

## LICENSING SUB COMMITTEE

30 JULY 2021

Present: Councillor Derbyshire(Chairperson)  
Councillors Jacobsen and Lancaster

### 7 : DECLARATIONS OF INTEREST

None received.

### 8 : APPLICATION FOR THE VARIATION OF A PREMISES LICENCE - KFC, ST MARY STREET

Present:

Applicants: Richard Campbell represented by Matthew Phipps,  
TLT Solicitors, Grant Reid Operations Director  
DemiPower and David James District Manager KFC.

Responsible Authorities: Rob Gunstone – South Wales Police  
Kirsty Evans, Licensing Enforcement

Other Persons: Councillor Norma Mackie – Ward Councillor for Cathays.

#### The Application

An application for the variation of a Premises Licence has been received from Demipower (2017) Ltd in respect of KFC, 112 St Mary Street, Cardiff, CF10 1DX.

The applicant has applied for the following:

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

“This is an application to extend the permission for late night refreshment, as follows;

Monday to Sunday from 23:00h until 03:00h the following morning (current permission from 23:00h until 00:30h the following morning).

The opening hours of the premises to be extended from 10:00h until 03:00h the following morning every day.

To add the following conditions to the operating schedule;

- Customers shall not be allowed to bring their own alcohol for consumption on the premises.
- Adequate and appropriate first aid equipment and materials will be kept on site, regularly checked and kept in an easily accessible place for staff.
- All exit routes will be kept unobstructed, with non-slippery and even surfaces, free of trip hazards and clearly signed.
- The manager will undertake a weekly inspection of the public areas of the premises to identify anything might present an identifiable risk to public safety.

Any risks identified that are deemed to be unreasonable must be rectified at the earliest possible opportunity.

- The Premises Licence Holder will use all reasonable endeavours to keep the highway and public spaces in the vicinity of the premises kept free of litter from the premises, to the satisfaction of the Council.
- The Premises Licence Holder shall request all persons associated with the handling, transportation and delivery of food shall employ due care and attention at all times to ensure:
  - a. There shall be no obstruction of the public highway whilst deliveries are taking place;
  - b. Drivers/couriers shall be instructed that they do not engage in loud talking/shouting/door slamming or emit loud music from their vehicle whilst on or off the premises;
  - c. All goods and waste to be handled carefully whilst being transported into and out of the premises and to the clients' address to prevent/minimise noise disturbance to residents within the vicinity.

All other hours, activities and conditions are to remain unchanged by this application”.

(2) The opening hours permitted by the licence are currently as follows:

Monday to Sunday: 10:00 to 00:30 hours

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

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

Monday to Sunday: 23:00 to 00:30 hours

#### Applicant's Representations

The Applicant outlined the key points in the application including that it was for an extension of hours for late night refreshment only and no alcohol sales.

The Applicant explained that DemiPower were a KFC Franchisee with 116 restaurants across the UK and ambitious growth plans. They strive to work with authorities in the area where they operate.

Sub-Committee were advised that the current licence, which was granted 2 years ago after being significantly contested, is until 00:30. The Applicant had previously satisfied Sub-Committee at that point and the licence had not been subject to review since.

The previous application offered conditions such as CCTV, SIA Doorstaff on event days and after 00:30, Bodycams, Incident Book, Signage. Litter clearance, Odour Control and deliveries during working hours only. The application builds on these conditions.

The Applicant quoted paragraph 7 in relation to promoting licensing objectives and felt that this is being done in the current operating schedule and there are additional conditions being proposed to deal with any issues relating to the extension of hours.

The applicant stressed that this application needs to be considered on its individual merits.

Sub-Committee were advised that the Applicant had engaged in pre-application consultation, particularly with South Wales Police, who have proposed a number of conditions which were outlined in the report. If minded to grant, the applicant considered that this application would promote the licensing objectives in that there would be 7 hours of SIA door security in the area, from 21:00, where there is no obligation to do so until 00:30. 1 on the front door and 2 patrolling. This gives a ratio of around 1 SIA: 10 Customers.

The Applicant noted the incident statistics served by South Wales Police, noting there were issues in the vicinity late at night and accept the CIA; however this premises is currently closed at the time of the incidents. The Applicant accepts these are relevant considerations but not determining factors. There is no explanation of the area the statistics refer to and the CIA covers a significant part of the City Centre. The Applicant notes that there were no comparison figures for the past 18 months, it is accepted that there is crime but that this cannot be a legitimate basis on which to refuse the application.

