

## **Licensing Sub Committee**

**Tuesday 31 July 2018**

### **PRESENT:**

Councillor, Rennie in the Chair.  
Councillor, Hendy Vice Chair.  
Councillors K Foster and Fletcher (Fourth Member)

Apologies for absence: Councillor Parker Delaz Ajete (Councillor Hendy substituting).

Also in attendance: Jamie Sheldon (Democratic Advisor), Sharon Day (Lawyer) and Frederick Prout (Licensing).

The meeting started at 10:00 and finished at 12:45.

*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.*

#### **60. Appointment of Chair and Vice-Chair**

Agreed that Councillor Rennie was appointed as Chair and Councillor Hendy was appointed as Vice Chair for this meeting.

#### **61. Declarations of Interest**

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

#### **62. Chair's Urgent Business**

There were no items of Chair's Urgent Business.

#### **63. Plymouth Waterfront Trader Application - Marshmallow Man**

The applicant, Jason Wilkinson was given approval to trade marshmallow treats from his trike set up on a static site on Hoe Road or Madeira Road, until 31 March 2019. The decision about the specific site was delegated to the Street Trading manager.

#### **64. Variation of Premises Licence - The Clarence, 31 Clarence Place Stonehouse Plymouth**

The Committee:

- (a) Considered the report from the Director of Public Health
- (b) Heard and took account of verbal and written representations from the applicant, Mr Jakes and Ms Chilvers as follows:

- There was a restriction placed on the licence in relation to regulated entertainment on the premises when it was under different management. Since that restriction was put in place the applicant had taken over the licence and they had moved the door back into its original position and sound proofed the front of the premises. With that in mind the application was effectively asking the committee to reconsider the restriction that was placed on the licence in light of the changes they had made and the conditions put forward by Environmental Health. The idea was to have music at the back of the premises and be able to talk at the front of the pub;
- The limit of 2 nights per week put forward by Environmental Health and the other conditions were acceptable but they did not envisage having music every week. No all day events were planned however where they do charity events it was likely that the music would start in the afternoon. The proposition put forward by the complainant of non-consecutive days for the music was also acceptable to the applicant;
- A sound limiting device was a good idea and was in interest of all parties as it would ensure that the licensing objectives were upheld and would prevent noise issues in neighbouring property. When they took over the premises contact was made with the neighbours to ask if the music was loud but they never said anything to them;
- The Premises Licence Holder was regularly on the premises and when she was not there she is in regular contact with her partner on the premises and those working there have letter of authorisation to sell alcohol;
- No alcohol or glassware was permitted outside and this rule was enforced. Anyone disobeying the rules was asked to leave;
- Customers were told they can only smoke to the side of the building and ashtrays were provided. The area is cleaned at least once a day and inspected but it was impossible to mark out a specific area as the land was a public footpath;
- Any customers found standing outside the adjoining house were asked to move away. However, since the door had been moved no one had been sitting on the wall and if they have been they were not their patrons;
- Live music had only taken place when there was a TEN in place. The songs listed by the complainant had never been played as part of any TEN;
- The verbal abuse from the customer mentioned by the complainant did take place but the customer was rebuked by Ms Chilvers;
- Two sound monitors were used when any music performance took place and were recorded in the daily log. Recordings are taken inside and out. One example of the measuring that took place recorded as being between 86dB and 78dB and recorded as being background noise. Mr Jakes set his sound recorder 10dB higher than the other;

- Sound proofing had been installed in the main area of the pub to restrict any noise to neighbours and a detail of what had been installed was provided to committee. Whilst committee noted this, they were not given any information to confirm that this was to any approved specification;
- The premises now attract different clientele to what it did previously. A number of veteran and LGBT now use the venue. All patrons get on well and there was a diverse atmosphere without trouble;
- The using and supply of drugs is forbidden and they had a zero tolerance towards it. They were working with local police to help prevent drug activities in the area. The premises have CCTV which picks up any drug dealing activities in the back lane and toilets are also checked regularly. Live music has nothing to do with drug use in the area;
- A number of letters from local people in support of the premises were submitted. These were taken into account by the committee;
- Being unable to have music put the business at an unfair disadvantage to others in the area. This was not taken into account by the committee as it was not relevant under the licensing objectives;
- The premises have been run for many years without problems and were a hub of the community. The aim was for this to be a community pub and they will run charity events.

