

Licensing Sub-Committee

Tuesday, 27th June, 2017

PRESENT: Councillor C Townsley in the Chair

Councillors A Garthwaite and B Flynn

1 Election of the Chair

RESOLVED – Councillor Townsley was elected Chair of the meeting.

2 Appeals Against Refusal of Inspection of Documents

There were no appeals against the refusal of inspection of documents.

3 Exempt Information - Possible Exclusion of the Press and Public

The agenda contained no exempt information.

4 Late Items

No formal late items of business were added to the agenda, however Members were in receipt of the following supplementary information:
Item 6 The Potting Shed – additional submission from the applicant (Minute 6 refers).
Item 9 Turtle Bay – additional submission from West Yorkshire Police. On the day of the hearing, the applicant for Turtle Bay produced additional documentation relating to a previous application at the premises (Minute 9 refers).

5 Declarations of Disclosable Pecuniary Interests

There were no declarations of interest.

6 "Potting Shed" - Application for the Grant of a Premises Licence for The Potting Shed, Oxford Road, Guiseley, LS20 8AA

The Sub Committee considered the report of the Head of Elections, Licensing and Registration on an application made by Potting Shed Trading Limited for the grant of a Premises Licence for The Potting Shed, Oxford Road, Guiseley LS20 8AA.

In brief, the application sought the provision of live and recorded music and sale of alcohol Monday to Saturday 10.00 am until 01:00 hours, and on Sundays from 10.00 am until 23:30 hours. Late night refreshment was proposed Monday to Saturday from 23:00 until 01:30 and Sundays 23:00 until 23:30. Non-standard timings to extend hours of operation at Christmas, New Year and British Summer time were also sought.

No representations had been received from the Responsible Authorities however one member of the public had submitted a representation. The following were present at the hearing:

Mr P Whur – applicant's legal representative	Mr Verge – on behalf of Mrs Jones, local resident
Ms J Renner – Operations Manager	Mr Hopkinson - observing
Mr V Schumacher – observing	

Mr Whur addressed the Sub Committee first and informed Members that the applicant had a number of other premises in Bingley, Beverley, Northallerton and other locations. The Guiseley venue was formerly occupied by HSBC bank, and a refurbishment of £750,000.00 to £1m was proposed to establish the business which in turn would create 50 new jobs.

Mr Whur explained that the main focus would be a “Family Friendly” food orientated venue – there would be a large seating area, waiter service and an acoustic lobby, to assist in ensuring any escape of noise from the premises would be kept to a minimum. Additionally, the live music to be offered would be largely solo or duo performers; and the external area had been orientated away from the nearest residents. A number of conditions were offered by the applicant and detailed at pages 5 to 9 of the report which sought to ensure the promotion of the licensing objectives. The applicant had also held pre application meetings with the responsible authorities – and no responsible authority had felt it necessary to make a representation in respect of the application.

In reply to a Members’ query, who pointed out that this application sought the longest hours of operation in the area, Mr Whur stated that the requested hours mirrored those operated in the applicants other premises. The other premises, specifically the Northallerton site which had a much larger garden/external seating area, operated without incident – with the exception of one isolated incident at the Bingley premises in 2016.

The Sub Committee then heard from Mr Verge who appeared on behalf of a resident who lived 80 metres away from the proposed premises. He advised that one of the applicants other Potting Shed premises in Bingley had been the source of noise complaints. There was concern that this Guiseley premises would also be a source of noise and related issues. Mr Verge also highlighted that the external terraces and seating area had been included within the ‘red line boundary’ for the licensed area and queried what activity was proposed within that area. Planning permission had not yet been granted and Mr Verge requested that this application be deferred until the planning application had been determined.

In responding to the points made, Mr Whur advised that quite often planning and licensing applications “run parallel” and invariably, one application would be determined before the other. He explained the issues with the Bingley premises which had led to a Review of that Premises Licence and the action taken since then - the person responsible was no longer with the company and lessons had been learnt. Ms Renner provided additional information on the management of the external areas; as well as doorstaff provision and Members received assurance that smokers would be located to the rear of the premises (from 22.00 hours).

The Sub- Committee carefully considered the application as presented and the submissions made at the hearing by Mr Whur and Mr Verge.

During their deliberations, Members sought to clarify the applicants’ stance on the inclusion of the external terraces and areas within the licensed area. On receipt of an offer to remove those two areas from the application, Members continued their

deliberations, having regard to the Licensing Act 2003, the Section 182 Guidance and the conditions offered by the applicant.

RESOLVED – To grant the application as varied by the applicant (namely that the roof terraces and external areas would be removed from the premises licence application as no licensable activities will be undertaken in these areas).

Subject to the following Conditions:

- The applicable mandatory conditions;
- The conditions offered by the applicant and detailed in the application

7 "Hirst's Yard" - Application to vary a premise licence for 11-13 Hirst's Yard, Leeds, LS1 6NJ

This application was withdrawn from the agenda prior to the meeting as the applicants and all interested parties had reached agreements on measures suggested in order to promote the licensing objectives of the city. The Premise Licence will therefore be issued by the Licensing Officer in accordance with the agreed conditions.

