

LICENSING SUB COMMITTEE

13 JULY 2021

Present: Councillor (Chairperson)
Councillors Derbyshire, Goddard and Wood

1 : DECLARATIONS OF INTEREST

No declarations of interest were received.

2 : APPLICATION FOR THE VARIATION OF A PREMISES LICENCE - EAGLE BAR, CHARLES STREET

Present:

Applicants: Hadyn Price represented by Martin Jones,
Hugh James Solicitors

Responsible Authorities: Tomos Jenkins, Pollution Control
Jay Sampson, Licensing Enforcement

Other Persons: Tim Eggington
Maria Fragoulaki
David Jones
Park Estates Investments – represented by Matthew Phipps and Andrew Giles

The Application

An application for the variation of a Premises Licence has been received from Haydn Geoffrey Price and Peter Michael Barry in respect of Eagle Bar Cardiff, Basement, 39 Charles Street, Cardiff.

The applicant has applied for the following:

(1) Details of variation (as stated by applicant):

“The application seeks approval to
1. Amend condition (20) to read :
Each Friday and Saturday members only will be permitted entry to the premises after 02:00 hrs.

The exceptions to this will be:

- (a) the annual LGBT Mardi Gras
- (b) special occasions when notice in writing will be provided to the South Wales Police at least 7 days before the event. The South Wales police to have absolute veto over this
- (c) private pre-booked functions

2. Live music in the form of cabaret & karaoke up to 01:00 hrs Monday - Thursday and to 03:00 hrs Friday to Sunday

Condition (26) to be amended to read: There will be no mixed DJ music

3. Permit customers to use the front forecourt for smoking/drinking to midnight on weekdays and to 03:00 hrs on Friday and Saturday nights.

Members were asked to note that a representation was received from South Wales Police. A copy of the representation, and confirmation of its subsequent withdrawal following an agreement by the applicant to accept the conditions suggested in the representations, were attached at Appendix C of the report.

Applicant's Representations

Mr Martin Jones presented the application. Members were advised that the application is seeking to make 3 amendments to the existing licence. Mr Jones provided a summary of the historical background for Eagle Bar. Eagle Bar was preceded by Club X. Eagle Bar opened in August 2011 and the neighbouring flats were opened in 2014. There has also been further development in Charles Street since. Eagle Bar has operated successfully for 10 years. The bar is located in the basement of the building and has a rear external area and a fenced front forecourt.

The application seeks to vary 3 conditions. Mr Jones provided a summary of the application. Firstly, the requirement that patrons are members of a private club should only be applied after 0200 hours on Friday and Saturday. This would allow Members to attend with friends who are not members.

Secondly, that live music in the form of cabaret and karaoke be permitted until 0100 hours Monday to Thursday and until 0300 hours Friday to Sunday. The intention is that there would be no DJ music. Members were advised that the premises has a very good track record in terms of controlling sound within the premises. The level of sound would not alter. The double set of doors at the front of the premises are to be replaced and this will improve sound insulation. A number of conditions were proposed to control the breakout of noise.

Thirdly, to permit customers to use the front forecourt for smoking and drinking until midnight on weekdays and until 0300 hours on Friday and Saturday nights. This is currently permitted in the area at the rear of the premises. It was proposed that patrons were to be allowed to take their drinks into the front forecourt.

Mr Jones referred to the plan contained in the report and provided further information regarding use of the external forecourt area. Members were advised that the area is a small totally enclosed area. There was enough room for approximately 10 patrons.

Members were asked to note that there were no Police representations. The representations had been withdrawn as the applicants had agreed to accept the conditions requested by South Wales Police. Mr Jones highlighted the agreed conditions. Members were advised that a number of the conditions, including that relating to CCTV, were already being complied with. The applicant also proposed further conditions in relation to the application. Those conditions related to the

monitoring and adjustment of noise levels, the receipt of and responsibility for complaints, doors remaining closed and managing the dispersal of customers upon leaving the premises.

Mr Haydn Price addressed the Sub Committee. Mr Price advised members that he has extensive professional experience in communications. Mr Price noted comments in the written representations received regarding communication. Mr Price stated that he regularly speaks to neighbours and they are often invited into the premises to see how the premises operation and to discuss and address any concerns they have. No neighbours have taken up the invitation in the 7 years since the flats have been occupied. When events such as Pride are taking place neighbours are written to indicate when events are taking place and any different arrangements. Additionally, a 24-hour hotline telephone number is provided. There have never been any calls made but if any calls were received issues would be addressed.

Mr Jones recognised that the burden rests with the applicant to demonstrate that the licensing objectives will be promoted. The variation sought minor changes to the premises licence conditions and the application is put forward on that basis.

