

Licensing Sub Committee

Tuesday 16 April 2013

PRESENT:

Councillor Rennie , in the Chair.
Councillor Mrs Bowyer, Vice- Chair.
Councillors Singh (Fourth Member) and John Smith

Also in attendance: Sharon Day (Lawyer), Katey Johns (Democratic Support Officer), Linda Perez (Licensing Officer), Mr David McIndoe (Licensing Officer, Devon and Cornwall Police), Rohdri Morgan (Environmental Health Officer).

The meeting started at 10 am and finished at 3.40 pm.

Note: At a future meeting, the committee will consider the accuracy of these draft minutes, so they may be subject to change. Please check the minutes of that meeting to confirm whether these minutes have been amended.

89. APPOINTMENT OF CHAIR AND VICE-CHAIR

Agreed that Councillor Rennie is appointed Chair and Councillor Mrs Bowyer is appointed Vice-Chair for this meeting.

90. DECLARATIONS OF INTEREST

There were no declarations of interest made by members in accordance with the code of conduct.

91. CHAIR'S URGENT BUSINESS

There were no items of Chair's urgent business.

92. PHOENIX TAVERN, 11 PHOENIX STREET, PLYMOUTH - GRANT OF PREMISES LICENCE

The Committee having –

- (i) considered the report from the Director for Place;
- (ii) Heard from the applicant (both in written and verbal submissions) that:
 - They considered their operating plan addressed all areas of concern and that it took into account all potential problems concerned within the cumulative impact policy
 - Music levels will be closely monitored and noise reduction methods would be put into place. The same measures would be put in place as were now in place and working at the other premises operated by the applicant

- It was intended that all loud music would cease at 11pm and that from then until midnight calming music would be played prior to the disbursement of patrons.
- There have been no objections from local residents
- The nearest living space is in excess of 25 metres from the premises and the smoking area is located at the furthest point from the local flats
- They consider they are fully able to cover more than one premises by using strong management controls and in house training. They have written protocols for the staff which are detailed in the operating plan. The applicant and daughter will be actively involved in running the premises although a manager will be brought in at a later date.
- The use of PIR lighting and CCTV will have a positive impact on the area and will reduce the issue of drunks abusing passing locals, the use of the area as an open WC as well as reducing the area being regularly used by prostitutes
- The premises will help improve the area for local residents with a place of entertainment that does not require a late trip to a night club type facility
- The premises will support the regeneration of the Millbay and Stonehouse areas
- The controls and operation protocols submitted within their operating plan fully covers and enhances the control issues for the neighbourhood and would be positive action towards crime issues in the area. They considered it must be better to have the premises being used rather being an empty building in the area
- As they have not been able to access crime statistics for the area they have had to work with general information in their operation plan but they feel it covers best practice and covers a wide ranging risk assessment of the area and the premises operation.
- The main trouble times for Union Street are between 2am and 4am. The premises will be closing by half past midnight at the latest and so the area around the pub will be cleared well before the above times when trouble usually starts.
- Due to the financial climate it is unlikely that the pub will stay open for the times that have been put forward
- The applicant submitted an operation plan for consideration.
- The premises will not be a late night venue
- Mr Welch was not going to be involved in the running of the business and was only involved in building, renovation and staff training.
- The applicant would be willing to accept conditions put on the licence and would work with any conditions put forward
- The applicant wanted to make this a local pub with team events and local affordable food. The aim was to make the 'family Phoenix'.
- The applicant has run other premises for the last six years and has worked with the responsible authorities to address any issues that have arisen and it was acknowledged by the police and Environmental Health that this was correct.

- The applicant had been the chairman of the Plympton Pub watch scheme
- The applicant handed in best bar none certificates and other documents in support

(iii) Heard representations (both written and verbal) under the licensing objectives as detailed below:

a) **Prevention of Public Nuisance –**

Environmental Health stated that granting the application had the potential to undermine this licensing objective due to the licensable activities proposed and the proximity to residential properties.

The premises are situated directly across the road from large block of residential properties (approximately 20 metres away). Noise from live and recorded music until midnight and noise from patrons using the outside areas for drinking and smoking had the potential to impact upon the residents of these properties.

Complaints of noise had been received from residential properties in the area about noise from other licensed premises in the locality.

