

# LICENSING ACT SUB COMMITTEE

Friday, 7 July 2023

Present: Councillors A Hodson (Chair)  
G Davies  
R Pitt

## 7 APPOINTMENT OF CHAIR

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

## 8 MEMBERS' CODE OF CONDUCT - DECLARATIONS OF INTEREST

Councillor A Hodson declared a personal interest in the application by virtue of being acquainted with the brother of a local resident who had made a representation and was in attendance at the meeting.

## 9 APPLICATION TO VARY A PREMISES LICENCE UNDER THE PROVISIONS OF THE LICENSING ACT 2003 - LATERAL, 83 BANKS ROAD, WEST KIRBY, CH48 0RA

The Director of Law and Governance reported upon an application that had been received from Lateral Wylde Limited to vary a Premises Licence in respect of Lateral, 83 Banks Road, West Kirby, CH48 0RA.

The hours permitted under the current Premises Licence and the hours applied for the variation of the Premises Licence were set out within the report. The application also included a request to remove the following conditions from the current Premises Licence:

- Along with the Designated Premises Supervisor, two other members of staff must hold a valid personal licence
- An Anti-Drug policy must be implemented and a secure place to store controlled drugs prior to collection must be made available. The Police must be notified of any seizures of controlled drugs. A Drugs Register must be maintained.

It was reported that the applicant had originally requested Live Music from 18:00 until 22:00 seven days a week and Recorded Music from 08:30 until 23:30 seven days a week however these applications had been submitted in error and had subsequently been withdrawn.

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.

Following discussions with Merseyside Police, the applicant had agreed to have a number of conditions placed on the Premises Licence, as set out within the report, should the application be granted.

In respect of the application seven representations had been received from local residents. The representations related to public nuisance being caused to local residents by customers both inside and outside the premises which the residents had advised was currently a problem. The local residents considered that should the application for later hours and 'off' sales of alcohol be granted then public nuisance would be exacerbated.

A representation had also been received from a Ward Councillor, Councillor Tony Cox, who supported the representations received from local residents. Copies of the representations had been provided to Members.

The applicant attended the meeting. Three local residents who had made representations were also in attendance.

The Licensing Manager confirmed that all documentation had been sent and received.

The Licensing Manager outlined the report.

The applicant addressed the Sub-Committee and advised that the premises operated as a café/bistro but that the current hours of operation were not viable for the business to operate successfully, therefore they were currently at a disadvantage compared to other businesses in close proximity and wanted to be brought in line with other businesses. They informed Members of the Sub-Committee that the current hours do not allow for two sittings of an evening and therefore the business has to rely upon the income from customers using the premises predominantly during the day. It was reported that should the application be granted, the business would continue to operate as a café/bistro. Members were advised that the capacity of the premises is 35 customers seated and that they operated a table service after 5.00pm. It was refuted by the applicant that the premises was a vertical drinking establishment and a number of different menus had been provided to illustrate the varied food offer at the premises.

In response to questions, the applicant advised that the premises currently have a Pavement Licence and they intended to serve alcohol to the four tables outside the front of the premises, however they would be content to

reduce the operating time of the outside area to 9.30 pm. The applicant also advised that there could be occasions when there are individuals who may be drinking without having a meal, however the intention was to operate as a café during the day and a bistro during the evening.

Further to questions from the legal advisor to the Sub-Committee, the applicant advised that only four people would be permitted to smoke outside the premises at any one time, a dispersal policy would be implemented, customers would be requested to remain inside the premises whilst they waited for taxis and windows and doors would be kept closed from 7.00 pm which they believed would assist in managing the premises to prevent noise nuisance being caused to local residents.

With reference to the request to remove the conditions as outlined within the report, the applicant advised that the premises had never had any issues or incidents in relation to customers being under the influence of drugs and they therefore believed this condition was unnecessary and no objections had been received from Merseyside Police in respect of this, however a number of further conditions had been agreed with Merseyside Police and that they would be willing to receive any suggestions as to how to negate any nuisance being caused by the premises.

