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Supplementary Information for Licensing Sub Committee – 10th November 2015

Agenda Item 6 – Black Swan Application for grant of a premises licence, 37 Call Lane, Leeds

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WITNESS STATEMENT

Name: [REDACTED]

Occupation: [REDACTED]

Dated: 02 November 2015

My name is [REDACTED] and I am a Director of [REDACTED]. I make this statement in support of the application made by the company for a new premises licence for Black Swan, 37 Lane, Leeds LS1 7BT; and in response to the representations received against this.

Whilst we acknowledge that this proposed site is located in the Red Zone of Leeds City Council's Cumulative Impact area, I am confident that the grant of this application will not add to the impact experienced in the area. It is my intention to present the committee with compelling evidence to support this statement. This is based on our style of operation and management and the comprehensive conditions in the proposed operating schedule. As such, we would submit that the authority would be justified in departing from the Cumulative Impact Policy in light of the individual circumstances of this case, given that this is an exceptional application.

The Application

The style of operation and proposed conditions are set out in the most part in the Risk Assessment Statement (attached) that was submitted with the application for a new premises licence. However, it is worth highlighting the key elements of what is proposed.

The premises currently has the benefit of a licence (no. PREM/01576/009). This is an historic licence, having initially been granted in this format in 2005 and clearly including conditions which are remnants of previous licensing regimes. As such, given the proposed changes to hours, we felt that it was sensible to use this as an opportunity to overhaul the licence and ensure that it is truly fit for purpose. It has always been the intention that the current licence would be surrendered on the grant of this new licence application.

Importantly, the current licence provides for a total maximum capacity of 450 persons (see condition 34). We have proposed in the operating schedule attached to the licence that the maximum capacity for the premises will be a total of 375. This inevitably reduces the potential impact of the premises.

Furthermore, it is notable that the general capacity of Call Lane for customers frequenting licensed premises has reduced of late. I am aware that Revolucion de Cuba Limited have recently taken on the premises at 174-178 Briggate, on the corner of Call Lane. This premises was previously occupied by two separate operations, trading as Baracoa on the ground and first floor and Phono in the basement. Revolucion de Cuba have taken on each of these premises, but will use the basement area for back of house only. As such, there is effectively one less premises in the Cumulative Impact Area. Therefore, despite the fact that customers may be dispersing later (should this application be granted), there will be less of them doing so both from the premises, and in this area in general. Thus, any potential cumulative impact is reduced.

Additionally, it is clear that not all of Black Swan's customers would be dispersing at the proposed hours for cessation of licensable activities of 03:00 Sunday to Thursday or 04:00 Friday to Saturday. We have suggested extensive, and clearly exceptional, dispersal provisions which ensure that customers leave in a very gradual way. This can only have a positive effect on any problems caused in the cumulative impact area. As detailed in the risk assessment document, the upstairs area will be closed at 02:00. In respect of the downstairs area, there will be a last entry time of 02:00 Sunday – Thursday and 03:00 Friday – Saturday. This combined with the dispersal time provided by the additional half hour opening makes for what we have submitted to be a truly exceptional dispersal arrangement. We have also highlighted that the extended hours would discourage migration and result in customers dwelling in Black Swan until they are naturally ready to go home, rather than meaning that there is an exodus at 02:00. As such, I would suggest that the grant of this application may assist in addressing problems of cumulative impact in the area.

We have voluntarily proposed further restrictive conditions which we believe ensure that the grant of later hours will not add to cumulative impact. Indeed, when taken in comparison with the licence that is currently in place, it is clear that the proposed licence would be much more effective in ensuring that the licensing objectives are upheld.

The licence will require door staff to be employed throughout the week. Currently, there is no obligation to employ door staff at all.

The licence will require the sale of alcohol to be ancillary to food in the upstairs area after 18:00 daily. This is not required by the current licence, and in fact this arguably takes the upstairs area outside the scope of the Cumulative Impact Policy altogether. We consider this to be a significant concession, again a factor which makes this application exceptional. Indeed, Leeds City Council's Statement of Licensing Policy ('the Policy') states, at 7.18, that 'a previous problem area can be improved by the introduction of new styles of business types, such as food led premises'. This premises was, and will remain, food led in any case, but now a significant proportion of it will require that the sale of alcohol is ancillary to food. As a further indication that the premises is food led; food will be available, in the form of pizzas, until 03:30 on a Friday and Saturday. There is no requirement on the licence currently that food is available at any time.