The premises is situated in a cumulative impact area and in the opinion of Environmental Health the application submitted had failed to put forward any steps to address the potential negative impact of the operating hours on this licensing objective with regards to local residents. In particular in relation to the operating hours until midnight and also the use of the outside areas. Whilst some controls had been put in place Environmental Health did not consider these to be sufficient.

To support this view Environmental Health stated they had concerns over the track record of the applicant due to the fact that the applicant has had two other premises and noise issues which arose at those premises had been slow to resolve. Additionally they were concerned that noise issues may recur through poor management as the applicant had not demonstrated in the current application how they will operate three separate premises in three wide ranging areas of the city.

Particular concerns with respect to this application related to:

- The operating hours of regulated entertainment
- Sound insulation qualities of the premises
- Control of noise breakout

- How complaints from residents would be prevented
- The control of patrons using and leaving the premises
- The capacity of the premises

Environmental Health stated that amendment of the licensable activity hours and the addition of conditions may address the licensing objective. They put forward the following conditions:

Proposed Hours and Conditions

- A. All licensable activities to cease at 23.00hrs
- B. Alcohol to be supplied 'on' the premises only.

Nuisance Management and Monitoring Controls

1. The Premises Licence Holder shall nominate a senior member of staff as the person responsible for the management, supervision, compliance with licensing conditions and general control of regulated entertainment. This person will also be responsible for instructing performers on the restrictions and controls to be applied.
2. Entrances are provided with lobbies and doors with automatic door-closers and shall be maintained in good working order.
3. No speakers for amplification of music shall be placed on the outside of the premises or on the outside of any building forming a part of the premises.
4. An announcement will be made prior to closing requesting patron's co-operation in leaving the premises and vicinity as quickly and quietly as possible.
5. The Premises Licence Holder or nominated person shall ensure that exits will be manned at closing time to ensure that patrons leave the area quickly and quietly as possible.
6. A telephone number will be made available and displayed in prominent locations in CARGO building and the Phoenix Tavern for local residents to contact in the case of noise-nuisance or anti-social behaviour by persons or activities associated with the premises. The telephone number will be a direct number to the management who are in control during opening hours. A record will be kept by management of all calls received, including the time, date and information of the caller, including action taken following the call. Records will be made available for inspection either by any relevant responsible authority

throughout the trading hours of the premises.

7. The Premises Licence Holder or nominated person will be available at all times during regulated entertainment and who is responsible for cooperating and liaising with any relevant responsible authority.
8. (i) The Premises Licence Holder or nominated person shall carry out observations in the vicinity of the properties at Phoenix Street/Sawrey Street, on at least 30min intervals whilst live music, karaoke, DJ's playing recorded music or any similar entertainment is taking place to establish whether there is a noise breakout from the premises.

(ii) If the observation reveals noise breakout at a level above background noise then the volume of music shall be reduced to a level is not above background noise levels.

(iii) A record of such observations shall be kept in a log for that purpose, such a log shall be completed immediately after the observation detailing the time, location and duration of the observation, the level of noise break out and any action taken to reduce noise breakout.

(iv) Such records must to be made available at all times upon request to a police officer or an officer of the local authority.
9. No percussion instruments will be permitted as part of any entertainment set.

Noise Limiting Devices

10. The Premises Licence Holder will ensure that the noise limiting device is sealed after commissioning, so that sound operators cannot override the system during the performance of live and recorded music
11. All doors and windows will be kept shut during regulated entertainment.
12. All doors and windows shall be maintained in good order and where appropriate acoustically sealed to minimize noise breakout.
13. Staff will check prior to the commencement of regulated entertainment, and periodically during regulated entertainment that all windows and doors are shut.
14. The exit door(s) will be fitted with a suitably constructed

lobby minimize noise break out from the premises.

15. The entrance doors to the premises will be fitted with automatic self-closers and maintained in a sound condition.
16. The windows and other exit doors will be acoustically glazed or suitably insulated to minimize noise breakout from the premises. (Details of any such works will be specified to the Environmental Health Department.)

