

Licensing Sub Committee

Tuesday 24 August 2021

PRESENT:

Councillor Jordan, in the Chair.
Councillor Rennie, Vice Chair.
Councillors Hendy (Fourth Member) and, Wakeham.

Also in attendance: Ann Gillbanks (Senior Lawyer), Marie Price (Senior Enforcement Officer) and Helen Prendergast (Democratic Adviser).

The meeting started at 10.00 am and finished at 2.50 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.

6. **Appointment of Chair and Vice-Chair**

The Committee agreed to appoint Councillor Jordan as Chair for this particular meeting and Councillor Rennie as Vice Chair for this particular meeting.

7. **Declarations of Interest**

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

8. **Chair's Urgent Business**

There were no items of Chair's urgent business.

9. **Grant of Premises Licence - Burgers R Us, Sherwell Arcade, North Hill, Plymouth, PL4 8LH**

The Committee -

- (a) considered the content of the report from the Director of Public Health;
- (b) considered written representations and heard from the applicant and his legal representative as follows -
 - this was an application for the licence of a kiosk situated at Sherwell Arcade; there was a current licence for a mobile unit situated at the same location for the hours of 11pm to 5am, the same hours as this application;
 - professional and clean unit: currently trading with his mobile van, the

kiosk would be more professional and provide a better experience for his customers with better facilities and better CCTV which could help the local community; he would gain more respect not from his customers but from other people when requesting people keep the noise down they would be more likely to listen to him from a kiosk rather than a van;

- none of the Responsible Authorities had objected to this application; the applicant had engaged with the police and Environmental Health; they had given conditions which he had agreed to; the conditions went further than the licence currently held;
- the applicant had an existing licence operating from 11pm and 5a; the key issue for the Committee for this application was not whether the grant of a licence would undermine the licensing objectives, rather did the change from a van to a kiosk undermine them, they did not;
- it was important to say that this application was for food and late night refreshments; the applicant would not sale alcohol or cigarettes; the Council's Licensing Policy (page 13) stated late night refreshments was an integral part of the premises and helped to reduce alcohol related crime and anti-social behaviour, and that was what this business did, it prevented it;
- the licensing objective of preventing crime and disorder: the police had not objected; the applicant worked with the police, as he had good CCTV, if the unit was not there, there would be no CCTV in this area; from his location he could see outside of the Switch and Air clubs and the car park had a very good view and picked up a lot of footage unconnected to his van; the police regularly asked to view the CCTV; he kept good logs and provided a sample of detail lists of events he had witnessed; that showed this was a business which kept good records, if approached by the police he would be able to help;
- the applicant paid to be part of the radio scheme with other businesses;
- the new licence would have two members of staff at the kiosk at all times which would help to prevent crime and anti-social behaviour;
- there would be better CCTV with a permanent kiosk which would be of benefit to the police and others; the permanent structure would likely discourage anti-social behaviour, when the applicant left

that area and no one was around; the kiosk would have CCTV and continue to discourage anti-social behaviour;

- the applicant was prepared to agree to the additional conditions set by the police and Environmental Health; these were more restrictive than the present licence, so provided the community satisfaction and reassurance that better conditions were in place;
- public nuisance noise: the unit did not play music, did not have a generator as it was electricity based; the applicant would tell people to keep the noise down and did that now and had notices for this; he would not serve customers, if they were being noisy and asked them to wait in an orderly queue; there were no immediate dwellings next to the unit, so it would not create any noise;
- fighting and arguments: those happened as people congregated and that would happen in any event, as a result of the clubs nearby; people did not just congregate outside of the applicant's premises as they were waiting for a taxi, waiting to go after a party, they would do that anyway; people did not go out at 11pm for a burger;
- in those circumstances the van providing food and soft drinks would help disperse the crowd and sober them up (as per the policy); the benefit was to help prevent public nuisance;
- litter: the applicant did not sell glass bottles, or food in wraps or, provide carrier bags; he did clean the area and not just for the waste from his van which was little but any waste around and picked up other waste from other establishments; there was only one public bin in the area which filled up quite quickly with waste from students; he had a bin and the new kiosk would have a better bin, this would help to reduce public nuisance;
- issues with drinking and disorderly behaviour were not connected with his premises;
- public safety sufficient space for the new unit: the unit was not as long or as tall as the present van and it would be better and a more helpful structure there on the road; there were no issue of safety around the unit;
- issues raised by the objectors regarding healthy food: applicant provided healthy options and salads, not alcohol or cigarettes, so no material change to the products sold;
- protection of children from harm: no cigarettes or alcohol were being sold and no children buy from his unit; the applicant did have CCTV and would help anyone in distress; the applicant gave out

water, free of charge if people were in trouble;