We have suggested the imposition of an arrangement with a private hire taxi company to assist with dispersal. Again, there is no mention of this on the current licence.

The CCTV conditions attached to the current licence have been significantly improved by those proposed in the new application and extensive public nuisance conditions have been added.

The proposed licence is much more restrictive, much clearer and contains conditions that are eminently more enforceable than those included in the current licence. This ensures that there will be no contribution to cumulative impact caused by the grant of extended hours.

Representations

However, despite the extensive conditions offered, we appreciate that there is a perceived need for representations to be submitted because the premises is located in the Red Area. I appreciate the concerns raised in the course of the representations submitted, but I believe that we can address each of them.

West Yorkshire Police

Firstly, I would like to emphasise that the incidents of crime and disorder referred to in the initial representation were included in error, as has since been confirmed by WYP. Therefore,

it is clear that there are no specific incidents of crime and disorder associated with the premises. I believe that this is as a result of the style of operation and type of clientele, as outlined in the Risk Assessment Statement. I would emphasise that by virtue of the significant food offering, Black Swan is very different from the vast majority of the nearby licensed premises listed in this representation.

██████████ refers to the fact that the peak time for assaults in the Call Lane area is between midnight and 05:00, and the peak time for robberies is between 23:00 and 03:00. She states that the hours of operation applied for fall within these peak times. However, it must be highlighted that the current licence for the premises has hours which fall within these peak times, but, as outlined above, with much less restrictive conditions. Furthermore, as also mentioned above, dispersal at these peak times currently is not as gradual as it could be.

We would submit that the grant of this licence would ease any contribution that the premises currently makes to the problems described in ██████████ representation.

██████████ makes reference to the fact that the TENs utilised at the premises are not covered by the Cumulative Impact Policy. However, this fact would not prohibit West Yorkshire Police from objecting to TENs or making contact with us if our extended hours have caused problems. They have not done so, which patently indicates that no additional impact has been felt. Indeed, I believe that we have a strong and constructive working relationship with West Yorkshire Police, and that we are not a problematic premises for them. By way of example, I understand that our door-staff are the only staff who attend unofficial briefings held by the Police on a Friday and Saturday night at the top of Call Lane.

Finally, ██████████ refers to her knowledge of local residents complaining of noise caused in this area. It is interesting to note that there are no residential representations.

Licensing Authority

In his representation, ██████████ refers to the Policy's rebuttable presumption that applications will be refused unless the applicant can demonstrate that their application would not impact upon the cumulative effect of licensed premises in the area. I am confident that the extensive conditions that we have proposed do in fact demonstrate this. We have advised the Council of many reasons why this application is an exceptional case.

██████████ refers to factors which the licensing authority consider as indicative of the fact that no impact will be caused by the grant of an application. One of these factors is the inclusion of conditions which ensure that the premises will operate in a particular manner to secure a food led operation. I refer again to the proposal that the upstairs part of the premises will require that the sale of alcohol is ancillary to food after 18:00 daily. I refer also to the multitude of seating at our premises and the varied and extensive food menus offered (examples of which were submitted with the application).

Whilst I accept that these factors alone do not meet the standard of rebuttal, it is worth highlighting the fact that this premises is well managed and run by experienced and responsible operators.

Environmental Health

The representation submitted by ██████████ refers to the potential for noise disturbance associated with the premises should this application be granted. He also refers to the possibility that the grant of this application would 'set a precedent'. We would submit that this is not a relevant concern. Each application must be considered on its merits, and, as is clearly stated in the policy, only exceptional applications shall be granted. Any new applicant would therefore have to go to the great lengths that we have to prove that they are exceptional.

In respect of noise disturbance, there is scant evidence of anything which specifically relates to our premises. ██████████ refers to noise complaints received 'over the years'. We have been in the premises since October 2014. Even prior to that, the number of complaints received from the location of the premises were relatively few, even none in 2013 which explains its omission from the table appended to the representation. In the time that we have operated the premises, only 1 noise complaint has been received. This was due to sound escaping from an exit door left open due to the failure of a magnetic lock. This was a one off incident, and is clearly not indicative in any way of how the premises usually operates and interacts.

