

LICENSING SUB COMMITTEE B

TUESDAY, 13 October 2015

PRESENT: Councillor A. Davies (Chair)

Councillors:

T. Theophilus and J.S. Williams

Present as observers: Councillors T. Bowen and T. Davies

The following Officers were in attendance:

R. Edgecombe, Legal Services Manager

Rees, Licensing Officer

K. Thomas, Democratic Services Officer

Present as a representative of a Responsible Authority:-

Mr E. Jones – Principal Licensing Officer – Carmarthenshire County Council

Chamber, County Hall, Carmarthen - **10.00** - 11.35 am

1. DECLARATIONS OF PERSONAL INTEREST.

No declarations of personal interest were made at the meeting

2. APPLICATION FOR THE VARIATION OF A PREMISES LICENCE - CHILLIES DINER & MOJITOS BAR, 17-21 COWELL STREET, LLANELLI

The Sub-Committee considered an application from Morgan & John Leisure Ltd for the variation of a premises licence in respect of Chillies Diner & Mojitos Bar, 17-21 Cowell Street, Llanelli SA15 1YA as follows:-

Supply of Alcohol/Films:- Monday to Thursday 09:00 – 00:30
Friday and Saturday 09:00 – 03:00

Live Music:- Monday to Sunday 09:00 – 23:30

Recorded Music: - Sunday to Thursday 09:00 – 00:30
Friday & Saturday 09:00 – 03:00

Late Night Refreshment: - Sunday to Thursday 23:00 – 00:30
Friday & Saturday 23:00 – 03:00

Non-Standard Timings:- to allow all the above activities, except live music, on 12 occasions per year to 03.30 a.m.

The current premises licence allowed:-

Supply of Alcohol/Films/Recorded Music:- Monday to Sunday 10:00 – 00:15
Live Music Monday to Sunday 10:00 – 23:30 (limited to 24 occasions per year)
Late Night Refreshment Monday to Sunday 23:00 – 00:15

Opening Hours Monday to Sunday 09:00 – 00:30

The Legal Services Manager briefed all present on the procedure for the meeting. The Committee's attention was drawn to additional documentation circulated at the meeting from the applicant amending his application to remove those elements relating to the playing of live and recorded music.

The Licensing Authority Representative referred to the report detailing the particulars of the application, as set out above, and advised that the following documentation was also attached thereto:-

- Appendix A – A copy of the application
- Appendix B – The Licensing Authority's representations;
- Appendix C – Dyfed Powy's Police's representations, as agreed with the applicant
- Appendix D – Representations received from interested parties;

The remaining Responsible Authorities had not submitted any representations in respect of the application.

The Licensing Authority Representative referred to his representations, detailed in Appendix B to the report, and drew the Sub Committee's attention to a number of factors in relation thereto. Firstly, on point c), and the issue of the premises' planning consent, the applicant had confirmed that it would be his intention to seek a variation to that planning consent for any variation that may be granted by the Sub-Committee that day, and that the variation would not be implemented until such time as planning consent had been obtained. With regard to point f), the Licensing Authority was of the view that the wording of the operating schedule, submitted as part of the application, was not sufficiently precise to enable it to form clear enforceable licence conditions in accordance with Section 18(2)(a) of the Licensing Act. The applicant had stated in point f) that a risk assessment had been undertaken, however, there was no documentary evidence to support that claim. Accordingly, site visits had been undertaken by himself and a representative of the Public Health Division on separate weekends to assess whether there was a need for such an assessment to be formally undertaken and documented. During those occasions the level of music being played at the premises was found to be low background music only. As a result, discussions had been held with the applicant who had agreed to amend his application to remove the elements relating to the playing of live and recorded music and, therefore, no detailed documented risk assessment had been requested. Notwithstanding that amendment, the Sub Committee was requested to note that the Live Music Act still allowed for the playing of live music up to 11:00 p.m. However any background music would still have to be at a low level and would not allow for any dancing to take place

The Licensing Authority Representative thereupon referred to the issue of licensing conditions, and suggested that should the Sub-Committee be minded to grant the variation, that the conditions numbered 1-21 of the Dyfed Powys Police's representations (Appendix C), as agreed by the applicant, be added to the variation licence, and the existing conditions numbered 1-3, 7 and 9-12 be removed from the licence for the avoidance of duplication.

All parties were afforded the opportunity of questioning the Licensing Authority on the representations made. Reference was made to patrons leaving the premises at 3.00 a.m. and a question was asked on whether that could undermine the licensing objectives, and if any steps had been undertaken to assess any potential impact. The Licensing Authority representative advised that as the suggested noise impact assessment only related to the playing of loud music, and not patrons entering / leaving the premises, no further assessments had been requested. Furthermore, the applicant's decision to remove the playing of live and recorded music from his application had negated the need for further monitoring.

The Sub-Committee thereupon received representations from two interested parties objecting to the variation of the premises licence on the following basis.

- prospective tenants frequently enquired as to the closing time of the premises. Whilst they could currently be assured of a 12.30 a.m. closure, should that be extended to 3.00 a.m., it could prove to be a disincentive to prospective tenants;
- current residents had expressed concerns at potential noise levels of people leaving the premises at 3.00 a.m. and causing anti social behaviour together with the impact of cigarette smoke rising from the pavement ground level into any open first floor windows;
- the landlords could end up losing tenants and the resultant vacant properties could be hard to let if a 3.00a.m. closure were to be granted;
- Whilst no complaints had been received by the landlords regarding the current operation of the premises, complaints had been made regarding the previous use including the playing of loud music, patrons congregating on the pavement outside, vandalism and anti social behaviour.
- Several residents had small children and found it intimidating leaving the premises ;
- The lease held by the applicant forbade any change of use without the landlord's express prior permission. No request for a change of use had been made, and neither would it be given if the premises were to remain open until 3.00 a.m. The landlords would also seek to forfeit the lease should the applicant operate under the requested variation

All parties were afforded the opportunity of questioning the objectors on their representations where they confirmed that no specific complaints had been made to the landlords regarding the operation of the current premises.