- presented a video showing cleaning of the area at the end of the night; videos showed how clean the area was left at the end of business;

(c) representations from Responsible Authorities, were as follows -

- Devon and Cornwall Police: no representations made, as agreed conditions with the applicant (refer to appendix 6 of the report);
- Environmental Health: no representations made, as agreed conditions with the applicant (refer to appendix 7 of the report);

(d) representations from Other Parties; considered written representations and heard from other parties, as follows -

- heard from resident -
 - the noise outside in the streets that would go on all night;
 - the increase in the amount of litter that would be left scattered around;
 - an increase in the activity and infestation of rats, pigeons and seagulls;
 - an increase in the hazards from carelessly discarded broken bottles/glass, tin cans, etc;
 - the problem of more anti-social behaviour, including urinating in the street, etc;
 - this would have a detrimental effect on the health and wellbeing of residents in the building (Winifred Baker Court);
- Winifred Baker Court comprised of 30 retirement apartments; many of the resident were very elderly and some very frail; they needed some peace and quiet; the building was there before the students, bars and burger vans, it was once a quiet location;
- the burger van business encouraged grouping of noisy customers, who did not disperse quickly; the Burgers R Us kiosk was just yards from the property and was applying to open all night long;

- there was a lot of shouting, swearing and screaming in the road and other anti-social behaviour; it was not right that the residents should have to put up with this; sometimes it was impossible to sleep;
- that the granting of this application would be detrimental to the health and well-being of the people who lived in the Court, as well as other private residents in the broader area;
- the noise levels the residents sometimes had to endure, along with the mess frequently found in the local area was already unbearable;
- Councillor Singh and the Deputy Lord Mayor recently toured the streets of Drake Ward; during the walk it was evident that the level of rubbish, as well as the three P's (pee, poo and puke) was unacceptable and that was without the granting of this application;
- playing football with take-away food cartons, tin cans and bottles at 3 o'clock in the morning (and on one occasion an empty beer keg), frequently kept some of the residents awake into the small hours; this had been made more uncomfortable during the hot spell when the residents had to close the windows to minimise the noise and suffer suffocating conditions of the very warm nights;
- health and safety issues: as previously stated, the presumed increase in the amount of litter even with bins being provided, including discarded take-away cartons, beer cans, bottles, both broken and discarded, the three P's, etc was of much concern; seagulls, pigeons and the likelihood of an increase in rat infestation and activity could be a hygiene risk to all local residents;
- the dangers that all these things can and did cause to the elderly residents on a daily basis, whilst going out into the city centre for their shopping and to young children of families visiting this area to visit The Box;
- crime was another of the residents' concerns; on more than one occasion they have had drunken youths climbing into the private grounds which caused stress and worry to the residents at night, especially friends who found it hard to sleep because of the noise levels;

