



Chief Executive's Department
Governance Services
4th Floor West
Civic Hall
Leeds LS1 1UR

Contact: Hannah Bailey
Tel: 0113 247 4326
Fax: 0113 395 1599
Email: hannah.bailey@leeds.gov.uk
Your reference:
Our reference:A61/hb/wetherspoons

7th July 2006

APPLICATION FOR THE GRANT OF A PREMISES LICENCE AT WETHERSPOONS (FORMALLY COCOON BAR), 99 PORTLAND CRESCENT, LEEDS, LS1 3HJ

On 19th June 2006 the Licensing Sub Committee heard an application by J D Wetherspoon Plc, Wetherspoon House, Reeds Crescent, Watford, WD24 4QL for the grant of a premises licence for the above premises.

The applicant sought the following:

Films, live music, recorded music, performances of dance, anything of a similar description, provision of facilities for making music, provision of facilities for dancing, provision of facilities for entertainment of a similar description:

Monday to Wednesday	11:00 hours until 01:00 hours
Thursday to Saturday	11:00 hours until 02:00 hours
Sunday	12:00 hours until 00:30 hours

Supply of alcohol (for consumption on and off the premises:)

Monday to Wednesday	09:00 hours until 01:00 hours
Thursday to Saturday	09:00 hours until 02:00 hours
Sunday	09:00 hours until 00:30 hours

Late night refreshment:

Monday to Wednesday	23:00 hours until 01:00 hours
Thursday to Saturday	23:00 hours until 02:00 hours
Sunday	23:00 hours until 00:30 hours

The applicant proposed to open the premises to the public during the following times should the application be granted:

Monday to Wednesday	07:00 hours until 01:30 hours
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final

Thursday to Saturday

07:00 hours until 02:30 hours

Sunday

07:00 hours until 01:00 hours

This letter represents the formal decision of the Sub Committee in respect of the application.

Preliminary Procedural Issues

The Sub Committee considered preliminary matters of a purely procedural nature. There were no declarations of interest made.

The Sub Committee then decided that the procedure for the hearing would not be varied. The Sub Committee also considered if the public should be excluded from any parts of the hearing.

The Sub Committee decided to exclude the public from that part of the hearing where Members would deliberate on the application as presented. This would allow them to have a full and frank discussion on all matters put before them and this fact outweighed the public interest in not doing so.

Prior to the hearing the Sub Committee had considered the Licensing Officers Report and the written representations received from West Yorkshire Police, LCC Environmental Health , LCC Health and Safety Team and local residents (as detailed at Appendix A.)

The Sub Committee permitted each party 10 minutes in which to make their case. This time limit was imposed having regard to the relevant Regulations and in the interests of consistency and the efficiency of business.

The Sub Committee then went on to consider the application.

The Hearing

The Sub Committee considered the verbal submissions of the applicant's barrister, Mr Beckett, which addressed the application and the comments of the interested parties.

In determining the application the Sub Committee took into account written submissions from the above responsible authorities contained within the report and the Notices of Hearing. These had been circulated to the Parties prior to the hearing.

After considering the evidence and submissions the Sub Committee needed to satisfy itself that granting the licence would promote the licensing objectives.

In reaching this decision the Sub Committee had regard to the provisions of the Licensing Act 2003, guidance under Section 182 of that Act and the Council's own Licensing Policy.

In particular the Sub Committee took into account Sections 34 & 35 of the Act because these were the most relevant to the application and Chapter 7 of the Guidance relating to the prevention of crime and disorder, public nuisance and public safety

The Sub Committee noted that the premises lay within the Cumulative Impact Policy area of Leeds City Centre.

The Sub Committee then went on to consider the following paragraphs of the Licensing Policy as the Sub Committee took the view these paragraphs had bearing on the application.

final

11:05 to 11:10 Crime & Disorder

11:11 to 11:22 Public Safety

11:23 to 11:28 Public Nuisance

06:31 to 06:39 Cumulative impact of a concentration of Licensed Premises

Reasons for the decision

The following interested parties attended the hearing:

Mr R Halliwell, Environmental Health

Mr R Beckett, applicant's barrister

Mr C Webber, applicant

Mr A Broome, applicant

Mr M Pickersgill, local resident

Dr D Hayden, local resident

Miss S Perry, local resident

The Sub Committee noted that the following agreement had been reached between the applicant and West Yorkshire Police regarding their suggested conditions:

- The Designated Premises Supervisor will risk assess the requirement for door supervisors at the premises in conjunction with West Yorkshire Police and employ such supervisors in such numbers and at such times as deemed necessary by the risk assessment;
- Participate in the Nitenet radio scheme or other such scheme as might be in place in accordance with guidance issued by West Yorkshire Police and the service provider's instructions;
- To restrict opening hours upon reasonable request from West Yorkshire Police on certain problematic Leeds United match days.

These conditions would be included in the applicant's Operating Schedule, and eventually the licence, should the application be granted.