Responding to questions Mr Jones provided clarification on the use of the external area to the rear of the premises. Members were advised that the rear area is used occasionally but the applicants were mindful of the fact that there are many more residential properties at the rear of the premises that could potentially be affected by noise nuisance. Further clarification on the layout of the 'sound lobby' and access and egress to the premises was also provided.

Tomas Jenkins asked whether the applicants would be prepared to set a condition in terms of the maximum number of people permitted to use the external area at the front of the premises. Mr Price was concerned that enforcing a limit could potentially lead to flashpoints. The area is small and people do not remain in the area for long. There are also SIA security staff manning the entrance which is immediately adjacent to the area. Mr Jones offered a condition that would permit a maximum of 15 people. Drinks would only be served at the bar, there would be no external bar.

Mr Jones confirmed that at 0200 hours non-members would not be asked to leave the premises. The revised condition would mean that after 0200 hours only Members would be permitted to enter the premises. Mr Jones also explained how customers queueing to enter the premises would be managed. The porch lobby system would ensure that one door is always closed.

Mr Jones stated that there was an expectation that the noise levels at the premises would not change as a result of the application.

Mr Phipps noted that the applicant referred to a letter from a construction company and a proposed set of conditions during their representations. The applicant seemed to suggest that the Sub Committee would have those documents before them but neither document was including in the report. Mr Phipps stated that there were strict rules regarding disclosure of evidence and it was not appropriate for the applicant to produce new documents at the hearing. He requested, therefore, that the Sub Committee disregard reference to those documents. The Licensing Officer advised that neither document has been received from the applicant within statutory

timescales. The Legal Advisor confirmed that unless the documents are produced within the statutory time limits then they cannot be produced at the hearing unless all parties agree.

Responsible Authority Representations

Tomos Jenkins addressed the Sub Committee on behalf of Pollution Control. Members were advised that objections to part 3 of the application to allow smoking and drinking in the front courtyard area until 0000 hours Monday to Thursday and 0300 hours Friday and Saturday. Pollution Control have advised that there are 18 residential properties in close proximity to the area and officers were not satisfied that the prevention of public nuisance licensing objective would be upheld. Concerns were raised that when people congregate, sitting and drinking for prolonged periods noise is hard to control particularly when background noise levels are low. This continual noise is very different to transient noise from people passing and it is known to cause difficulties to those hearing the noise.

Pollution Control agree that having up to 15 people sitting and drinking in the front courtyard for prolonged periods would cause noise nuisance and therefore strong objections were raised to the use of the front area as proposed by the application.

Tomos Jenkins responding to questions stated that whilst no complaints have been received regarding noise emanating from the area, the objection seeks to address forthcoming problems and not issues that are pre-existing. Mr Jenkins confirmed that he has not visited the premises. However, 9-years experience in public health has demonstrated that it is better for both residents and businesses to put in control measure and safeguards rather early rather than wait for complaints to arise.

Jay Sampson of Licensing Enforcement addressed the Sub Committee. Members were advised that the Licensing Authority objected to the application on the grounds of the prevention of public nuisance. Mr Sampson accepted that a number of conditions have been discussed in relation to mitigating noise nuisance, primarily in relation to music. However, concerns remain that the use of the front forecourt area, as proposed, as there was little offered in the application in terms of controlling noise in this area.

The premises is also located within the cumulative impact policy area and therefore a rebuttal presumption that any application for new licences or variations to existing licences will be refused, unless the applicants have demonstrated that there will be no negative impact on the licensing objectives. The premises sits in the 'red' category. Whilst a number of conditions have been offered by the applicant, it was the opinion of Licensing Enforcement that these were insufficient to depart from the cumulative impact policy. Jay Sampson stated that it was the authority's position is that the very nature of part 3 of the application would inevitably result in increased noise and the measures offered would not mitigate that. Mr Sampson confirmed that there was nothing obvious that could be offered by the applicant that would cause the Licensing Authority to withdraw their objection.

Other Persons Representations

Councillor Mackie addressed the Sub Committee. Members were advised that local members were objecting to the application on behalf of residents as there was likely to be disruption and noise nuisance caused to residents. The applicants have stated that the premises existed before the apartments and therefore their properties should be soundproofed. However, the application seeks to change the nature of the premises and therefore the applicant needs to ensure that the residents are not affected by the variation to the premises licence. Concerns were raised about part 2 of the application – to change the requirement for patrons to be members. It was accepted that whilst the premises has been well managed in the past, this change would attract different clientele. The premises was formerly a small private members club but the changes would allow the premises to operate as a bar, open to the public, with live music.