8 Application to Vary a Premises Licence held by The Leeds Club, 3 Albion Place, Leeds, LS1 6JL

This application was withdrawn from the agenda prior to the meeting as the applicants and all interested parties had reached agreements on measures suggested in order to promote the licensing objectives of the city. The Premise Licence will therefore be issued by the Licensing Officer in accordance with the agreed conditions.

9 Application to Vary a Premises Licence held by Turtle Bay, Unit A14, The Light, Albion Street, Leeds, LS1 8TL

The Sub Committee considered an application to vary the premises licence held by Turtle Bay Restaurants Limited for Turtle Bay, Unit A14, The Light, Albion Street, Leeds, LS1 8TL. In brief the application sought to extend the terminal hour of each current licensable activity along with the opening hours of the premises. It was noted that the premises was located within the 'Red Zone' of the Leeds City Centre Cumulative Impact Area.

The application attracted representation from West Yorkshire Police and the Licensing Authority. The following attended the hearing:

Mr T Lyons – legal representative for the applicant
PC C Arkle – West Yorkshire Police

Mr P Dukelow

Mr V Schumacher (observing)

Mr S Kennedy – Entertainment Licensing

Mr Lyons addressed the Sub Committee on behalf of the applicant, explaining that this premises was located partly within the "Red Zone" of Leeds City Centre Cumulative Impact area as its frontage was on Albion Street and partly within The Light which benefited from 24 hour a day, 7 day a week, security. He referred to the decision notice issued after the 2015 hearing for the original grant of the premises licence (supplementary document tabled prior to the hearing) when a licence was

granted for licensable activities until 00.00, with the provision of late night refreshment until 00.30 and 1 hour for dispersal on Fridays and Saturdays.

Mr Lyons stated the applicant now sought that additional hour for the provision of licensable activities, as that was the usual trading style of the Turtle Bay brand, plus existing customers had asked to stay an extra hour. He suggested that the applicant proved the application was an exceptional case in 2015 and contrary to fears expressed then about crime and disorder and this operating as a vertical drinking outlet, the venue had been successful as a food led Caribbean themed restaurant. He confirmed that the conditions contained within the existing premises licence would remain and highlighted that there was no admittance after 00:00 midnight, the applicant sought simply to retain existing customers for longer. He stated that Turtle Bay patrons did not cause any of the issues in the area.

Turning to the supplementary information submitted by WYP which outlined the circumstances of the Section 19 Closure Notice served on the premises on 18th February 2017, Mr Lyons commented that this submission suggested that there were issues with the premises; however there was no evidence of assaults, drunkenness, damage or thefts from person identified at Turtle Bay. He acknowledged and apologised for errors which led to the issue of the Closure - failure of the premises to have a BACIL radio and the CCTV system recording for 25 as opposed to 31 days contrary to Conditions 10 and 19 on the premises licence – but stated these were no more than errors.

Mr Lyons then drew Members attention to the positive findings at the premises during the visits undertaken by West Yorkshire Police and Entertainment Licensing Enforcement officers on 18th February and 27th May 2017. He then dealt with the incidents contained within the schedule of fifteen incidents submitted by West Yorkshire Police – recorded as occurring at the premises between 5th January 2016 and 9th June 2017 and noted that Turtle Bay was already closed when several incidents were recorded and that, on other occasions, the premises was the victim of the crime - for example when a customer left the premises without making payment.

Mr Lyons reported that the premises had utilised 18 Temporary Event Notices since December 2016 which had permitted the premises to undertake licensable activities until 01.00 and remain open until 01.30 – these had occurred without issue. He also highlighted that there were a number of neighbouring licensed premises with a very different style of operation and who traded to much later hours.

Mr Dukelow then advised on the nature of the Turtle Bay brand and how it was important for patrons to understand that their experience and the offer available would be the same in any of the seven venues. He stated that he had visited the Leeds premises whilst the TENs were in operation to ensure they operated correctly. He explained that diners were often disappointed that they could not remain at the venue for longer. Finally, Mr Dukelow stated the applicant did appreciate the Red Amber Green system and the CIP.

Mr Lyons concluded by stating that the additional hour would not add to the number of people within the Red Zone, as Turtle Bay would retain its existing customers and it would not add to the issues of crime and disorder being experienced. The applicant

did not seek to remove the condition that prohibited the entry of new customers to the premises after midnight.

In response to questions from the Sub Committee, Mr Lyons confirmed that the issues regarding the signing in book for door-staff and lack of Check 21 poster during the visit to the premises on the 27/05/17 had been an oversight and had been rectified.