The Sub Committee noted that the following agreement had been reached between the applicant and LCC Health and Safety Team regarding their suggested conditions:

- The premises will be constructed and will operate in accordance with all health and safety related legislation in order to ensure the safety of customers and staff and in addition the premises licence holder will use all reasonable endeavours to ensure that its own in-house health and safety policies and procedures will be followed.

This condition would be included in the applicant's Operating Schedule, and eventually the licence, should the application be granted.

The Sub Committee considered the verbal submissions made by Roger Halliwell in support of the full objection made by Environmental Health to the application. Mr Halliwell began by stating that the premises had been occupied by various operators since 2004. However the fabric of the building was acoustically weak and did not contain noise sufficiently. This problem was exacerbated due to the presence of residential flats above the premises. From mid July 2004 there had been a number of complaints from the residents of Broderick Court to Environmental Health services regarding noise levels. This had culminated in

final

Environmental Health Officers issuing the owner at that time with a Statutory Notice for causing noise nuisance.

Following implementation of the Licensing Act 2003, the premises had applied for a conversion only, Mr Halliwell continued, so Environmental Health services had not been entitled to raise objection. However an out-of-hours visit by an Environmental Health Officer in November 2005 to a third floor flat at Broderick Court had recorded clearly audible bass levels in the residential property. Shortly after this time the premises occupant had gone into liquidation, leaving the property vacant and without a licence.

Environmental Health Officers had serious concerns that should a new application be granted at the premises, particularly until 02:00 am, that considerable disturbance would be caused to residents within the building. The Sub Committee heard that the applicant had suggested four conditions be attached to the licence to address the issue of noise nuisance. These conditions stipulated that a full acoustic survey report should take place before any entertainment be permitted at the premises; that if this survey identified unreasonable noise disturbance an acceptable noise insulation / limiting scheme be submitted in writing to Leeds City Council; that any subsequent noise limiting works to the building be completed to the satisfaction of the Environmental Health division; and that no regulated entertainment take place at the premises until the three aforementioned conditions had been fully complied with to the satisfaction of Environmental Health Officers.

Although negotiations with the applicant regarding these four suggested conditions had taken place, there was still concern over the late hours applied for and Mr Halliwell concluded by urging the Sub Committee to take all these factors into account when considering the application.

The Sub Committee went on to consider the verbal submissions made by Miss S Perry, on behalf of local residents. Miss Perry opened her representations by stating that in her opinion the premises were unsuitable for use as a licensed establishment due to their location. Residents were of the view that there was already a surplus of bars within the Cumulative Impact Policy area.

Miss Perry questioned whether 02:00 am was an appropriate closing time, particularly due to the lack of adequate sound-proofing at the premises as evidenced by the problems experienced with past operators. Residents were also concerned about potential noise nuisance caused by patrons using the outdoor veranda area and urged the Sub Committee to place a curfew on the use of this area, should the application be granted. The dispersal of large numbers of patrons at the end of an evening also worried residents, as excessive noise from taxi operators was already a problem until the early hours of the morning at present, and would be worsened should the application be granted.

Miss Perry went on to inform the Sub Committee that two separate operators had failed to make a success of a bar in these premises. Residents recognised that the building was in a prime location and were not averse to some sort of establishment opening in the premises, but it was felt it would be more suited to a restaurant or family-friendly café, Miss Perry concluded.

Finally the Sub Committee went on to consider the submissions of Mr Beckett, the applicant's barrister, in support of the application. Mr Beckett began by stating that the Wetherspoons company were aware of the history of the premises and were wholly supportive of local residents' claims. The company were willing to work alongside local residents as it was recognised that noise nuisance was not in the interests of either party.

final

The sound-proofing scheme put in place when the building was constructed in early 2000 was clearly inadequate and this needed to be addressed in conjunction with Environmental Health Officers, Mr Beckett continued. The Wetherspoons company had earmarked £200,000 for works to the premises should the application be granted. However, Mr Beckett stressed that the venture needed to be commercially viable for the company and it was for this reason that longer opening hours had been applied for.

The premises, with the large veranda area, were very desirable from the company's point of view. Mr Beckett acknowledged that the premises were located within Area 1 of the Cumulative Impact Policy area. However Mr Beckett informed the Sub Committee that the premises would retail as a Lloyds Bar. This brand, he continued, had a greater emphasis on food sales, quoted to be around 50% food to 50% alcohol, which would be served until the terminal hour for alcohol sales. The levels of seating to be provided at the premises, 220 seats in total, also reflected the trend for food as well as alcohol that characterised the Lloyds Bar brand. It was for these reasons, Mr Beckett argued, the premises did not fall into the category of 'high capacity vertical drinking establishment.'

Mr Beckett went on to draw the Sub Committee's attention to the agreements already made with West Yorkshire Police and LCC Health and Safety Team. Mr Beckett stated that the company were happy to be bound by these conditions which illustrated their responsible attitude to retailing. If a solution could be found which allowed the company to provide entertainment that was to the agreement of both Environmental Health Officers and residents, then Wetherspoons would be prepared to invest in this in order to take the project further.