██████████ further refers to the presence of residents in the Call Lane area, and the complaints received regarding public nuisance. Once again, it is most notable that no residents have submitted a representation. ██████████ refers to the fact that it is often difficult for residents to identify the problematic premises where noise is an ongoing issue. If

this were the case however, you would expect residents to be extremely active in relation to any application whatsoever submitted in respect of nearby premises that might have an effect upon them. Evidently, that is not the case here.

I am convinced that if this application is granted there will be no discernible addition to the existing levels of activity in the vicinity and therefore no prejudice to the prevention of public nuisance licensing objective.

In fact with the more gradual dispersal of our patrons coupled with the reduction in numbers generally on Call Lane, I would suggest that this proposal positively improves the position.

Indeed, far from there being demonstrable ill-feeling towards this application from the people of Leeds, it is clear that many people would support and welcome the grant of this application.

Conclusion

As a result of the various conditions proposed, and the premises that we operate, I would encourage the Committee to grant this application. This is clearly justified in light of the exceptional circumstances outlined throughout the application and this statement.

I would emphasise that the Policy states, at 7.8, that 'a cumulative impact policy should not be absolute'. As such, discretion must be employed to permit the grant of applications which are exceptional and which therefore demonstrate a clear commitment to adhering to the requirements of the Policy.

As detailed, the conditions which would be attached to this licence if granted, are significantly more onerous than those attached to the current licence that is in existence for this premises. Whilst on the face of it, given the increase in hours, this application contradicts the provisions of the cumulative impact policy, we submit that the licence applied for is eminently preferable to that which is currently in place. I am hopeful that an in depth consideration of the application by the Committee will confirm to you that this is the case.

Black Swan, Call Lane, Leeds – Variation Application

Risk Assessment Statement

Style of Operation

Black Swan is a quintessential English pub, and very much a food led premises. It has been trading as such since 28th October 2014. The premises is owned and run by responsible and knowledgeable operators with vast experience of running premises both in Leeds and further afield.

The food offering is split over two floors; with homemade sourdough pizzas served on the ground floor and a full restaurant menu inspired by fine British food served on the first floor. Example menus are included with this application.

As well as this, Black Swan is proud of its high quality, premium priced drinks offering, and wants its customers to be able to enjoy drinks at the premises both before and after eating. Furthermore, the premises is happy for customers to attend for the purposes of drinking only, in the hope that they will be encourage to order pizzas, or be enticed to return to the premises in the future for a full meal.

Drinks are an important part of the offering, but food is the focus, with dedicated food and drink pairing events held on a regular basis. Certainly, this is not a vertical drinking venue and does not bring with it the associated problems with anti-social behaviour and crime and disorder. The premises provides extensive seating on both floors, and it is the consistent experience that customers who are drinking would always rather take a table and sit to enjoy the sophisticated and wide ranging offering.

Clientele

Being a food led pub premises as outlined above, the clientele is naturally more mature than those of other premises in the vicinity. The customers of Black Swan will attend the premises in small groups for food, drinks and to meet friends. They do not attend in large groups for extensive vertical drinking. The clientele are largely professionals; the premises does not attract students or other kinds of customers who cause the sorts of problems associated with the late night economy.

As such, the applicant is confident that the premises, by operating to later hours, simply does not have the propensity to contribute to the cumulative impact in the Call Lane area. It has traded successfully for 12 months without giving rise to problems in terms of crime and disorder or anti-social behaviour.

However, the applicant of course appreciates that the premises is situated in the ‘red zone’ of the Leeds City Centre Cumulative Impact Area. We believe that the measures outlined below, combined with the nature of the premises, demonstrate the exceptional nature of this application, and are sufficient to justify the grant of this extension.

Capacity

The premises is currently subject to a maximum capacity of 450 (as per condition 34 of the current premises licence).

Should the extended hours applied for be granted, the applicant would be willing to reduce this maximum to a total of 375 persons excluding staff. Naturally a reduction in the number of people who can be catered for at the premises, and therefore a reduction in the number who will be dispersing will have the effect of reducing any cumulative impact.