- drugs were another concern; hypodermic needles had been found carelessly disposed of in the area; the possibility of the undesirable people who supplied drugs infiltrating the area where these late-night/early morning burger vans were applying to operate;
- the danger of fighting breaking out in these unsupervised locations; the police were very much appreciated by the residents but even they may find it difficult to police these areas as much as they would like to; they were often at full stretch at night and at weekends; the residents knew that Friday and Saturday nights were the busiest and that was when a lot of the unwanted behaviour occurred and the police force was in most demand;
- visitors to Plymouth: The Box seemed to be a big success, as a visitor attraction; each time him and his wife walked down to the city centre, there was a great many excited people queuing to enter this amazing new feature of the city but if the area was blighted by litter in the form of cartons, cans and bottles, what sort of impression would this give to visitors from outside of Plymouth;
- suggested that if this application was granted then a revised time of 1.00 am be strongly considered and not the inconsiderate early morning time of 5am;
- Sunday morning, 22 August stepped out in to Addison Court and found discarded cartons and soft drinks cans;
- in a perfect world would like to see a return to old Sunday trading laws;
- heard from Ward Councillors -
 - litter and public nuisance: the nature of takeaway food was that it was bought and then two and three streets away when finished consuming food threw the waste product in the street; as a trustee of a litter picking volunteer group had seen cartons in Mount Street school, the reservoir and the park and sweeping the area was commendable but a licensing authority had an obligation to prevent litter;
 - noise: clubs and nightclubs in the vicinity had their own noise issues but noise from an outdoor van or kiosk was different with loud conversations, expletives, fights clearly disturbing for

those wishing to sleep, quite upsetting to residents; it was different to music where noise remained constant, this was intermittent noise caused by congregations of people at the van/kiosk;

- safety: CCTV was good to stop crime and would encourage all businesses to do that; looking through the logs showed people ejected from premises at Sherwell Arcade spilled out into the main area adjacent to the van, so risky for two members of staff who may not be SIA trained; if young people were working the risk was monumental, if they were not trained to deal with conflict; they could call the police but there may be a delay in the response; there was a 24 hour Spar with a Subway inside; less likely people dealing drugs in the shop than surreptitiously in a queue at the van;
- place: Winifred Baker Court was a quiet area with fantastic amenities; the area had changed over the years; new facility which was The Box opened normal business hours, with evening events and people working in the facility; Council had an amazing street services team but they could only be in one place at a time; orange polystyrene boxes, excrement, cans, etc, not a good impression on tourists;
- if the request to refuse the application was refused, it would be recommended that the applicant reconsider a fresh application addressing these problems, eg broader area of litter picking conditions, recognisable packaging, closing time 1.00 am, three members of staff on business nights including someone who was SIA trained;
- having a unit that would be there permanently would be problematic over a period of time;
- the application did not state where exactly the unit would go, as there were parking bays nearby and the pavement was used very heavily by nearby residents who lived in a sheltered accommodation supported by the Royal British Legion; the majority of these residents had access to mobility scooters which they relied on; the less obstructions the better to have to mount and dismount off the dropped kerbs; some residents did have sight issues and a permanent unit would cause issues; they also had visitors and carers during the day and night; it was also worth noting that even when they reported these issues it was very hard for them to keep a diary due to their age and some would be able to and some would not; there was never any consideration for this and Plymouth was a Dementia Friendly city;

- even during the Covid restrictions dating from January 2021, the area and the vicinity had seen an increase in all categories of anti-social behaviour, burglary, criminal damage and arson, other thefts, public order, robbery, vehicle crime and most importantly violence and sexual offences and other crimes;
- having a permanent structure in place would allow people to congregate and stand around whilst they eat their food purchases;
- protection of children from harm: there was a school, Mount Street Primary, nearby and he had had many incidents which included broken glass bottles, not necessarily from burger vans but due to the thoroughfare of traffic from The Box museum to Sherwell Arcade; there were incidents of needles and syringes that had been found in the vicinity; this was mentioned due to the number of incidents that had risen as shown in the crime statistics; the area had seen an increase in these issues;
- there was also the North Hill Cumulative Impact Policy boundary which had been ratified by Full Council on 23 June 2008 (information confirmed again by Full Council in November 2018 effective from March 2019);
- as a food operator and being licensed by the Council, who would be operating all those hours; his concerns were where the staff would be using when they needed to use the toilet; wait it right that caterers used a separate washroom facility on the unit, as well as taking up more vital space?;
- with the increase in serving soft drinks, nature would still take its course which meant people would be urinating in the street and there had been many incidents of this including vomiting as well;
- this site was near The Box museum and granting this application would lead to other applications for units to be placed by other land marks within the city;
- this premises was close to the number one attraction, known as The Box museum; if the licence was granted then expect a burger van on every other site; gateway to the Boulevard, Royal Parade, corner by the Theatre Royal and the resultant effect upon visitors' impression of the city;
- the policy of the joint local plan, referred to the Council's own policy, Plymouth as a healthy city to enjoy an outstanding way

of life; what did a healthy city look like across all of the city and neighbourhoods, each neighbourhood quiet and connected not dominated by traffic, air quality; improve local environment; all people living independently longer so should be a focus on self-care, Plymouth known for being a Dementia Friendly city;