Councillor Mackie also raised concerns regarding the use of the front forecourt area. Having up to 15 people congregating and drinking alcohol will inevitably create noise nuisance, particularly to the neighbouring properties. The premises is also in the cumulative impact zone and the presumption is that the application will be refused. It was difficult to see how conditions would mitigate noise nuisance.

Mr Tim Eggington spoke in support of the application. Mr Eggington stated that he was employed at Eagle Bar for five years. Mr Eggington considered that a number of comments made in the representations received were unfounded. Mr Eggington referred Members to the written representation he submitted and commented on the noise created by other venues in the city centre.

Maria Fragoulaki raised concerns regarding the application. Ms Fragoulaki stated that she was already concerned by the current operation of the premises. She had witnessed customers were already drinking in the front forecourt area. Smoking in the area is also a problem as the smoke comes into her property when the windows are open. People were said to have been gathering under a gazebo type structure in the front forecourt and noise nuisance is already a problem.

Ms Fragoulaki advised Members that she is often disturbed by people leaving the premises in the early hours of the morning – from people shouting and laughing and saying goodbye to friends whilst waiting for taxis etc. Charles Street is a very residential area and noise created by people is very difficult to control. Mr Fragoulaki requested that the application be refused.

Ms Fragoulaki also referred to previous exchanges she had with Mr Haydn Price when she tried to address noise nuisance issues in the past. Members were also advised that Ms Fragoulaki had documented a list of calls to the relevant authority with regards the noise nuisance difficulties she had been experiencing from the premises. She also stated that she needed to call the Police following an incident with her doorbell.

Ms Fragoulaki accepted that the city centre is vibrant. However, passing noise is not problematic. Her problems emanate from people leaving Eagle Bar specifically. Noise from inside the premises is clearly audible when the double doors are open.

Ms Fragoulaki confirmed that Mr Price had invited her to a meeting with her landlord on order to address these issues. However, she was unable to attend such a meeting due to work commitments. Responding to a question from Mr Jones, Ms Fragoulaki was unable whether a noise test had been conducted at the property. She did not however accept that the results of a such a test would be valid as the disturbance is from people, not from the volume of music, and therefore it would be difficult to recreate that under test conditions.

Members were advised that the gazebo structure is frequently used on the front forecourt. Some people were visibly holding drinks leaving the premises and entering the premises. Smoking under the gazebo also created a nuisance.

David Jones addressed the Sub Committee as a patron of Eagle Bar. Mr Jones advised Members that the clientele at Eagle Bar were a mature crowd, primarily professional people over 30 years of age. The bar is very small and there have been very few complaints over the years since it has been operating. The management have tried to address those complaints. Mr Jones considered that any noise created by Eagle Bar is noise that would be expected in a vibrant city centre.

Mr Matthew Phipps addressed the Sub Committee on behalf of Park Estates Investments. Park Estates Investments were a landlord that owns 19 apartments either side of the premises. As landlords, they have been in discussion with their tenants who have requested Park Estates Investments to protect their position. Mr Phipps considered that the application sought to profoundly change the nature of the operation of the premises. It was not accepted that the premises has had an exemplary record since it began trading.

The first part of the application sought to permit entry to the premises to the general public on Fridays and Saturday. That would fundamentally change the nature of the premises and the clientele. The premises would no longer be a private members club and would now operate as a nightclub. Members were asked whether it would be appropriate to remove that condition. Reference made to the behaviour of existing clientele by the applicants and their supporters were no longer relevant as a result.

The second part of the application requests live music, cabaret and karaoke. Members were asked to consider how this condition along with the other conditions proposed will affect the nature of the premises and how clientele will behave. The conditions proposed to balance the new regime are lacking and do not address the issues or licensing policy.

Mr Phipps raised concerns around the installation of a 'sound lobby' as proposed in the condition and whether those works should be subject to a minor variation of the premises licence. Mr Phipps also raised concerns regarding the statement that removing the requirements for clientele to members would eradicate queuing at the premises. In terms of the live music element of the application, Mr Phipps stated that an acoustic report and other testing that he would expect as part of the application was not provided. Members were also asked to note that although there was no shared wall, the walls of these terraced properties abut to one and other.

Referring to the conditions agreed between the applicant and South Wales Police, Mr Phipps stated that those conditions address the prevention of crime and disorder licensing objective. That does not address the concerns raised regarding public nuisance.

The third element of the application relates to the use of the outside yard. Concerns were raised that patrons were likely to dwell in the outside yard for longer is drinking and smoking is permitted in that area. Mr Phipps did not accept a limit of 15 people using that area was appropriate as currently there is a total prohibition on the use of that area.

Mr Phipps provided a summary of a number of comments made by local residents in the written representations received. The comments were in relation to existing problems of noise nuisance emanating from the premises. However, the premises licence was not under review. Park Estate Investments were seeking to maintain the status quo.

