

CITY OF PLYMOUTH

Subject: Open Air, 3 and 4 Sherwell Arcade, North Hill,
Plymouth.
Variation of Premises Licence

Committee: Licensing Sub Committee (Miscellaneous)

Date: 21 September 2010

Cabinet Member: Councillor Michael Leaves

CMT Member: Director for Community Services

Author: Peter Clemens, Senior Licensing Officer

Contact: Tel: 01752 305465
e-mail: licensing@plymouth.gov.uk

Ref: ERS/LIC/PREM

Part: I

Executive Summary:

An application has been received from Mr Keith Dunkley in respect of Open Air 3 & 4 Sherwell Arcade, North Hill, Plymouth for the variation of the premises licence under Section 34 of the Licensing Act 2003.

Corporate Plan 2010- 2013:

This report links to the delivery of the corporate improvement priorities. In particular:

1. Informing and involving residents.
 2. Improving culture and leisure activities.
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Implications for Medium Term Financial Plan and Resource Implications: Including finance, human, IT and land

Not applicable.

Other Implications: eg. Section 17 - Community Safety, Health and Safety, Risk Management, Equalities Impact Assessment etc.

Members should be aware that Section 17 of the Crime and Disorder Act 1998 puts a statutory duty on every Local Authority to exercise its various functions with due regard to the need to do all that it reasonably can do to prevent crime and disorder in its area.

Recommendations and Reasons for recommended action:

That Members consider this report.

Alternative options considered and reasons for recommended action:

None.

Background papers:

Application.
Licensing Act 2003.
Guidance issued under Section 182 Licensing Act 2003.
Council's Licensing Policy.

Sign off:

Head of Fin		Head of Leg		Head of HR		Head of AM		Head of IT		Head of Strat Proc	
Originating CMF Member											

1.0 BACKGROUND

1.1 On the 9th August 2010 the licensing department received an application from Mr Keith Dunkley in respect of Open Air, 3 & 4 Sherwell Arcade, North Hill, Plymouth for the variation of an existing licence under Section 34 of the Licensing Act 2003.

1.2 Details of variation

Current Licensable Activities	Variation Application
<p><u>(f) Playing of Recorded Music (Outdoors)</u></p> <p>Hours Mon to Sun 11.00hrs to 21.30hrs</p>	<p><u>(f) Playing of Recorded Music (Outdoors)</u></p> <p>Hours Mon to Sun 11.00hrs to 23.00hrs</p>
<p><u>(m) The Sale by Retail of Alcohol for consumption ON and OFF the premises.</u></p> <p>Hours Mon to Sun 11.00hrs to Midnight</p> <p>Non Standard Timings. Seasonal Bank Holiday Extensions throughout the year until 01.00hrs except New Years Eve until 02.00hrs</p>	<p><u>(m) The Sale by Retail of Alcohol for consumption ON and OFF the premises.</u></p> <p>Hours Mon to Sun 11.00hrs to 02.30hrs</p> <p>Non Standard Timings. Until 03.30hrs on New Years Eve</p>
<p><u>(o) Hours premises are open to the public</u></p> <p>Hours Mon to Sun 11.00hrs to 00.30hrs</p> <p>Non Standard Timings. Seasonal Bank Holiday Extensions throughout the year until 01.30hrs except New Years Eve until 02.30hrs</p>	<p><u>(o) Hours premises are open to the public</u></p> <p>Hours Mon to Sun 11.00hrs to 02.45hrs</p> <p>Non Standard Timings. Until 04.00hrs on New Years Eve</p>

1.3 Variation application.

The nature of the proposed variation is;
 To allow recorded music outdoors until 23.00hrs.
 To open throughout the week until 02.45hrs.
 To allow the supply of alcohol until 02.30hrs.

1.4 Current Conditions attached to the premises licence (Appendix 1).

1.5 Representations have been received in respect of this application.

1.6 Cumulative Impact Policy

This application does fall within an area to which the Cumulative Impact Policy applies and creates a rebuttable presumption that applications for new licences or variations to existing ones which are likely to add to the existing cumulative impact will normally be refused unless the applicant can demonstrate in their operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives if the application were granted.

2.0 RESPONSIBLE AUTHORITIES

- 2.1 Devon & Cornwall Constabulary – have made representation under the Prevention of Crime and Disorder and Public Nuisance objectives (Appendix 2).
- 2.2 Environmental Health – have made representation under the Public Nuisance objective (Appendix 3).
- 2.3 *Devon & Somerset Fire & Rescue Service* – no representations.
- 2.4 *Trading Standards* – no representations
- 2.5 *Planning Officer* - no representations.
- 2.6 *Child Protection* – no representations
- 2.7 *Health & Safety Executive* – no representations.

