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LICENSING PANEL

Friday, 12 February 2021

Present: Councillors A Hodson
K Greaney
D Mitchell

5 APPOINTMENT OF CHAIR

Resolved – That Councillor A Hodson be appointed Chair for this meeting.

6 MEMBERS' CODE OF CONDUCT - DECLARATIONS OF INTEREST

Members of the Panel were asked to declare any disclosable pecuniary and non pecuniary interests, in connection with any application on the agenda and state the nature of the interest.

No such declarations were made.

7 APPLICATION FOR A PREMISES LICENCE UNDER THE PROVISIONS OF THE LICENSING ACT 2003 - LATERAL, 83 BANKS ROAD, WEST KIRBY

The Legal Advisor to the Licensing Panel announced that this meeting was being held virtually, was being webcast and a record would be retained.

The Director of Law and Governance reported upon an application that had been received from Lateral Wylde Limited for a Premises Licence in respect of Lateral, 83 Banks Road, West Kirby.

It was reported that the premises do not currently have a Premises Licence. The hours applied for were set out within the report.

The applicant had submitted an operating schedule setting out how the business would be conducted/managed in accordance with the four licensing objectives. A copy of the full application was available. Members were advised that the proposals set out in the operating schedule may become conditions of the licence should the application be granted. It was reported that following discussions with Merseyside Police, the applicant had agreed to include two conditions on the Premises Licence, one relating to CCTV and the other relating to the requirement for customers to provide proof of identity as stated within the report.

In respect of the application 16 representations had been received from local residents who were objecting to the application. The representations related to antisocial behaviour and concerns of noise nuisance from entertainment coming from the premises and nuisance being caused by customers both inside the premises and within the vicinity of the premises.

Two representations had also been received from local residents who were in support of the application as they considered that the granting of the application would not undermine the Licensing Objectives.

Representations had also been received from Local Councillors Tony Cox, Alison Wright and Jeff Green who supported the representations submitted by local residents who were against the application. Copies of all representations were available.

The applicant attended the meeting by way of video conference.

Ward Councillor, Councillor Wright also attended the meeting by way of video conference as well as six local residents and a legal representative of a number of local residents.

The Licensing Manager confirmed that all documentation had been sent and received including documents which had been submitted by the applicant and local residents and which had been served on all parties. Ward Councillor Jeff Green had also submitted a written statement which would subsequently be read out during the hearing.

The Licensing Manager outlined the report.

The applicant advised that they had submitted a broad application in order to provide future flexibility and avoid the use of Temporary Event Notices. The applicant advised the Panel that they considered the residents to have taken the business model intended out of context. They outlined the way in which they would operate the premises and explained that it would be a bistro with table service where the serving of alcohol would be restricted to the evening time and would be accompanied by food. The applicant informed the Panel that it would not be a vertical drinking establishment.

The applicant outlined details of the business model for the premises which included the serving of plant based food and Scandinavian cuisine. They advised that the premises would be run as a coffee shop during the day up until 5.00 pm during which time alcohol would not be served and that table service would be provided after this time with a menu and accompanying drinks for approximately 30 covers. They informed Members that there would be experienced staff working at the premises who would be trained to a high standard. A chef would also be employed to develop the food offer for the

business and the overall offer of the business would be based on quality and not quantity.

The applicant stated that they recognised that noise could escape to accommodation above the premises and in seeking to remedy this they had commissioned an acoustic consultant to prepare an Environmental Noise Impact Report which had been provided to Members in advance of the hearing. The applicant made particular reference to page 106, Section 5 of the report. In response to questions, the applicant advised that they would be willing to comply with the recommendations of the report in respect of the installation of mineral wool insulation within the void.

In response to concerns regarding the transmission of noise from live music, the applicant gave an undertaking that no live music would be played at the premises, also that they would be willing to implement a limit on the level of recorded music through an 'App' that would be linked to the speaker which would be strictly managed to play background music only. It was explained that there would be no wall mounted speakers in the premises in order to reduce the transmission of noise.

The applicant responded to questions from Members of the Licensing Panel, Councillor Alison Wright, Mr D K Abraham, Legal Advisor to the Panel and the representative of some local residents as well as the local residents in attendance.

In response to questions raised, the applicant advised that they would be willing to work together with local residents to mitigate concerns and would arrange for bottles not to be disposed of between the hours of 7.00 pm and 9.00 am and make arrangements with a view to waste disposal and deliveries also taking place during a reasonable time of the day. They would also seek to limit the number of people wishing to smoke outside to four at any one time and any seating placed outside during the day would be removed in the evening. The applicant also stated that they intended to implement a Challenge 21 Policy but would be willing to change this to a Challenge 25 Policy.

The applicant informed the Panel that they currently run a successful coffee shop in Heswall and that one of the partners, Mr Norton also had experience working in licensed premises. Mr Norton further confirmed that he would be the Designated Premises Supervisor should the application be granted.

Ward Councillor, Alison Wright addressed the Panel and informed Members that the particular concerns were in respect of noise nuisance and the potential for anti-social behaviour caused by customers both inside and outside the premises. Councillor Wright raised concerns in respect of the hours applied for and the impact on the health and wellbeing of the residents who live above the premises.