(c) Heard the following representations from Environmental Health. These were considered relevant under the Prevention of Public Nuisance and were taken into account in reaching a decision:

- That due to previous issues of noise from the premises they had made a representation under the licensing objective of prevention of public nuisance. Discussions had taken place with the Premises Licence Holder and conditions had been put forward which were detailed at appendix 2 of the report.
- They were still of the opinion that Section 177A should not be removed from the licence but that the condition should be amended to reflect those conditions put forward at appendix 2.
- Previous TEN had been granted and the premises had used the maximum they can for the year. They had one complaint in respect of music which claimed that there was no TEN in place. A visit to the premises had confirmed that a TEN was in place.
- They were confident that the applicant would work with the conditions as Environmental Health has been working with the premises licence holder for 12 months without issues. Environmental Health believed that the conditions would address any potential problems.

(d) Heard from Councillor McDonald representing a local resident who had made representations as follows. Both verbal and written representations were taken into account as follows:

- The Premises Licence Holder had not reassured residents and problems continue despite having spoken to the neighbours when they took over and having the problems explained to them. Bad language is frequently used within the premises and is heard within the property;
- There was a lack of sound proofing at the back of the property. This was where children may sleep and so music would disturb them. This was considered to be relevant under the licensing objective of prevention of children from harm. However the committee considered that the conditions put forward by environmental health would address any potential problems;
- Currently when music was played at the premises it can be heard within the next door property, even though sound proofing had been placed between the premises and the neighbouring property. When the premises had a private party the music was very loud and drowned out the sound from the complainant's television. The dates provided by the other party in relation to this problems experienced were: 5.5.18 (Sweet Caroline and Queen songs), 26.5.18, 19.6.18, 17.6.18. This was considered to be relevant under the licensing objective of prevention of public nuisance however the committee considered that the conditions put forward by environmental health would address any further problems;
- There were concerns that having live music will attract drug dealers to the area and that this raises concerns for the safety of their children. This was considered relevant under the licensing objective of prevention of crime and disorder however the committee were satisfied that the actions taken by the premises licence holder including CCTV addressed any drug related issues in the area;
- Various allegations made that licence conditions have not been complied and examples were provided in the representation. This was not considered to be relevant to the application save that it would be relevant when considering the likelihood of the Premises Licence Holder complying with the conditions put forward by environmental health. However having listened to what had been said by environmental health in this regard, the committee were satisfied that the Premises Licence Holder would comply with any conditions added to the licence;
- There was no requirement for an additional live music venue in the area. This was not considered to be relevant as it did not relate to any of the licensing objectives;
- The Premises Licence Holder is rarely at the premises. This was not considered to be relevant as it does not relate to any of the licensing objectives;
- In the representation suggested conditions had been put forward and whilst these were not relevant under any licensing objective, the committee gave consideration to the suggestion that music should not be on consecutive nights as this would promote the licensing objective of prevention of public nuisance and the applicant had also indicated this would be a workable condition.

- (e) Having considered the representations as set out above the committee did not consider it appropriate to grant the application as applied for as it had the potential to undermine the licensing objective of the prevention of public nuisance. However the committee agreed that the application would be granted as follows in order to promote the licensing objective of prevention of public nuisance:

Condition 26 be amended to read:

Section 177A of the Licensing Act 2003 relating to live and recorded music does not apply to this premises. Regulated entertainment may take place as follows:

- a. Regulated entertainment is restricted to live and recorded music with two vocalists only. No live instruments are permitted
- b. Regulated entertainment is restricted to two non-consecutive days per week between 10 am and 11pm.
- c. The licence holder will control the sound levels of the music/entertainment. A noise limiting device (the specification and design to be agreed with the Environmental Health Service) must be fitted so that all live amplified music including vocals and recorded music is channelled through the device(s). The maximum noise levels will be set by agreement with Environmental Health Service and reviewed from time-to-time as appropriate. If the noise limiter is not working then no regulated entertainment is permitted.

The application for retrospective permission to move the location of the front door was granted.