3.0 INTERESTED PARTIES

No letters of representation have been received from residents living within the vicinity of the premises.

4.0 CONSIDERATIONS

- 4.1 The Committee is obliged to determine this application with a view to promoting the licensing objectives which are:
 - the prevention of crime and disorder;
 - public safety;
 - the prevention of public nuisance;
 - the protection of children from harm.

In making its decision the Committee is also obliged to have regard to the guidance issued under section 182 of the Licensing Act 2003 and the Council's own Licensing Policy and the representations (including supporting information) presented by all the parties.

The Committee must take such of the following steps as it considers necessary for the promotion of the licensing objectives:

1. Modify the conditions of the licence
2. Reject the whole or part of the application;
and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

The Committee is asked to note that it may not modify the conditions or reject the whole or part of the application merely because it considers it desirable to do so. It must actually be necessary in order to promote the licensing objectives.

ANNEX 1 - MANDATORY CONDITIONS

(1) The first condition is that no supply of alcohol may be made under the premises licence: -

- (a) At a time when there is no designated premises supervisor in respect of the premises licence, or
- (b) At a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.

(2) The second condition is that every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

ANNEX 2 - CONDITIONS CONSISTENT WITH THE OPERATING SCHEDULE**A. Conditions that have been agreed with The Environmental Health Authority****Public Nuisance**

1. Recorded music shall cease at 21.30 hours.
2. A senior member of staff (manager) will assess the impact of any noisy activities on neighbouring residential premises at the start of business and frequently throughout the opening hours. In this case the activities concerned are:
 - a) the use of recorded music
 - b) the noise levels from large groups of patrons frequenting the bar
3. Control of light pollution
Lighting shall be positioned in such a way so as not to cause a nuisance to any neighbouring properties

(a) GENERAL

Staff banned from drinking on duty

Records maintained of any material incidents within or in immediate vicinity of premises

Drug disposal facility at entrance

Drugs warning notices on display

Zero tolerance to drugs use and dealing

Policy of banning customers for misbehaviour within or in vicinity of premises where deemed necessary and appropriate

Availability of soft drinks, non-alcoholic and/or low alcohol beverages at all times

Food available

(b) THE PREVENTION OF CRIME AND DISORDER

Specific staff training and supervision in assessment of customer consumption and condition

CCTV System (a) Internal Hall

(b) Internal partial

(c) External

(d) Retention of tapes/discs etc for minimum 30 days

Licensed door staff to appropriate levels as necessary

No cheap alcoholic drinks promotions cut-price drinks, "package deals"

No drinks hoarding

Pro-active policy against "binge" drinking

Zero tolerance to offensive conduct

Toughened glassware for draught products

Regular glass collection

(c) PUBLIC SAFETY

Regular dedicated cleaning of premises

Limit on number in premises

(d) THE PREVENTION OF PUBLIC NUISANCE

Advisory notices re noise on leaving premises

Freephone or similar taxi facility

Nominated staff to deal with complaints from neighbours

CCTV and/or regular monitoring of external areas of premises at night

(e) PROTECTION OF CHILDREN FROM HARM

Warning notices in place in relation to under age drinking

Children under the age of 16yrs are allowed on to the premises between the hours of 11.00am and 20.00hrs when accompanied by an adult

Full training for staff in law specifically relating to minors and alcohol and specific photo i/d proof of age requirements

ANNEX 3 - CONDITIONS ATTACHED AFTER A HEARING BY THE LICENSING AUTHORITY (26TH JUNE 2007)

Noise emanating from the premises will not be audible one metre from the facade of the nearest residential property



Building safer communities together



DEVON & CORNWALL
CONSTABULARY

Our ref:
2BCU/Lic/55474/dr

Your ref:

Mr P Clemens
Licensing Department
Plymouth City Council
Civic Centre
PLYMOUTH PL1 2AA



Licensing Department
Charles Cross Police Station
Hampton Street
PLYMOUTH
PL4 8HG

24 August 2010

Telephone: 01752 720469

Dear Mr Clemens

Re: APPLICATION TO VARY PREMISES LICENCE – OPEN AIR, 3-4 SHERWELL ARCADE, NORTH HILL, PLYMOUTH, PL4 8LH

On 9th August 2010 the Licensing Office at Charles Cross Police Station received a copy of the application to vary the Premises Licence as detailed above.