The Licensing Manager read out a statement from Ward Councillor Jeff Green, who referred to the licensing objective of the prevention of public nuisance and his concerns in respect of the detrimental effects that live music being played at the premises would have on the amenity of local residents, in particular those living directly above the premises.

Councillor Wright responded to questions from Members of the Licensing Panel and Mr D K Abraham.

The legal representative of a number of local residents made reference to the inter relationship between Planning and Licensing and expressed concerns that vertical drinking may occur at the premises. He submitted to the Panel that the applicants were inexperienced in operating a licensed premises and made reference to paragraph 6.4 of the Council's Licensing Policy. It was his view that the intention was to operate the premises as a bar. He made reference to paragraph 6.30 of the Council's Licensing Policy and paragraph 2.16 of the Statutory Guidance which relate to particularly to public nuisance. He made reference to a similar application that had been concluded some years previously and which had resulted in the revocation of the Premises Licence. He stated his concerns in respect of the lack of a dispersal policy. He believed there was a very real risk that the premises would cause a public nuisance. He described the locality of the premises and made reference to the proximity of residential properties and retail establishments which close at 5.00 pm. He also referred to complaints made due to noise disturbance from coffee machines, music and construction work.

In summarising his concerns, the legal representative expressed his disappointment in the lack of communication between the applicant and local residents in respect of this application and felt that this would have assisted. He stated that should the Licensing Panel be minded to grant the application, he believed the hours applied for should be reduced, that there should be no extension of hours on Boxing Day or New Years Eve, appropriate conditions should be attached and that if the premises is run well they could then ask to extend their hours of operation in the future.

In advance of the hearing a report had been submitted by Mr Vivian of Big Sky Acoustics Limited. Mr Vivian addressed the Licensing Panel and advised that he believed it might be possible for the premises to operate during the day time. It was his view that the building was weak acoustically and he believed that a reduction in hours may not be sufficient to mitigate nuisance. He expressed concern that the applicants' acoustic report did not address licensing matters. He confirmed that he had not visited the premises.

A number of local residents addressed the Panel and expressed a number of concerns including noise nuisance that had been experienced when coffee was being prepared at the premises and by recent renovations undertaken,

the potential for nuisance to be caused by people smoking outside the premises and lack of communication from the applicant. A local resident referred to the fact that a further fire assessment should be undertaken.

In response to the representations made, the applicants stated that they would manage the premises responsibly so as not to cause a nuisance to local residents or undermine the licensing objectives. They also emphasised that it would be background music only that would be played predominantly at the premises and they would be content to reduce the hours of operation.

Members of the Licensing Panel had regard to the representations made by all parties.

In coming to their decision, Members took into account that the business would not be operated as originally described in the application and that a number of concessions had been made by the applicant in light of the representations made by the residents and Ward Councillors.

In determining the application Members also had regard to the fact that there were no representations from any of the Responsible Authorities, in particular Merseyside Police, Environmental Health and the Fire Authority and had particular regard to the fact that no evidence was submitted to support the representations that antisocial behaviour may be caused by the operation of the premises.

In determining the application Members of the Licensing Panel had regard to the Licensing Objectives, the Council's Statement of Licensing Policy and the Statutory Guidance issued under Section 182 of the Licensing Act 2003.

Resolved –

(1) That in accordance with Regulation 14(2) of the Licensing Act 2003, the public be excluded from the meeting during consideration of the application.

(2) That the application for a Premises Licence in respect of Lateral, 83 Banks Road, West Kirby be granted with the following hours:

Sale by Retail of Alcohol

Sunday to Saturday 17:00 to 21:30

Hours Open to the Public

Sunday to Saturday 08:30 to 22:00

(3) That in addition to the conditions set out in the operating schedule and the condition relating to CCTV agreed with Merseyside Police, the following conditions be placed on the Premises Licence:

- Appropriate mineral wool insulation material must be installed within the void in the ceiling of the bistro in accordance with the recommendation set out in the Environmental Noise Impact Report.**
- All windows and external doors shall be kept closed after 19:00 except for the immediate access and egress of patrons.**
- The premises must use a noise limiting App linked to a speaker to control the sound of music to a background level.**
- Notices must be prominently displayed at the exit requesting patrons to respect the needs of local residents and to leave the area quietly.**
- There must be no more than four customers permitted to smoke outside the premises at any one time.**
- Deliveries must not take place at the premises between 19:00 and 09:00.**
- Bottles or broken glasses must not be disposed of from the premises between the hours of 19:00 and 09:00 so as not to cause a disturbance to residents in the vicinity of the premises.**
- The premises must produce and operate in accordance with a noise management policy which must include a dispersal policy.**
- All members of staff at the premises must seek credible photographic proof of age from any such person who appears to be under the age of 25 years and who is seeking to purchase alcohol. Such credible evidence, which must include a photograph of the customer, must either be a passport, photographic driving licence or proof of age card carrying a PASS logo. All occasions where persons have been refused must be recorded in writing.**