

Licensing Sub Committee

Tuesday 23 April 2013

PRESENT:

Councillor Rennie, in the Chair.
Councillor John Smith, Vice Chair.
Councillors Mrs Bowyer and Mrs Nicholson (fourth member).

Also in attendance: Ann Gillbanks – Senior Lawyer; Linda Perez – Senior Licensing Officer, Mike Artherton – Parking and Highways Manager; Phil Conday – Senior Environmental Health Officer; David McIndoe – Devon and Cornwall Police and Amelia Boulter – Democratic Support Officer.

The meeting started at 10.00 am and finished at 2.30 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.

96. **APPOINTMENT OF CHAIR AND VICE-CHAIR**

Agreed that Councillor Rennie is appointed Chair and Councillor John Smith is appointed Vice-Chair for this meeting.

97. **DECLARATIONS OF INTEREST**

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

98. **CHAIR'S URGENT BUSINESS**

There were no items of Chair's urgent business.

99. **MOBILE BURGER VAN, REGENT STREET, PLYMOUTH**

The Committee having -

(i) considered the report from the Director for Place;

(ii) heard from the applicant that:

- The application does not fall within the Council's Cumulative Impact Area therefore there is no added fear of disorder with regards to the catering van
- The van will be situated very close to the police station
- the applicant has considerable experience working in this type of business and has worked in Union Street for many years without problem.

- Has experience on how to manage busy periods by making sure that the vans are staffed properly to operate a very quick service
- if there were queues of rowdy drunk people waiting for food they would be served as quickly as possible to get them away and that they would be served within a couple of minutes of ordering
- hot drinks are not sold so that people do not stand around the van
- that there is CCTV fitted in the van which has 2 cameras running
- there is a fully charged mobile phone in the van for use in emergencies
- will use batteries on-board the van and LPG gas rather than use a generator to cut down problems of noise
- do not play music at the van so do not feel that there will be additional noise levels from people at the van as it would be just the same noise as occurs there
- would be willing to sponsor a couple of bins further down the road from the van to deal with litter and will ensure that there is no litter on site when leaving for the night
- will do litter inspections every hour or more frequently if necessary whilst open
- will check around the establishment at Regent Court, 280 meters away to ensure no litter has been thrown around there.
- The van will be parked adjacent to a brick wall which is not an obstruction to the exit of the car park and people will not be forced to walk on the road.
- The car park is not in use when trading
- LPG gas bottles are in a secure cabinet attached to the van and are regularly checked - there would be no oil residue left around the area
- The applicant holds a food safety rating of 5 from Plymouth City Council
- The application was made as there was a need for more work for current staff
- Students need more food outlets so they don't need to go home and put frying pans on
- There is no trouble at the present van operated by the applicant and staff move people on quickly
- Trained staff to help people
- There will be jobs created if the application is granted.

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

a) Prevention of Crime and Disorder

Heard from Devon and Cornwall Constabulary that:

- The officer met with Mr Hamilton and discussed sites and made it clear the site would be an issue before the application was made
- The proposed location is adjacent to the entrance of the Regent Street car park in Plymouth
- The proposed location is on a small grass verge to the right of the car park exit as you face it
- To get to this location the vehicle will have to be driven onto a pavement and manoeuvred into place and the dimensions of the vehicle will mean it is parked partly on the grass verge and partly on the pavement

- There is a main fire hydrant situated at this location which will be masked by the vehicle
- Apart from the Road Traffic offences that would be committed driving the vehicle into position it is considered that the difficulty in gaining access to the fire hydrant during the hours of operation would have a detrimental effect on the licensing objective of Public Safety and would be a serious hazard should there be a fire in the unit or nearby property
- The area of Regent Street is adjacent to the Cumulative Impact area of North Hill adopted by the Plymouth City Council.
- Although the application falls outside of that area it is only approximately 50 meters away so it is considered that the Cumulative Impact Policy is a relevant consideration
- Having researched the Police Crime recording system can state that Violent Crime within the Greenback and University areas over a three year period has increased
- Provided details of statistics relating to violent crime within the night time economy for the period of 7pm to 6.59am
- The operation of this mobile catering van overnight will undoubtedly attract the presence of people who have been drinking alcohol, some to excess which will in turn lead to an expectation that the footfall in the area will increase
- It was a reasonable assumption that there will be an increase in noise, litter, anti-social behaviour and crime
- Experience shows that the operation of such units does encourage people not only to gather but to linger in the area which is a cause for concern as it indicates a potential increase in complaints regarding, noise, crime and disorder and public nuisance due to the presence of student, residential family dwellings and a retirement complex all within one hundred meters of the location
- CCTV and mobile phones will only address any problems with disorder after it has occurred
- In view of the above would recommend refusal of this application.