Furthermore, the premises currently has seated capacity for over half of that revised maximum occupancy number, emphasising that this is not a vertical drinking venue. Again, should the application be granted, the applicant would be willing to agree to the insertion of a condition providing that there must be a minimum of 175 seats provided on the premises at all times (with the exception of private hire events).

Dispersal

Additionally, the premises will implement a detailed dispersal strategy, which will provide for managed gradual dispersal, lessening the impact on the area at any one time. Dispersal is presently managed by SIA registered door staff, despite the fact that there is no obligation on the licence for this to occur. The applicant would be happy to add a condition requiring a minimum of one SIA registered door supervisor to be employed at the premises from 21:00 until close Sunday to Thursday and two SIA registered door supervisors to be employed at the premises from 21:00 until close Friday and Saturday.

An amended dispersal policy is attached, and the additional conditions detailed below will be offered.

The first floor area will be accessible only to parties including diners (although individuals who are solely drinking but accompanying diners will be permitted) from 18:00 onwards. This area will then be closed at 02:00.

However, the ground floor will remain open, meaning that the number of customers dispersing at 02:00 will be less than is the case currently. Some customers from the first floor may move onto the ground floor, but the majority will disperse given that, as outlined above, the attraction of Black Swan is the availability of seating. If the seats are occupied, not many customers will remain to stand drinking. If the seats are unoccupied, then of course the premises would not have a problem with any remaining diners relocating to the ground floor.

In addition, given that all customers dispersing from the first floor will have been dining, the dispersal will naturally be very gradual as customers will leave when they have finished their meals.

The ground floor area will then be permitted to carry on the sale of alcohol and provision of regulated entertainment until 03:00 Sunday to Thursday and until 04:00 Friday to Saturday, with an additional half an hour provided for dispersal and late night refreshment.

Furthermore, there will be a last entry time (with the exception of returning smokers) of 02:00 Sunday to Thursday and 03:00 Friday to Saturday. This will provide for a full hour and 30 minutes of dispersal, just for the ground floor area of the premises, again meaning that dispersal will be very gradual. Taking into account the closing of the first floor at 02:00, this will mean that dispersal is effectively taking place over a period of an hour and 30 minutes Sunday – Thursday and two hours and 30 minutes Friday – Saturday. We would submit that this is truly exceptional.

We would further submit that such gradual dispersal will actually lessen the cumulative impact in the area. Currently, customers disperse from both floors at 02:00. This means that a large number of customers are directed onto Call Lane at once at a sensitive time, when police officers are changing shifts. Furthermore, these customers may not leave the Call Lane area, but rather migrate to other premises that are still open.

As such, we are confident that it would be preferable for Black Swan's customers to remain in the relaxed, seated environment of the premises, until such a time as they naturally decide to end their night and leave the area. Providing extended opening hours gives these customers that option.

Furthermore, the premises will come to an arrangement with a private hire taxi company who will operate a ring back service. Customers will be encouraged to wait inside for their taxis, and indeed will be provided with ample time in which to do so by virtue of the extended dispersal period.

Late Night Refreshment

The premises will provide pizzas (whole or by the slice) in the ground floor area until 03:30 on Friday – Saturday. Our pizzas are very popular and are always in demand. This late night food offering will differentiate us from the other premises in the area, which are alcohol led. The effect of this will be that our customers will not leave the premises at the end of the night and migrate to late night takeaways. They will be able to enjoy the food offering whilst remaining on the premises and waiting for their taxis.

Temporary Event Notices

We are confident that the extended opening hours will not cause problems in the area not only because of the extensive measures that we have devised, but also because the premises has experience in operating to these hours.

The premises has had the benefit of Temporary Event Notices permitting licensable activities until 04:00 plus 30 minutes dispersal on the following dates this year:

- 23 – 25 January
- 30 January – 1 February
- 6 – 8 February
- 12 – 14 February
- 20 – 22 February
- 27 February – 1 March
- 2 – 3 April
- 5 – 6 April
- 3 – 4 May

No representations were submitted in respect of these TENs, and no complaints were received or issues raised by any responsible authority following these dates. As such, the premises can clearly trade to these hours without adding to the cumulative impact, which again demonstrates the exceptional nature of this application.