The application as presented appears to amount to a material variation and falls within one of the areas designated as a Cumulative Impact Area by Plymouth City Council

The Devon and Cornwall Constabulary wish to make representations to the Licensing Committee re this application for the following reasons

The premises are located within a Cumulative Impact Area as defined in Plymouth City Councils licensing policy and we would refer to the evidence produced by police that supported the introduction of this policy.

The policy was adopted in response to the level of Crime disorder and public nuisance reported in the area as a result of the number of licensed premises which remained open until the very early hours.

The police will produce evidence that the area in which the premises are situated is subject to a rising level of crime and anti social behaviour the majority of which occurs between the hours of 1900 and 0600hrs.

The police are unable to link all instances of crime and disorder or public nuisance to particular premises.

Cont/.....



The police have examined the application in detail and brief discussion has taken place with Mr Dunkley prior to the application being submitted

Both the Licensing act and the Plymouth City Council Licensing policy require any application for a material variation within a cumulative impact area to demonstrate how the applicant intends to ensure that the variation will not impact on the promotion of the four licensing objectives.

This application does not provide sufficient detail to demonstrate how it will not have a negative effect on the Licensing Objectives

Yours sincerely

A handwritten signature in black ink, appearing to read 'D. McIndoe', with a stylized flourish at the end.

D. MCINDOE
Alcohol Related Crime Reduction Officer
Devon & Cornwall Constabulary

Memorandum



From: Head of Environmental Regulation Service
To: HEAD OF LICENSING SECTION
FAO: PETE CLEMENS
Date: 3rd September 2010
Our Ref: EH. 780044
Investigating Officer: Rhodri Morgan
Extn: 4851

LICENSING ACT 2003
ENVIRONMENTAL HEALTH REPRESENTATION

Premises: 3 & 4 Sherwell Arcade, North Hill, Plymouth, PL4 8LH

Name of Licensee: Mr Keith Dunkley

Type of Application: Alcohol (Both)/Entertainment Licence

Report Prepared By: Rhodri Morgan

Recommendations

- ~~1. That this department has no comments regarding the Application.~~
2. This department would like to make the following representation;

LICENSING ACT 2003
ENVIRONMENTAL HEALTH REPRESENTATION
Name: 3 & 4 Sherwell Arcade
Address: , North Hill, Plymouth, PL4 8LH

Report By: Rhodri Morgan

Date of Inspection: N/A

Public Nuisance

This department recommends refusal of the application to;

1. Extend the opening hours until 02.45 hrs
2. To allow recorded music until 23.00 hrs
3. To allow the supply of alcohol until 02.30 hrs

Licensing Act 2003
Supporting Information for Committee Hearing following the Environmental
Regulation Service Representation

Premises Name:

This department has made representation based on the following information.

The location of the Premises is within a cumulative impact area and the application does not adequately address the concerns for further potential impact on the area.

The special policy was adopted due to the overall levels of crime, disorder and nuisance that was prevalent in the area resulting from licensed premises which continue operating until the early hours of the morning which cannot be linked to a particular premises. With particular regard to the anti-social behaviour and nuisance behaviour of patrons leaving licensed premises and their impact on the surrounding neighbourhood in the early hours of the morning.

Responses from residents concerning the adoption of the special policy, strongly commented on how alcohol-related anti social behaviour and disturbance associated with the large numbers of patrons present in the vicinity of North Hill impacted on local residents. No representations were received from licensed premises operating in the area at the time of the consultation. Only one commercial property commented on the level of crime, but did not want to restrict commercial activity as a result.

The number of licensed premises in North Hill and surrounding areas remains high, largely consisting of vertical late night drinking establishments which predominantly focus on the student market, as it has done historically.

North Hill area of Plymouth continues to attract large numbers of people and remains busy beyond 6am on occasions, although this impact is reduced during period June to September when the University is closed. The North Hill and surrounding areas of Mutley Plain and Greenbank has a mixed residential and commercial use, serving a variety of domestic situations from student accommodation to residential homes.

The Cumulative impact policy was adopted to control various forms of and potential for alcohol-related public nuisance. In particular no operating schedule has been provided by the applicant to acknowledge the potential affect from the extended use of the premises for the supply of alcohol and use of regulated entertainment would have on the area and what measures would be taken to mitigate its affects on and off the premises particularly having regard for public nuisance.

The applicant has not demonstrated in the application how there will be no negative cumulative impact on one or more of the licensing objectives. The applicant has failed to address how the potential impact from increased use of the premises will be reasonably controlled to prevent any cumulative impact on public nuisance

The potential effect of increased noise activity from extending the use of the premises will in the opinion of this Department contribute further to cumulative impact on the local community. Taking this information into consideration, it is the recommendation of this Responsible Authority that the application be refused.