The Committee considered that all the representations were relevant.

b) Public Safety

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

Heard from Environment Health Officer that:

- The location of the mobile van would be a hindrance to the view of cars leaving the car park and will increase the likelihood of accidents at the exit to the car park and increase the danger during any emergency situation requiring the evacuation of the car park

- The proposed siting of the vehicle has the potential to force both customers and members of the public into the road, causing possible collision with passing vehicles
- The applicant has failed to consider the wider implications of public safety when proposing to site the mobile food vehicle.

The Committee considered this representation was relevant.

c) **Prevention of Public nuisance**

Heard from Environmental Health Officer (and also considered written representation) that:

- There is a potential for
 - increase in noise levels from patrons that may disturb nearby local residents
 - increase in existing noise levels due to the operation of equipment such as a generator, affecting local residents
 - increase in levels of litter and spilled food waste from patrons in the vicinity
 - increase in levels of grease and by-products of cooking in the immediate vicinity
 - potential odour nuisance from cooking smells affecting residential premises in the immediate vicinity
- Complaints have been received from local residents regarding issues of nuisance emanating from the operation of mobile food vendors trading in the North Hill area concerning issues of noise from generators, odour from cooking smells, grease, food debris and rubbish in general; with 10 specific complaints since 2008.
- Produced data from a survey of local residents entitled “Plymouth Customer Data Integration Project: Upload of Survey data-initial findings” and explained how the data was obtained from questionnaires being returned from households in the area and explained some the data contained in the survey
- As a result of the survey, further work was undertaken by officers of the Public Protection Service and operations were conducted on the 10 December 2010, 4 February 2011 and 4 March 2011 until 03.00 hours. A number of issues were highlighted and a number of incidents documented of people walking from both Mutley Plain and from North Hill dropping food wrappers on their way home. This is not from any specific premises and the wrappers are often found some distance from the source. New larger bins have been installed in this area but it is considered that the introduction of another take-away food outlet is likely to create further litter issues
- The survey demonstrates that the residents have been affected by the saturation of take-aways in the North Hill area
- That people will gather outside and may make noise in a residential area which is likely to include shouting. Shouting is difficult to control on a public highway.

- No measures on public safety have been presented by the applicant and not all people would be customers. No suitable conditions would control these issues.
- Recommended that the application be refused.

The committee consider this representation was relevant.

Heard from the Parking and Highway Manager (and also considered written representation) that –

- The physical location may not cause an obstruction and but would cause an obstruction to people exiting the car park
- the car park operates for 24 hours and although there is no access after midnight cars may exit at any time
- the weight of the vehicle will break down the pavement slabs creating greater maintenance requirements
- concerns on the LPG gas bottles being located close to the multi storey car park
- increased foot fall and people will have consumed alcohol and therefore raised concerns for safety
- proposed location would be subject to enforcement as there is a traffic order which imposes no parking or no waiting at any time which includes all the pavement
- recommended that the application be refused.

The committee considered the representations relevant with the exception of the traffic order contravention which is something that the committee cannot consider under the Licensing Act.

Heard from a number of other parties including Councillor Singh whose representations (written and verbal) covered issues:

- That residents suffer from noise and mess of late night revellers in this area.
- The streets are already littered with fast food cartons and bottles left by drinkers who return home in the early hours of the morning
- The clubs at the end of Regent Street thump out noise which spoils many a summers evening in residents gardens and which continues on into the morning
- That there is already a permanent similar establishment nearby, with a closing time of 04.30 and a fast food service van a few hundred metres away in Addison Road and the additional outlet would increase the already excessive noise and litter at night and early morning
- The previous manager of Regent Court submitted that litter in the garden fronting Regent Street has increased year on year during the time in management and also the residents have seen a significant increase since Regent Court opened in 1989 (litter consisting of discarded bottles, drinks cans, greasy paper and food cartons)
- In the summer months residents could not open their windows or use the gardens as they would be subject to smells and noise

- Food served was unhealthy and would not follow current government guidelines to encourage people to eat more healthily
- Although litter bins may be available not all members of the public would use them
- Doubted that the battery to power the van would last that long and would have to revert back to use a generator and that the generator could not run silently
- CCTV although fitted would only capture nuisance after it has occurred and would not control
- The van could cause damage to the grass verge and cause the pavements to become slippery
- The present manager of Regent Court submitted that rubbish is still thrown into the front garden into regent street, especially during the applied for hours and this application if granted would encourage more noise and litter
- That there was concern about the use of the car park in that it may attract people to eat in there and also possibly use as a public toilet. Residents had complained about urinating in the street to Councillor Singh at residents meetings
- The entrance and exit to the proposed development of the College of Art is likely to be blocked by the siting of this van
- One of the parties had visited other vans operating within the area and had noted that they left a greasy residue on the pavements and the area in general
- There are already other vans in the area and a designated food outlet in the area so there is no need for any more
- Recommend that the application is refused.