65. **Variation of Premises Licence - La Roux, 33 Notte Street, Plymouth PL1 2AZ**

The Committee:

- (a) Considered the report from the Director of Public Health
- (b) Heard from the Premises Licence Holder and took into account both written and verbal representations as follows:
  - They were a small family run business and want to increase the licensed area to include decking with sale and supply of alcohol on the decking ceasing at 10pm on all days. Alcohol would be supplied outside using a small mobile bar;
  - He considers that Plymouth needs to promote itself and needs activity as the city centre was not at its best at the moment;
  - He was seeking to create employment but needs to be able to compete with neighbouring businesses which can serve outside until midnight;
  - He understands residents' concerns and doesn't want to upset them but wants to be successful;
  - CCTV covers the decking area and was always monitored;
  - All off sales were in a sealed container but in reality they had not had many off sales;
  - The toilets were regularly checked;
  - Never had any problems;

- Staff receive regular training on serving alcohol. Challenge 21 operates, no alco-pops were sold and non-alcoholic drinks were provided;
- Any music was played at low volume;
- The door was self-closing door;
- Waste was collected and the bin stores are out of site;
- The premises was always closed and staff were gone by 12 – 12.30am;
- The decking area can hold 30 people. They don't believe noise from stacking of chairs comes from this premises as they only have 7 aluminium chairs and these were put away 12.30am;
- The decking area was screened and includes foliage to create acoustic barrier. At present the decking area was used as a smoking area;
- He tries to work with neighbours and have only had 3 complaints in total;
- The outside area was monitored at all times and they have never had any reason for the police to be called. The premises was not a 'lads' bar and generally attracts couples and girls on a night out;
- The outside area was generally used for sitting and they don't encourage standing;
- Some residents do frequent the bar;
- Will endeavour to work closely with residents going forward and will adhere to what they were told to do;

(c) Heard from the resident association and a resident and considered both the verbal and written representations as follows:

- The use of the decking area after 9pm is in direct contravention of a planning condition which was put in place to protect residents from noise pollution. This was not taken into account as a breach of a planning condition was not relevant to any licensing objective. In considering this the committee had regard to the statutory guidance at paragraphs 14.64 and 14.65 and noted that, even if the application were granted to a later time than allowed by the planning condition, the applicant would still be bound by, and have to comply with, the planning restriction;
- If the application were granted the premises licence holder would be in breach of their lease. This was not considered to be relevant as it did not relate to any licensing objective;
- Granting the application was highly likely to cause noise disturbance from people arriving at, queuing for drinks on the decking and leaving the premises. Several residents have very complex health needs and noise disturbance caused by customers queuing will be extremely distressing and detrimental to their health. Residents will suffer loss of amenity, noise pollution and disturbance. The main cause of concern was that the area was to be used until 10pm. If it was only used until 9pm there wouldn't have been any objection. This was considered to be relevant under the licensing objective of protection of public nuisance. Committee noted that the outside area had been used as a beer garden for some time and that there had been no representations from any responsible authority. However the committee considered it appropriate to address the concerns outlined by way of condition restricting the time during which the outside bar and area can be used as set out below;

- The look of the decking area is unlikely to provide the impression to visitors that the Council should be hoping for the Mayflower celebrations. This was not considered to be relevant as it did not relate to any of the licensing objectives;
  - Extending the licensing hours would be likely to have significant negative impact on the health and well-being of residents. Whilst committee understood this concern it did not relate to any of the licensing objectives;
  - The application could have very significant negative impact on a person due to very complex disabilities which included autism, uncontrolled epilepsy, and visual impairment, sensory difficulties leading to sensory overload and extreme stress and anxiety. Their care ends at 10pm and they were affected by noise after this time. They were already disturbed by music being played outside in the evening, noise from patrons leaving after closing and staff closing up. Noise which may not disturb others affects this person because of his particular disabilities. This was considered relevant under the licensing objective of prevention of public nuisance however the committee could not be certain that the noise was coming from these premises due to the location of other premises in the area;
  - One resident is unable to have windows open due to smoking below. This led to the apartment becoming unbearably hot which can increase frequency and seriousness of seizures. This was considered to be relevant under the prevention of public nuisance licensing objective however the committee did not consider that the application would significantly change the use of the area in this regard as it was already used as a smoking area.
- (d) Agreed that having taken the above into account it was appropriate and proportionate to grant the licence as follows:
- The condition relating to the supply of alcohol consumption off premises is restricted to Mon – Sun 9am – 7pm is removed from the licence;
  - The extension of the licence area to include the decking area was granted. In granting this the committee noted that in doing so it would not increase the capacity of the premises due to a restriction on the licence limiting the number of customers at any one time to 28 people;
  - The sale and supply of alcohol on the decking area will cease at 9pm on all days and the decking area must be cleared of patrons by 10pm. This condition was considered appropriate to promote the licensing objective of prevention of public nuisance.

## 66. Exempt Business

There were no items of exempt business.