In response to the above, the applicant addressed the Sub Committee with his representations including the following:-

- The applicants, on initially opening the premises, had not intended to open beyond its permitted hours. However, following 3 months of trading it had become evident there was a need to open beyond those hours in order to enable the business to survive
- The premises mainly operated as a restaurant and cocktail bar and was aimed at attracting people aged 26 and above;
- Some patrons would like to remain in the premises longer but currently had to leave at 12.30 a.m.;
- It was not the owners' intention to attract younger patrons as dancing and loud music was catered for within other premises in the town centre.
- It was not considered a 3.00 a.m. closure would adversely impact on residents as there were other establishments in close proximity which played loud music and closed at 2.00 a.m.;
- The owners would ensure that stewards were on duty to monitor patrons entering/leaving the premises
- Currently two members of staff lived in the residential accommodation above the premises and had not experienced any noise nuisance
- With regard to the issue of cigarette smoke permeating into the first floor flats, that could be attributable to people attending the adjacent cafe's and smoking on the highway and that he had no control over that practice;
- As a business, the main objective was to be profitable. The current hours were restricting that ability with the only scope to improve being to remain open later on Friday and Saturday evenings. Accordingly, the variation application only sought a 3.00 a.m. closure for only those two days and to also be respectful of the

residents

- It was accepted there was a need for planning consent to be obtained for the later opening, should the variation be granted.
- Discussions would be held with the landlords to seek their agreement for later opening should the variation be granted;

All parties were afforded the opportunity of questioning the applicant on the representations made. In response to questions, the applicant confirmed that he would use door supervisors every Friday and Saturday after 10.00 p.m. (earlier if required on special occasions such as rugby internationals) to control entry to the premises and to request patrons to be respectful to residents when leaving. With regard to the operation of his premises in Bridgend, he confirmed that was open until 4.00 a.m. and whilst the Police had made representations regarding the general operation of the town centre in the early hours, no issues had been identified specifically to his premises and he had never received a final warning.

The Sub Committee thereupon

UNANIMOUSLY RESOLVED to retire into private session in order to receive legal advice pursuant to Paragraph 16 of Schedule 12A of the Local Government Act 1972.

Following the adjournment, the Sub Committee reconvened to advise of its decision and having had regard to the relevant paragraphs of the Licensing Authority's Statement of Licensing Policy and the Guidance issued by the DCMS and the Home Office

RESOLVED that the application for the variation of the Premises Licence in respect of Chillies Diner and Mojitos Bar, 17 Cowell Street, Llanelli be granted subject to following:-

1. To permit the sale of alcohol and late night refreshment until 1am on Fridays and Saturdays and the closing time to 1.30am
2. the conditions numbered 1-21 agreed between the applicant and the police being added to the licence, save condition 15 being amended to read 'Door Supervisors to be on duty every Friday and Saturday after 11pm'
3. the existing licence conditions numbered 1-3,7 and 9-12 being removed to avoid duplication

REASONS

In coming to its decision, the sub-committee had made the following findings of fact;

1. There had been no history of complaints at the premises to the licensing authority
2. The Applicant had agreed to the additional licence conditions requested by the police and had withdrawn his request for extended regulated entertainment.
3. No representations had been received from Public Health Services
4. The premises were immediately below a large number of residential flats
5. That local residents and their representatives had objected to the

- application on public nuisance grounds
6. Local residents had suffered nuisance from licensable activities at the premises in the past, but there had been no complaints to the Landlords or their agents since the applicants took over the running of the premises.
 7. There were a number of licensed premises nearby which closed prior to the terminal hour sought by the applicants
 8. That neither planning conditions nor the terms of the applicants lease permitted operating the extended hours sought.

The Sub -Committee had attached weight to the views of the police and the absence of any representations from public health services.

The Sub-Committee recognised that its decision must be based upon real evidence, and that concerns and fears about what might happen if the application were granted, where unsupported by such evidence, were not matters which it could properly take into account.

The Sub-Committee found the evidence of the local residents and their representatives to be credible and compelling and was satisfied that in the past a public nuisance had occurred as a result of licensable activities at the premises (although the Sub-Committee recognised that was not when the applicants were in occupation).

On the evidence presented, the Sub-Committee was satisfied that to grant the application on the terms sought would be likely to change the clientele of the premises and the nature of its operation. At the very least, it would attract patrons from other nearby premises which had an earlier closing hour. Whilst the Sub-Committee noted the applicant's assurances regarding the use of door staff to regulate the situation, the Sub-Committee considered it likely that, at the very least, to grant the application would result in persons congregating outside the premises between 2am and 3am and attempting to gain access. The Sub-Committee considered that would be highly likely to cause a public nuisance to persons living in the building.

The Sub-Committee carefully considered whether the issues identified could be adequately addressed by additional control measures. The Sub-Committee considered that could only be achieved by restricting the terminal hour of the premises so that it closed prior to the nearby premises referred to above.

On the balance of probabilities the Sub-Committee was satisfied that it was appropriate to refuse the application as sought but instead vary the terminal hour to 1.30 am on Fridays and Saturdays. The committee was satisfied that this was appropriate in order to promote the licensing objective of preventing public nuisance, and was a proportionate response to the issues identified.

CHAIR

DATE