External Area Controls

17. The Premises Licence Holder or nominated person shall erect and maintain, in a prominent position at every exit a clear, conspicuous and legible notice requesting patrons to avoid causing noise, nuisance or disturbance to local residents.
18. The designated smoking area will be for 'smoking only' and the licence holder or nominated person will take reasonable steps to prevent the consumption of any drinks in this area.
19. Management will control levels of noise in the outside area and advise customers of the need to respect local residents where appropriate. Any patrons continuing to cause any disturbance or disorder will be asked to leave the premises.
20. A designated, de-lineated and bordered smoking area will be allocated outside the premises.
21. Suitable receptacles will be provided for cigarette litter within the designated smoking area.
22. There shall be no consumption of beverages purchased from the premises outside of the premises.
23. The outside seating area would be limited to a maximum number of persons at any one time with the figure to be determined by the applicant following a suitable risk assessment and agreed with the Environmental Health Authority prior to commencement of the licence.

Delivery/Collection/Storage

24. The handling of kegs, bottles cleaning equipment, bottle disposal and similar items will not take place before (*Insert*) hours or after (*Insert*) hours when the noise generated could cause a nuisance particularly outside the buildings.

Taxi Provision

25. A specific taxi operator has been nominated for staff and customers use. The company's telephone number is advertised to customers. The operator and all drivers are aware that they should arrive and depart as quietly as possible, should not sound vehicle horns as a signal of their arrival or leave engines idling unnecessarily. In addition, staff will leave as quietly as possible, particularly at night and early in the morning.

The committee considered that this representation was relevant but did not consider that they had heard sufficient information to justify a reduction in the times of operation or to limit alcohol sales to on sales only. However the committee were of the opinion that the other conditions (save for condition 24) put forward were appropriate and would address the above licensing objective.

b) **Prevention of Crime and Disorder –**

Devon and Cornwall constabulary stated that the retail sale of alcohol and the provision of regulated entertainments was likely to have a negative effect of the above licensing objective. This was due to the location of the premises so close to residential homes and the impact of people who will gather in and around the premises (for example in the smoking area) would lead to a likely increase in levels of violence, disorder and anti-social behaviour.

Devon and Cornwall Constabulary stated that their records show that alcohol related crime levels and anti-social behaviour in the Union Street area remain high.

In relation to statistics it was stated that:

- the majority of crime in the neighbourhood occurs during the hours of 7pm to 7am and is not attributable to an individual premises with the peak times for crime being on Fridays and Saturdays.
- 88-94% of crime occurs between 7pm-7am within these hours in the cumulative impact area as a whole.
- Crime both in the neighbourhood and in the cumulative impact area generally increases from 10pm and peaks between 2am and 4am and then decreases until 7am.
- These premises last operated as a licensed premise in 2009 and were in the past been subject to police activity regarding the use of it by prostitutes, noise levels from live bands, and sales of alcohol to underage people and excessive drunkenness.

The police had concerns that the premises licence holder and DPS

will not be involved in the day to day running of the premises and that if her business partner is be involved in the premises that will further undermine the licensing objective due to previous his involvement in other premises. The police outlined the previous problems they had had with the applicant's business partner and his previous conviction.

The police further stated that the application did not demonstrate sufficiently the steps that would be taken to ensure that the grant would not impact upon the licensing objectives.

The committee considered that this was a relevant representation however they accepted the applicant's statement that Mr Welch would not be involved in the running of the business.

The committee took into account the fact that the Premises won't be open past half past midnight and also accepted that lighting and CCTV would assist in reducing crime and disorder in the area. The committee therefore did not consider that granting the application would add to existing problems with Crime and Disorder in the area.

However the committee did not consider that the applicant's operating schedule sufficiently detailed suitable conditions for CCTV and therefore in order to promote the crime prevention licensing objective the committee found that the following conditions would be appropriate to promote the crime prevention objective:

26. The Premises Licence Holder will ensure that a CCTV system which is fully compliant with the guidance contained in the Information Commissioner's Office (ICO) guidance document regarding installation of CCTV.
27. The CCTV will cover all areas of the premises to which the public have access including any outside areas
28. Images will be retained for a minimum of 31 days
29. The system will be capable of downloading images to a recognizable viewable format.
30. At all times the premises are open for business a member of staff will be present who is capable of operating the system and downloading images at the request of police or a member of a responsible authority.
31. The CCTV system will be capable of obtaining clear facial recognition images and a clear head and shoulders image of every person entering or leaving the premises.
32. The Premises Licence Holder or nominated person shall provide and maintain suitable and sufficient CCTV

surveillance systems to a specification provided by the Police Licensing Team, Charles Cross Police Station, Plymouth