Mr Phipps also reference a number of paragraphs set out in the Council's Statement of Licensing Policy were he considered were significant to the application before the Sub Committee. Members were asked to consider paragraphs 3.1, 7.3 and 7.4(c). Mr Phipps considered that the application was absent in relation to how it intends to address the requirements of the Statement of Licensing Policy.

The premises also sits in the 'red' category in terms of the cumulative impact policy. In order for the Sub Committee to grant any variation of significance the onus is on the applicant to demonstrate that the application is exceptional and the measures set out in its operating schedule, and any conditions, will result in no negative impact on any of the licensing objectives. Mr Phipps considered that the application did not do that. It was also significant that the applicants had failed to reference the cumulative impact policy during their submission.

Mr Phipps also addressed the 'agent of change' points raised by the applicants previously. Full planning permission was given for the neighbouring apartments in 2006. The application seeks to change how it operates in the future.

In closing Mr Phipps asked Members to consider whether a new application on this basis, with these conditions would like have been received in the context of the cumulative impact policy. Members were requested to concluded that the presumption put on the applicants under the policy had been attended to.

Summing Up

Tomos Jenkins considered that application for use of the external area would result in noise nuisance being caused to residents.

Jay Sampson stated that applicant did not address the cumulative impact policy and the rebuttal presumption to refuse new application or variations to existing licences.

Mr Eggington asked Members to considered that although he hasn't worked for Eagle Bar for some year, he was still prepared to attend in support of the application.

Mr Jones considered that the objections were being made on gross assumptions and that the application should be supported.

Mr Phipps asked what was exceptional about the application. The objectors were not in attendance to object to the operation of the premises but they did seek to protect residents. The Sub Committee was invited to refuse the application.

Mr Jones stated that the agent of change principal only applied to number 37 Charles Street. The application was from a successful business that has communicated well with the majority of its neighbours. The gazebo referred to is use to protect customers and staff from the weather. There are plans to further improve noise insulation in the lobby area.

The applicants have demonstrated that they are prepared to take steps to address concerns and any potential for the application to have a negative impact. Members were invited to grant the application.

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, APPROVED the application in part, granting the proposals at 1.2(1)1 and 1.2(1)2 of the report, but refusing the proposal at 1.2(1)3 of the report.

Members heard from the applicant and listened to all the evidence and submissions and considered the written material. Members also considered the Licensing Act 2003, the Section 182 Guidance and the Statement of Licensing Policy and heard the representations made by Environmental Health Pollution Control, the Senior Licensing Enforcement Officer, the Local Ward Member, and Other Persons. The Sub Committee have also considered all written representations made.

The premises is located in an area covered by a Cumulative Impact Policy that creates the rebuttable presumption that any new or full variation applications for Premises Licences will be refused or limited unless the applicant can successfully demonstrate that granting the application will not add to the cumulative impact in the area. Members agreed that the Cumulative Impact Policy would apply to this application.

It was noted that the applicants accepted the proposed conditions of South Wales Police in Appendix C of the report prior to the meeting. During the meeting the applicants offered a number of additional conditions for the committee to consider.

After carefully considering all of the submissions today and the written material, the Sub Committee considered that proposal contained within 1.2(1)3 of the report has the potential to cause an increase in public nuisance, and the premises is located within the Cumulative Impact Policy area.

The Cardiff Council Statement of Licensing Policy states that "Operators should take particular care to ensure that customers using external drinking areas, smoking areas or the pavement outside, do not cause unnecessary nuisance to local residents. It is suggested that the terminal hour for external areas that are in close proximity to residential properties does not exceed 21:00hrs." The proposal seeks to significantly

go beyond the suggested time within the policy and the measures offered to mitigate any nuisance the Sub Committee did not feel were sufficient.

In light of the above, the Sub Committee considered that the applicants had successfully demonstrated that the variation at 1.2(1)1 and 1.2(1)2 of the report would not add to the negative cumulative impact in the area or undermine the licensing objectives. However, the proposal at 1.2(1)3 of the report “to Permit customers to use the front forecourt for smoking/drinking to midnight on weekdays and to 03:00 hrs on Friday and Saturday nights” would likely add to the negative cumulative impact and cause an increase in public nuisance.

The Sub Committee therefore resolved to grant the application in part, granting the proposals at 1.2(1)1 and 1.2(1)2 of the report, but we refuse the proposal at 1.2(1)3 of the report. The granting of the licence is also subject to the additional conditions detailed at points 9 to 17 (inclusive) above.

3 : URGENT ITEMS (IF ANY)

No urgent items were received.

The meeting terminated at 2.00 pm