Following the submissions of the applicant's barrister, the Sub Committee asked a number of questions of the applicant's Business Manager about the planned day-to-day operation of the premises. Mr Broome explained that although the focus of Lloyds Bar was not on music, it was likely that the level of any background music would be increased in the evenings. Whilst there was no company-wide policy regarding a 'cooling down' period at the end of the night, it was at Manager's discretion to implement such a scheme. Mr Broome went on to inform the Sub Committee that as the establishment would be non-smoking, it was likely to attract a lot of family trade earlier on in the day. In terms of litter around the premises, Members heard that there were daily checks for staff to perform, and that appearances 'front of house' would ultimately reflect upon Managers' pay. Mr Broome concluded that it would be no problem to provide a taxi ring back system, as this was currently provided at a number of Lloyds Bars, and front of house staff would manage the swift dispersal of patrons at the end of the evening.

The decision

The Sub Committee considered the implications of the premises' location within the Cumulative Impact Policy area. However, Members were persuaded by the applicant's submissions that the establishment did not fall into the category of a vertical drinking establishment due to the number of seats provided and the premises emphasis on food sales.

The Sub Committee were largely persuaded by the applicants submissions that granting the application would not undermine the promotion of the four licensing objectives as evidenced by the agreements reached with West Yorkshire Police, LCC Health and Safety Team and the assurances given by the applicant in respect of the conditions suggested by LCC Environmental Health.

final

However, the Sub Committee did have regard to the representations made on behalf of local residents. Given their submissions in relation to noise nuisance, the Sub Committee resolved to amend the hours allowed for licensable activities, as detailed below:

Films, live music, recorded music, performances of dance, anything of a similar description, provision of facilities for making music, provision of facilities for dancing, provision of facilities for entertainment of a similar description and supply of alcohol (for consumption on and off the premises):

Monday to Wednesday	11:00 hours until 00:00 hours
Thursday to Saturday	11:00 hours until 01:00 hours
Sunday	12:00 hours until 23:00 hours

Late night refreshment:

Monday to Wednesday	23:00 hours until 00:00 hours
Thursday to Saturday	23:00 hours until 01:00 hours
Sunday	23:00 hours until 23:00 hours

The premises would therefore be open to the public during the following times:

Monday to Wednesday	07:00 hours until 00:30 hours
Thursday to Saturday	07:00 hours until 01:30 hours
Sunday	07:00 hours until 23:30 hours

The Sub Committee felt this amendment to be reasonable and proportionate given the number of residential properties that were contained in the same building as the premises and the fact that the building was acoustically weak.

The Sub Committee also felt that the points raised by Officers were valid and recommended that the applicant work with Environmental Health Officers to ensure the premises did not cause noise nuisance to residents in the building. The Sub Committee therefore imposed a number of conditions relating to the prevention of noise nuisance, some of which had been suggested by Environmental Health.

The licence was granted subject to the premises being insulated against the transmission of noise to adjoining premises to the satisfaction of the Environmental Health department. Although the premises licence as amended was granted, it would not become effective until the Environmental Health department confirm to the Licensing department in writing that these measures have been taken and completed to their satisfaction.

Conditions

- No regulated entertainment shall be provided until a full acoustic survey report setting out the impact of noise emanating from the premises during proposed entertainment events upon neighbouring premises has been carried out by an acoustic consultant or competent person and submitted in writing to Leeds City Council's Environmental Health Division;
- The acoustic assessment / survey report shall determine the impact of sound breakout and if unreasonable noise disturbance is likely to be caused to neighbouring premises, an acceptable scheme of noise insulation and / or measures to limit the level of noise at source such as noise limiters / noise cut off devices shall be designed by a suitable

final

acoustic specialist and submitted in writing to Leeds City Council's Environmental Health Division;

- Any agreed noise insulation that may include noise limitation, shall be installed to the satisfaction of Leeds City Council's Environmental Health Division and shall not be altered without prior approval and if a noise limiter / regulatory device is required it shall be operated and maintained to an agreed noise level;
- The provision of regulated entertainment included in any Premises Licence granted shall be of no effect until any works and / or measures identified in 1a, b and c have been completed / implemented to the satisfaction of Leeds City Council's Environmental Health Division;
- That seating capacity at the premises remain at a minimum of 220 seats;
- That recorded music be reduced to background levels during the last hour of trading;
- That the veranda area not be utilised by patrons after 23:00 hours;
- That the premises operate a taxi ring back system for the benefit of patrons.

There is a right of appeal to the Magistrates Court should you be dissatisfied with the decision made by the Sub Committee. You must make this appeal within 21 days of this letter reaching you.

Appeals should be addressed to the Magistrates Court at:
Clerk to the Justices
Leeds Magistrates Court
Westgate
Leeds
LS1 3JP

and accompanied by a copy of this decision letter and the court fee of £75.00.

Yours faithfully,

Hannah Bailey
Clerk to the Licensing Sub Committee

Appendix A

A Lucas
J D Hayden
S Perry
M Pickersgill
C Roebuck