Mr Bowley asked if this was the late night refreshment business that Mr Nadeem had run and was advised that it was, he was previously in the ladies fashion business. Mr Bowley noted that the business was a franchise and asked if Mr Nadeem was accredited with the British Franchise Association (BFA), which is the only UK group that oversees Franchises. Mr Nadeem explained that he didn't know about it. Members asked if he was prepared to join the BFA and he stated he would find out about it.

Mr Morgan asked what the argument for rebuttable presumption was and asked if it was solely the provision of CCTV. Mr Dyson said CCTV was one of the arguments as the Police had said it would have been of assistance in the Prevention of Crime and Disorder.

Members asked about the Police conditions and if the objection would be withdrawn if the conditions were met. Mr Bowley said no, the Police strongly object to the application but if it was granted then there would be conditions as it is a high risk premises.

Members asked for clarity on how the business was based on a Nando's model. Mr Nadeem explained it was fresh grilled food, people come in and place an order and it is made fresh for them, they can decide to sit on or take it away. When questioned on whether the food can be served at the table it was explained there was no table service and it was the food that was similar to Nando's.

Members asked the applicant to clarify what conditions they would be happy to accept. Mr Nadeem stated it was the CCTV, he added that they don't open every day after 23:00, when they do they would be prepared to have door staff but no body cameras; there would be no external dining area, they would have an incident book; there would be no under 16's after 23:00; there would be a sign at the till detailing this and the Basement would be withdrawn from the application.

Members asked why the condition regarding body camera was not accepted and the applicant explained it was due to cost and there have been no incidents at the premises.

Members asked about the standard of the CCTV and the area it covers, the applicant explained it surpassed the Police requirements and covers inside and outside the premises.

Summing Up

Mr Bowley reiterated that this was a whole new licence for the sale of late night refreshments. South Wales Police objections were based on evidence from statistics. He added that the City constantly changes and there are more premises

serving late night refreshments than ever before and there is more trouble, and this is why the Cumulative Impact Policy (CIP) was introduced. He noted that the Applicant was a nice man who has been naïve and taken on a premises with no licence; Mr Bowley considered that this was not a very good application; the business was a franchise ran by Mr Jamal who he considered deceived Mr Nadeem and South Wales Police and Mr Nadeem was unaware of the British Franchise Association. The CIP was introduced to prevent precisely this type of application from succeeding and Mr Bowley asked that this application be refused.

Mr Morgan explained that the Licensing Authority should consider its Licensing Policy. He added that the rebuttable presumption is there and the Committee needed to decide if the application had done enough to overcome the presumption and promote the licensing objectives. He considered the business to be more of a takeaway than a restaurant as there is no table service. He added that the policy stipulates that additional measures need to be offered to draw from the Red to Amber Category, he did not consider this had been done. He added that simply operating and complying with conditions is not enough to overcome the rebuttable presumption; the application needs to be exceptional and he did not consider this application to be of this standard.

Mr Dyson stated that the applicant had to show he was not contributing to the negative impact. He stated that Mr Nadeem was not deceived by Mr Jamal, he was now applying for a whole new licence; he added he was a good business man who had a good relationship with the Police. Mr Dyson stated that people already congregate on the street and this premises will offer them somewhere to sit and eat. He considered that the additional CCTV would provide a benefit to the Police. The premises would not be selling alcohol, has no incidents of anti-social behaviour and would follow all hygiene rules; Mr Dyson considered all of these show that it wouldn't add to the negative impact of the CIP.

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.

34 : URGENT ITEMS (IF ANY)

None received.

The meeting terminated at 11.45 am