- (e) heard the following responses to questions -
- the applicant had been trading since 2019 (although the pandemic had affected the time actually trading); a different operator had the licence before, who had a different way of dealing with things;
 - safety of staff was by way of locked door on the van/kiosk; if anything happened would call the police and use the radio contact; the counter was too high for anyone to jump over;
 - the proposed unit was not attached to the ground but remained in place;
 - there was access to a nearby club for the use of toilet facilities for staff and have a hand basin in the van;
 - residents living on the Addison Road side of Winifred Baker Court had experience of people buying burgers, who were shouting and screaming, sitting on a ledge near the building eating burgers and then discarding food cartons;
 - the applicant expressed willingness to work with local residents and offered to pick litter from their premises, or further along Addison Road;
 - many other establishments also used orange food cartons which had been referred to.

The Committee had taken into account all the relevant representations concerning the four licensing objectives, their policy and the statutory guidance;

Members had disregarded representations regarding the siting of the unit on the highway as this was not a matter related to the licensing objectives. They had also disregarded the representations about the effects the premises would have on the amenity of The Box and representations about the precedent being set for more such applications at other such attractions throughout Plymouth, as these all related to planning issues rather than to the licensing objectives.

The Committee had noted that the police did not make representations regarding crime and disorder statistics and heard no other direct evidence on this point. They noted that the conditions agreed by the police were stronger than those on the present licence.

The Committee noted that the Environmental Health officers did not present any evidence of noise nuisance which could be attributed to this application and that they also agreed conditions with the applicant that were stronger than those on the present licence.

The Committee noted that residents were disturbed at night by noise but no evidence was produced to link this directly with these premises but noted the applicant's offer to work with the local residents to help alleviate their concerns.

The Committee also noted the applicant's offer to extend the litter picking that was undertaken to further along Addison Road to help alleviate the residents' concerns with litter outside of their premises and whilst this was not a condition that could be imposed by the Committee, it would expect the applicant to honour this offer in the future.

In taking all of the above into consideration, the Committee agreed to grant the licence subject to the conditions agreed with the police and Environmental Health responsible authorities and to also impose the following condition –

- (1) the Premises Licence Holder or nominated person shall ensure a telephone number is made available to residents of Winifred Baker Court, for them to contact in the case of noise nuisance associated with the premises; the telephone number will be a direct number to the management who are in control during licensable 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 the Licensing Officer or any relevant responsible authority throughout the trading hours of the premises.

10. **Grant of Premises Licence - Uniburgerman, Outside the Roundabout Public House, Tavistock Place, PL4 8AT**

The Committee –

- (a) considered the content of the report from the Director of Public Health;
- (b) considered written representations and heard from the applicant and his legal representative as follows -
 - there were many similarities in respect of having a kiosk outside the Roundabout pub as with having a kiosk in Tavistock Place (considered in the other application); there was already a licence in place for a van for the same hours; it was a question of looking at the change from van and kiosk -
 - there was a practical difference from the other application as the applicant had not been trading since taking over the licence in 2019, as he had wanted to concentrate on the other site; the applicant now wanted to provide a professional kiosk, with CCTV providing a good facility and good experience for customers and helping to achieve the licensing objectives;