The Committee considered all relevant except for the comments about serving unhealthy food and damage to the grass verge as these are not something that the committee can consider under the Licensing Act. The comments about the visit made to other vans where greasy deposits were found was not considered relevant as they did not relate to vans that the applicant managed.

d) Protection of Children from Harm

No representations.

When questioned about staff and public safety the applicant explained that there was arrangements for toilet breaks to be taken at a local hotel and these would be timed so that did not coincide with busy periods to ensure that the van had staff when it was busy. The applicant considered that she had experience from running her other vehicles to be able to estimate peak times.

It was pointed out by the Parking and Highways Manager that parking in the proposed area would be in contravention of the traffic regulations order and therefore subject to enforcement. The applicant was not aware of this and declined the opportunity to adjourn to seek legal advice on the point.

The committee had concerns about these points but they are not relevant considerations under the Licencing Act.

The Committee agreed that having considered all of the above the applicant has failed to demonstrate that they will operate the premises in such a way as to promote the licensing objectives and the Committee therefore consider it appropriate to refuse the application

(Councillor Mrs Nicholson left the meeting prior to the Committee reaching its decision as she was not required as fourth Member).

100. **EL CAFE, 135 HOE ROAD, PLYMOUTH**

The Committee having –

- (i) Considered the report for the Director for Place;
- (ii) Heard from the applicant both in written and verbal submissions that:
 - The application was for a seafront café with art gallery below and associated artist studios
 - They have accepted the conditions proposed by the Environmental Health Officer
 - They will run the current café and extend the service to serve alcohol with sandwiches and meals and it is not intended to run the premises as a pub
 - Live music was applied for indoors and outdoors
 - They do appreciate the concerns about the noise concerning the salsa event but have agreed to the restrictions imposed by Environmental Health Officer
 - Have made arrangements to record the noise levels of the salsa music at a friend's premise in Grand Parade
 - Was happy to provide the residents with their contact numbers if noise levels rose
- (iii) Heard representations (both written and verbal) under the licensing objectives as detailed below:
 - a) **Prevention of Crime and Disorder**

No representations have been received from Devon and Cornwall Constabulary.
 - b) **Public Safety**

No representations.
 - c) **Public Nuisance**

Heard from other parties (written and verbal submissions) that:

 - The site is a small site, situated above the sea with access to the foreshore by way of steep, deep narrow steps and there are concerns for safety and accidents and potentially with people jumping into the sea

- Considered that the café was a credit to the city but does not want to see it turned into a pub with the granting of the licence
- There was no quarrel with applicant and felt the café was well run but did not want to change the character by the granting of any licence and that if a licence was to be granted that it should particularly contain the condition number 6 contained in the conditions put forward by environmental health
- The main concern about the premises related to the noise which is amplified due to the geography where the café is sited by the sea
- The noise from salsa performance has caused a nuisance in the past particularly the tone and the beat of the salsa music

The Committee considered this representation relevant but will be addressed by the conditions put forward by the applicant and also agreed by the applicant with Environmental Health Officers.

d) Protection of Children from Harm

Considered the written representation from the Safeguarding Business Unit that:

- They had agreed with the applicant that a condition would be added to the licence around the collection of glasses to prevent the possibility of partly left alcohol being consumed by the under aged
- That they had agreed with the applicant that a condition would be included that films would be censored before screening to ensure that they are suitable for children to view and for a condition to be added to the licence to deal with this (Every poster, advertisement, photograph, sketch, synopsis or programme relating to a film (other than a current news-reel) exhibited, or to be exhibited at the premises, shall indicate clearly the category of the film).

The Committee considered this representation relevant.

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 conditions put forward by the applicant; The conditions put forward by Environmental Health also to be added to the licence and also to include the following condition to deal with the Safeguarding Business unit concerns - Every poster, advertisement, photograph, sketch, synopsis or programme relating to a film (other than a current news-reel) exhibited, or to be exhibited at the premises, shall indicate clearly the category of the film.

101. **EXEMPT BUSINESS**

There were no items of Chair's urgent business.