PC C Arkle then addressed the Sub Committee. WYP objected to the application as Turtle Bay was located within the City CIP Red Zone, highlighting the presumption that applications for new and variations to existing premises licences would not be granted unless the application was exceptional. There had been an increase in alcohol related crime and disorder in the Albion Street area. The application sought to increase the hours for provision of licensable activities – along the same lines as the hours sought and refused in June 2015.

Turning to WYP supplementary information, PC Arkle directed attention to the crime statistics provided and explained that the schedule showed the time the crime was recorded; not the time the crime was said to have taken place. The thefts recorded as having occurred at Turtle Bay did for the most part appear to relate to thefts from handbags. WYP had to consider the area it aimed to protect; there had been a 39% increase in crime in that area between 2014/15 and 2015/16 and the applicant's premises did have an impact on these figures. The premises had been visited by WYP and Entertainment Licensing Enforcement 18 months after it started trading, she suggested that when the S19 Closure Notice was issued, the matters found were not therefore "teething problems" and it was poor for a premises trading in the Red Zone not to have an operational radio link.

PC Arkle highlighted one of WYP concerns as being the 2 for 1 cocktail hour offer – she reported that this was in operation at all times the premises was open except for three hours in the evening when food was the main sale (between 19:00 to 22:00 hours). In respect of the Late Night Refreshment, PC Arkle queried how many patrons would sit to eat a full meal after 22:00 hours and suggested that the 2-for-1 cocktail offer was what really drew people to the venue; and that customers staying later each night would only be drinking.

PC Arkle reminded Members that although it was difficult to verify whether or not Turtle Bay had added to the incidents of anti-social behaviour, drunkenness and crime once people had left the premises and moved on; it was the overall cumulative impact in the area which must be considered. There had been an increase in alcohol related crime in the area since September 2015 with the only material change being the grant of the premises licence to Turtle Bay. Whilst WYP did not claim the increase was all due to the applicant's premises, it alleged their presence had had some effect. She posed the question "*how can the grant of an extra hour in the CIP area for alcohol promote the licensing objectives?*" She acknowledged that there would be no new patrons permitted entry after 00:00 midnight, but the amount of alcohol consumed by patrons, particularly in view of the 2-for-1 cocktail offer, must be considered.

In conclusion, PC Arkle stated that although Turtle Bay had shown elements of good practice, it had not shown exceptional reasons to support the grant of the variation application. PC Arkle added that increasing the hours alcohol may be sold at the premises would not be consistent with the objective of promoting the licensing objectives or the City Centre's Cumulative Impact Policy; and the variation application should be refused in its entirety.

The Sub Committee then heard from Seamus Kennedy on behalf of the Licensing Authority who endorsed the comments made by PC Arkle and WYP – the Authority did not look at a premise in isolation, but as part of the whole. The Red Zone had been created for a very good reason; it provided a mechanism to promote a safe drinking environment. The issues associated with Turtle Bay were not of considerable concern in themselves; however it was important to impress the effect of cumulative impact. Mr Kennedy referred to the 39% increase in recorded violent crime at the Albion Street/Woodhouse Lane Red zone in the last year. Although not all of this was associated with Turtle Bay, this was high footfall area, on a main arterial route with a direct link to the Universities. People frequented and remained in the area until the small hours and he added that Mr Lyons could not guarantee that patrons would drift away naturally from the area. He noted that Mr Lyons' presentation focussed on the day to day running of the premises, which he acknowledged was relevant, but was not the whole story.

In conclusion, Mr Kennedy directed Members to Councils own Statement of Licensing Policy and asked them to consider the impact of the grant of the application on the licensing objectives and to reject the application as it was not exceptional as required by the policy.

During further discussions with Members, the following information was provided:

- WYP acknowledged there was not a high volume of crime associated with Turtle Bay, but that the premises were associated with crime
- Mr Lyons reiterated his belief that the variation application was “exceptional”; any issues in the report of Licensing Enforcement of assault and drunkenness happened at a low level
- Turtle Bay had held 18 TEN events to the hours now sought in the variation application, without a negative impact on the licensing objectives, including the 3 weekends prior to Christmas 2016
- Mr Lyons stated his believed that the CIP was not intended to capture this type of premises.

The Sub Committee carefully considered the application, the written representations and the submissions from all parties at the hearing. Members also had regard to the Section 182 Guidance, the Councils' own Statement of Licensing Policy and the Cumulative Impact Policy, noting that the premises was located within the CIP Red Zone (City Centre). This created, as detailed in paragraph 7.21 of the Councils' Statement of Licensing Policy 2014-2018, a rebuttable presumption against the granting of variation applications of this type.

The Sub Committee did not feel that the applicant had rebutted the aforementioned presumption and/or satisfied Members that granting the variation application would not impact on the cumulative impact of existing licensed premises in the area. It was

not believed that the application could be modified or varied or conditions could be added which the Sub-Committee felt would render it appropriate and proportionate for the promotion of the licensing objectives to grant the application in whole or in part. The Sub Committee therefore

RESOLVED – That the application be refused.