33. The Premises Licence Holder or nominated person shall notify the Police Licensing Team, Charles Cross Police Station, Plymouth on any occasion when the CCTV system is inoperative during normal opening hours and shall then notify them when measures have been taken to restore the system.
34. The CCTV system shall incorporate a recording facility which shall be retained and stored in a suitable and secure manner for a minimum of 31 days. A system shall be in place to maintain the integrity of the recorded image and a complete audit trail maintained. The system will comply with the Data Protection Act 1998 and all signs as required will be clearly displayed. The system will be maintained and fully operational throughout the hours that the premises are open for any licensable activity. For premises using a video recording systems, to maintain the quality of the recorded image the cassette tape shall be used on no more than 12 occasions.
35. The CCTV system must be registered with the Office of the Information Commissioner (ICO)
www.informationcommissioner.gov.uk
36. The positions of all CCTV cameras shall be clearly shown on the deposited plans and any alteration to the system should only be carried out after consultation with the Police Licensing Team, Charles Cross Police Station, Plymouth

In addition the following condition was also considered appropriate to promote the crime prevention licensing objective:

37. That the premises become a member of best bar none scheme

A representation which was received from a business in the area which fully supported the application and considered the premises having a good CCTV system would cut down any anti-social behaviour and would increase security in the local area. This was considered to be relevant by the committee and was taken into consideration in reaching its decision.

c) **Protection of Children from Harm –**

No representations were received

d) **Public Safety –**

No representations were received

In reaching its decision the Committee has had regard to its licensing policy and the guidance issued by the Home Office.

The licensing policy provides for a special policy in respect of the Union Street area; the area within which the premises are situated. The policy states that where an application for the grant of a licence is made in that area, there is a presumption that the application will be refused where relevant representations are received and it is anticipated that the application will add to the problems of crime and disorder and/or public nuisance in the area and the applicant has been unable to demonstrate, within their operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives.

Relevant representations were received from Environmental Health and the Police that to grant the application would impact on the licensing objectives of crime and disorder and public nuisance in that it would add to existing problems in the area with regard to noise and crime and disorder.

The committee did not consider that the applicant had been able to sufficiently demonstrate through her operating schedule that the application would not have a negative impact on the licensing objectives referred to in the representations.

However following the guidance from the Home Office at paragraph 13.35 prior to refusing an application the licensing authority must still be able to show that the grant of the application would undermine the promotion of one of the licensing objectives and that appropriate conditions would be ineffective in preventing the problems involved.

With this in mind the committee considered that conditions 1-23, 25 and 26–37 above would be effective in promoting the licensing objectives.

Therefore it was agreed that having considered all of the above the licence would be granted subject to the mandatory conditions contained within the Licensing Act 2003, conditions consistent with the applicant's operating schedule and the conditions 1-23, 25 and 26-37 set out above as being appropriate to promote the relevant licensing objectives.

93. **WETHERSPOONS (FORMER LIBRARY), 95 - 99 RIDGEWAY, PLYMOUTH - GRANT OF PREMISES LICENCE**

This item was withdrawn from the agenda as representations had been withdrawn.

94. **EXEMPT BUSINESS**

Agreed to exclude the press and the public for the following item in accordance with regulation 14(2) of the Licensing Act 2003 (Hearing) Regulations 2005.

95. **THE AVONDALE ARMS, 206 KEYHAM ROAD, PLYMOUTH - APPLICATION TO VARY A PREMISES LICENCE TO SPECIFY AN INDIVIDUAL AS DESIGNATED PREMISES SUPERVISOR (EI)**

The Committee –

- (i) considered the report from the Director for Place;
- (ii) considered representations from Devon and Cornwall Constabulary that to grant the licence would undermine the crime prevention licensing objective;
- (iii) heard from the applicant.

Agreed that having taken into account all of the above representations the application would be refused as the Committee accepted the evidence provided by the Police that to grant the licence would undermine the crime prevention licensing objective.

(Please note that there is a private part to this minute).