- objections had concerned litter and noise, these could not be attributed to the applicant, as he had not been trading; if the application was not successful, the applicant could continue trading under the existing licence; this application provided an opportunity to impose stricter conditions;
- the applicant was engaged with the police and Environmental Health and was happy to agree to their conditions, therefore stricter conditions would be in place; that meant whereas currently where there was no CCTV there would be CCTV on the unit and where no physical presence there would be two members of staff running the unit; at the moment there was no cleaning of the litter in the area and therefore the licensing objectives would be better served by him being there; he had the ability to trade now, what was different with mobile van was the kiosk which was safer, cleaner, better presence and better facilities including CCTV;
- regarding objections for the need for this establishment as already others in the area; it was not a licensing issue, as the applicant could trade under his existing licence;
- the fact that there were other late night venues in the area; that litter and other issues that had been reported were attributable to other places and not to the applicant, as he had not traded there yet;
- complaints of litter demonstrated litter was attributable to other places, ie reference to plastic bags, bottles and other rubbish; this could not be attributable to these premises, as the applicant was not trading at the moment; some of the objections referred to polystyrene burger cases, a number of other establishments in the area used similar containers ie Switch, Jacks and possibly Mr Wok;
- Plymouth College of Art provided an objection which raised a number of issues, the Committee was asked to disregard these, as not related to the licensing objectives; similarly the representation regarding the use of the word Uni in Uniburgerman and how this could be somehow linked with the College or University; Uni was a generic name and a Google search had revealed a Uni burger in Berlin; this was not a licensing issue;
- there was a suggestion that the kiosk would restrict access to the college; this was not the case; looking at the plan there was enough space for access and the fire service had not provided any objections for the siting of the kiosk;

- references to vandalism, anti-social behaviour and defecating around the area; not linked, as the applicant was not trading; the kiosk would provide a presence which was not there at the moment, as he was not trading;
 - rodents again that would be helped by the kiosk, as there would be bins and litter picking;
 - representations by the Roundabout pub and Caffeine Club being competition to their business was not a relevant consideration; the Caffeine Club and Roundabout pub both sold alcohol and it was likely that people would leave both premises, often drunk and causing an issue; there was no link that the sale of burgers would add to this;
 - an opportunity for the Committee to apply stricter conditions to the licence and if not granted there was still a licence in place; the applicant was very willing to agree to the stricter conditions and engage with the local community and the opportunity for the application to improve the situation in the area;
 - the applicant had agreed with the police, Environmental Health and the fire authorities; he was agreeing to trade under much stricter conditions to his detriment, as he wanted to provide a better business to his customers; he was a responsible business owner and cared about anti-social behaviour; suggestions about signs looking tacky were a planning issue and not a licensing one;
- (c) representations from Responsible Authorities, as follows -
- Devon and Cornwall Police: no representations were made, as agreed conditions with the applicant (refer to appendix 6 of the report);
 - Environmental Health: no representations were made, as agreed with the applicant (refer to appendix 7 of the report);
- (d) representations from Other Interested Parties: considered written representations and heard from other interested parties, as follows -
- from representative of Plymouth College of Art -
 - the drawing showed the unit would be placed outside the main entrance to the college; the stand where the van intended to be was by the college entrance to the refectory decking area and to the right, close in proximity with a brick wall which was used as a marketing wall to display promotional literature from time to time;

- also past the main entrance and past the wall to the left, was a paved area with sitting and further around to the right a grass area with slabbed concrete seating; this area had attracted attention where people had bought food and consumed it there; this objection was not just for this business but was also historical;
- the college held a lot of events and people visiting it would have to pass by the burger van; this would have an effect on its marketing; there was a connection to the Uni with the same name of the van;
- the issue was the pure location of the burger van directly outside the main entrance of college; student recruitment was competitive, campus tours pass the van; whether operating or not it could deter potential students;
- permanent, fixed and front and centre stage impact the college and would affect it from enjoying the outside area those were significant issues;
- the college, cleaned its litter and it continued to do so; no justification that the unit's presence would help to clear up the litter; the college had its own CCTV clearly for its purposes and there would be an impact on access for dropping people off to get by the kiosk, or dropping off students with accessibility issues;
- from Ward Councillor -
 - discussed the previous application at some length and understood the van had not been trading; were aware of the issues that one van brought and to put another permanent unit at this site only highlighted the issues once again;
 - the siting of the kiosk outside food venues, Roundabout pub and Caffeine Club; he used the Caffeine Club and had eaten there, he did not go there to get drunk; it was a harsh accusation to make against their customers;
 - North Hill was covered by a cumulative policy;
 - even though there was an existing licence for 11pm to 5am, he raised all the same issues regarding a permanent structure, as he did for the other application made by this applicant; this site would cause further issues; no seating was provided so people would congregate and eat in the College of Art's grounds, discard litter and then walk away;