The Applicant noted that the Licensing Authority considered the application should be refused or subject to certain limitations; the applicant considered this was an important and transparent point; The Licensing Authority states there is a chance that intoxicated people who pass by will hang around and litter will increase, the applicant does not accept this point and stated there was no evidence to support it. The applicant explained the current licence already has a specific litter condition and this application offers more.

In relation to the application being outside permitted hours and the rebuttable presumption, the applicant considers this is not an absolute rule. The original application had significant objections but Sub-Committee granted, the applicant had proved it then and sought to do so again. There was no evidence to suggest that the previous grant was the wrong decision as there had been no review of the licence.

The Applicant referred to the observations they had submitted to Sub-Committee in relation to other premises, noting that this premises are doing more than the vast majority and is an exceptional application which will improve the area, will set a standard and could be a template for others, improving the standards of other operations. It was noted that even if Sub-Committee find that the application would undermine the licensing objectives they could put on conditions/limitations; the rationale of the Policy should not be to exclude good applications; 2 years ago the application was considered exceptional and Sub-Committee were asked to consider this the same as there has been no evidence to suggest otherwise.

Members sought clarity on the deliveries and it was explained that this referred to stock deliveries that would only be delivered during the mornings and delivering food to homes would only happen until midnight.

Members noted that South Wales Police had asked for the premises to be take away only from 00:30 and asked if this distributes issues to elsewhere. The Applicant did not consider it would as there are a number of premises that are open later. It was

considered the application would improve the area, there are litter picks in and around stores all day until close with staff patrolling collecting all litter not only KFC litter and also bi-monthly area litter picks.

PC Gunstone referred to the observation data and noted that this was taken on Friday night and was purely a walk around and observations noted, including that very few premises have door staff and none to the extent being offered in this application.

#### Responsible Authority Representations

Rob Gunstone of South Wales Police stated he was grateful that the Applicant had confirmed agreement of the additional conditions as outlined in the report. He stated that South Wales Police have to object to the application as it is in the CIA and it has to come before Sub-Committee. He stated that the extension of hours would mean a noticeable change of requirement of Police resources, especially on a Friday and Saturday as premises trade later and later. The evidence submitted by South Wales Police was from premises that are fundamentally similar to KFC and were meant to illustrate the nature of the commitments based on the Police. The figures are from 2020/21 but were not a highly accurate picture due to Covid and not everything being open. The concern is the impact on Police resources and the prevention of Crime and Disorder, hence the amendments to proposed conditions and additional conditions requested. The crux of the issue is that if Sub-Committee feels the additional measures will bolster the current measures significantly enough to not add to the CIA impacts.

Responding to questions from Members on whether the extra SIA door staff from 21:00 strengthens the application, PC Gunstone noted the premises already had door staff from this time even though it was not a condition on their licence. PC Gunstone stressed that his focus was on the extended hours applied for when Police resources would be needed, hence the increase in door staff to keep up with the pace of demand on the premises so that Police are the last resort. He added that when operating as take away only there would be increased footfall as customers are turned around quicker.

Members asked if the radio system would be connected to the Cardiff Group and were advised that this is already an existing condition.

Referring to the Incident Statistics, members asked if more figures were available. PC Gunstone explained that the intention of submitting these statistics was to demonstrate that even during Covid restrictions, there were still incidents happening during the hours applied for.

Members asked why South Wales Police considered opening as takeaway only from 00:30 was better than having people sat inside eating. PC Gunstone explained that from experience a quick turnaround of customers means less likelihood of incidents/issues; the majority of people will leave quickly and go to the adjacent taxi rank. There could be issues if people remained inside and also if they are asked to leave.

Kirsty Evans Licensing Officer stated that the Licensing Authority (Enforcement) believes that the application undermines the following licensing objectives:

- The Prevention of Crime and Disorder
- The Prevention of Public Nuisance

The concerns are that the premises seeks to sell hot food and/or hot drink until 03:00 hours every day (an extension of 2 ½ hours a day) in an area that already suffers from incidents of crime and disorder and public nuisance. Whilst it is noted that the applicant has offered a number of additional measures to promote the licensing objectives there are still concerns that selling hot food/drink will attract more disorder and nuisance; the measures offered are not enough to mitigate these concerns. The premises itself is located in an area that is subject to the Council's Cumulative Impact Policy (CIP) and the applicant's proposals would mean that the premises would fall within the 'red' category in Table 1 of the Cumulative Impact Policy (CIP). The CIP has been adopted due to high levels of alcohol related crime and disorder in the interests of public safety and the avoidance of nuisance. The policy creates a rebuttable presumption that the application will be refused or subject to certain limitations, unless the applicant can successfully demonstrate the proposals will not add to the negative cumulative impact on one or more of the licensing objectives. St Mary street itself currently has 69 licensed premises. 57 of those licences authorise the sale of alcohol for consumption on the premises, known as 'on sales'. 4 of those licences authorises the sale of alcohol for consumption off the premises only, known as 'off sales'. 8 of those licences authorise late night refreshment (LNR) only. The proposed extension for LNR until 03:00 hours daily means that the likely customer target base would be intoxicated persons leaving nearby licensed premises. 45 of the 57 licences that authorise 'on sales' on St Mary Street authorise this past 00:30 hours (the current end time of LNR for KFC). Taking this into consideration there is a high chance that passing trade from intoxicating persons leaving these licensed premises would increase significantly. Providing more of an opportunity for intoxicated persons to gather and hang around on the street eating their takeaway is only going to increase the anti-social behaviour and public nuisance such as litter in an area that is already saturated with just that. The applicant has offered a number of additional conditions in respect of their proposals, it is however the Licensing Authority's position that these conditions do not go far enough in demonstrating that the extension in late night refreshment hours would not add to the negative cumulative impact on the aforementioned licensing objectives. The Licensing Authority (Enforcement) therefore object to the applicant's proposals and ask that the Licensing Sub-Committee determine the matter.

Kirsty Evans added that additional SIA staff, whilst an asset, are not the be all and end all. She added that the LA would not be objecting if it was delivery only, but they believe that the premises is seeking to open longer to target people leaving nearby licensed premises and will add to issues already there.

Responding to a question from the Applicant, Ms Evans confirmed there were no issues with the current licence, just the extension of hours.

#### Other Persons Representations

Councillor Mackie addressed the Sub Committee, explaining the reasons for objecting to the application including; the extension of hours means it would be more

likely that intoxicated people are served and they will gather in the area creating issues for the public and residents; people wouldn't be getting straight into Taxi's as often Taxi's won't take people who have food, this can also cause issues; people will find somewhere to stop and eat the food causing a noise nuisance; there are also concerns over Police resources. Cllr Mackie noted there had been no issues in the past 2 years however she stated there had been pandemic and there had been restricted trading hours. The Sub-Committee had granted the previous application up until 00:30, which was before any trouble generally starts. The City was now opening up out the pandemic, nightclubs were due to reopen so there would likely be issues starting up again.

Responding to questions from Members, it was confirmed that the original application was for 00:30 only.

Members asked if the conditions would make a difference and Cllr Mackie considered they would make a difference at the premises but not when people move away into the surrounding area.

### Summing Up

PC Gunstone summed up by saying that it was for Sub-Committee to decide if the application has demonstrated it will not add to the cumulative impacts and that if minded to grant, then the conditions as outlined be attached to the licence.

The Licensing Authority had nothing to add to their submission.

Cllr Mackie stated that she failed to see how opening until 03:00 could promote the licencing objectives and asked the Sub-Committee to refuse the application.

The Applicant summed up saying that the figures produced by South Wales Police were incidents from 4 premises described as similar to the Applicant's. It was noted that there were around 2 incidents at each of the premises and on that basis there could possibly be 2 incidents from this premises, and that is without the extra measures offered. It was noted that other premises around the area do not have anything like the proposals offered in the application, even late at night.

The Applicant considered it had been suggested that the Policy is to refuse, however he considered that it was to allow if exceptional, which they consider they are. It was reiterated that there had been no issues with the current licence that Sub-Committee agreed previously even with significant objections, nothing had happened to undermine that it had been an exceptional application then and there was nothing to say this application for variation was the same. The Applicant urged Sub-Committee to trust the operator, noting that the licence can always be taken away if there are 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 Statement of Licensing Policy, REFUSED 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.

The Sub-Committee heard from the applicant and listened to all the evidence and submissions and considered the written material. The Sub-Committee also considered the Licensing Act 2003 the Section 182 Guidance and its own Statement of Licensing Policy.

The Sub-Committee also heard the representations made by South Wales Police, the Licensing Authority, the local ward member, and 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. The Sub-Committee agreed that the Cumulative Impact Policy would apply to this application.

The Sub-Committee that in the submission the applicant agreed to provide additional door supervisors and offered other additional measures in the application, however, the Sub-Committee feel that there is the potential for the licensing objectives to be undermined if the application is granted, particularly in relation to customers staying in the area and the potential to cause additional nuisance.

In light of the above and the applicant's representation, the Sub-Committee feel that the applicant has not successfully demonstrated that this application would not add to the negative cumulative impact in the area, and this application will negatively impact on the licensing objectives.

The Sub-Committee therefore resolve to refuse the application.

9 : URGENT ITEMS (IF ANY)

None received.

The meeting terminated at 12.30 pm