- saying the kiosk would provide better CCTV was lame; if the applicant had done his homework, outside of the College of Art was a big mast with a camera on it; he could not see how CCTV on the kiosk would be better;
- if the licence was already in place there was no need for a permanent structure; there was the potential to take food to the wall by The Box, eat it there and discard litter; this would turn that area into a disaster zone, if granted;
- the joint local plan, referred to the Council's own policy, Plymouth as a healthy city to enjoy an outstanding way of life, a healthier life; this was a health option;
- a permanent structure would increase the number of people and footfall that were not there now when starting trading; at that point the police would have concerns;
- which toilets would they use as a long walk to Air;
- there would be the same potential problems with crime and disorder, public safety and litter that had already been raised in connection with the other application today; this was a financial decision to have two burger sites in this area; there was no care about the residents in the area;
- there was anti-social behaviour in the area and the North Hill Cumulative Policy needed to be looked at; the Committee should look at the impact of the structure for this area that had been changed due to The Box and the College of Art and the people they bring into the city;
- the College of Art's marketing team would be affected by a permanent structure; when displaying signage 'Uniburgerman' as it would look totally tacky when there was a multi award winning attraction and the church nearby; granting this would be a setback for the city and nothing to enhance the area of a forward thinking city;

(e) heard the following responses to questions -

- with regard to the use of toilet facilities, the applicant did not have anything in place yet and could not set up a toilet on site; possibly made arrangement with the Roundabout pub or Caffeine Club, or other places around;
- the kiosk would not be placed on land owned by the College of Art;
- the applicant said he would be willing to pick up litter in the College seating area;

- the siting of the permanent structure and whether it prevented access to the College would be a planning matter and not one in connection with the licensing objectives;
- the licence being applied for only related to the hours of 11pm and 5am and the operation of the unit during the day was not a legal issue for the licensing objectives;
- the point made that granting the licence sets a precedent was not a licensing issue but a planning and amenity issue;
- the applicant would be willing to meet with the College of Art to look at how impact could be minimised.

The Committee had taken into account all the relevant representations concerning the four licensing objectives, its policy and statutory guidance.

The Committee disregarded representations regarding the siting of the unit, as this was a planning matter. It had also disregarded the representations about the effects the premises would have on the amenity of the area of the church and The Box and representations about the precedent being set for more such applications at other such attractions throughout Plymouth as these all related to amenity which were planning issues rather than to the licensing objectives.

The Committee had noted that the police did not make representations regarding crime and disorder statistics and heard no other direct evidence on this point; it noted that the conditions agreed by the police were stronger than those on the present licence.

The Committee noted that the Environmental Health officers did not present any evidence of noise nuisance which could be attributed to this application and that they also agreed conditions with the applicant that were stronger than those on the present licence.

The Committee had noted the concerns raised by the College of Art representative about the current extent of litter from discarded food and cartons but understood that these could not be attributable to this applicant, as at the present time, he was not trading in this area. Likewise, the representation regarding anti-social behaviour in the area could not be directly attributed to this application.

The Committee noted the applicant's offer to extend his litter picking activities to the seating area in the College grounds to help alleviate their problems with this in the future, whilst the Committee could not impose a condition relating to this, it would expect the applicant to honour this offer in the future.

The Committee had concerns about the lack of arrangements for toilet facilities for the applicant's staff when on duty but noted that the applicant would make arrangements for this when trading commenced.

In taking all of the above into consideration, the Committee agreed to grant the licence subject to the conditions agreed with the police and Environmental Health Responsible Authorities and to also impose the following conditions –

- (1) suitable permanent provision of toilet facilities for staff to be arranged;
- (2) this licence would not come into force until such time as these provisions were in place and agreed with the Council's Licensing Officer as being adequate;
- (3) any future changes to the arranged toilet facilities also being agreed with the Council's licensing officer.