Members of the Sub-Committee were informed that Live Music was played occasionally without any amplification and that during quiz nights the quiz master was amplified on a small karaoke machine.

The local residents in attendance informed Members of the Sub-Committee that their main concern was noise emanating from the premises and nuisance being caused by customers of the premises. A local resident referred to paragraph 15.3 of the Council's Licensing Policy and the expert report provided by a noise consultant which they had submitted. The local residents who lived directly above the premises expressed their concerns in respect of noise nuisance as they were currently disturbed by noise from live music and during quiz nights.

The local residents also expressed concerns in respect of noise emanating from the use of the pavement area at the front of the premises and the tables and chairs causing a hazard.

In response to concerns from local residents that the premises had been operating as a bar, the applicant reported that there had been occasions when the kitchen had been unable to operate and that their food offer would be extended should the application be granted.

The applicant stated that the relationship with the local residents was fractured, however they would be willing to improve communications.

Local residents responded to questions from the applicant, the Members of the Sub-Committee and the legal advisor to the Sub-Committee and referred to conditions they would like to be placed on the Premises Licence should the application be granted.

In determining the application Members of the Licensing Act Sub-Committee 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.

Members of the Sub-Committee had regard to the representations from local residents and the submissions made by the applicant. In considering these representations and submissions the Sub-Committee had particular regard to paragraphs 9.42, 9.43 and 9.44 of the Statutory Guidance. Members also had regard to paragraph 15.3 of the Council's Statement of Licensing Policy and noted the close proximity of residents living above the premises. Having regard to these references Members took into consideration the nature of the premises, the number of customers that could be accommodated in the premises whilst seated and the measures put forward by the applicant to minimise any adverse impact on local residents, including the offer that they were willing to reduce the time applied for when using the outside area.

Members also took into consideration the observations made in the most recent acoustic report which stated that the coffee shop/bistro could operate without causing significant disturbance to residents but that the performance of live music, quiz nights and noise from customers outside of the premises during extended hours could exacerbate the current situation reported to the noise consultant without robust conditions being in place. In considering these comments Members had to have regard to the limitations placed upon them in respect of these two activities, in that the operation of a quiz was not a licensable activity and that amendments to the Licensing Act 2003 made any conditions regarding live music ineffective unless the Premises Licence is brought into review following evidence that the provision of live music was causing a public nuisance.

Members considered that the main objective of the application was to enable the café/bistro to operate 90 minutes later than their current hours and took into consideration that it had been reported that the premises should be able to operate extended hours as a café/bistro without causing significant disturbance to local residents.

Members of the Sub-Committee also took into consideration that there had been no complaints made to any of the Responsible Authorities in particular Environmental Health or Licensing regarding disturbance caused by the operation of the premises. They also noted the additional conditions agreed by the applicant should the application be granted and the willingness of the applicant to improve communication with the residents regarding issues

arising relating to the premises and that they would notify residents when the premises intended to operate under a Temporary Event Notice. It was noted that there had been 5 Temporary Event Notices applicable to the premises since the Premises Licence had been granted in 2021.

Members also took into account Section 11 of the Guidance in respect of the review mechanism provided by the Licensing Act 2003 when problems associated with the Licensing Objectives occur after the grant of a Premises Licence.

**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 to vary a Premises Licence in respect of Lateral, 83 Banks Road, West Kirby, be granted with the following hours:**

**Sale of Alcohol (for consumption ‘on’ and ‘off’ the premises)**

**Sunday to Saturday 12:00 to 23:00**

**Hours open to the Public**

**Sunday to Saturday 08:30 to 23:30**

**(3) That The request to remove the following conditions from the current Premises Licence be granted:**

- **Along with the Designated Premises Supervisor, two other members of staff must hold a valid personal licence.**
- **An Anti-Drug policy must be implemented and a secure place to store controlled drugs prior to collection must be available. The Police must be notified of any seizures of controlled drugs. A Drugs Register must be maintained.**

**(3) That in addition to the conditions currently attached to the Premises Licence and the conditions submitted as part of the application, the following conditions be placed on the Premises Licence:**

- **No food or drink may be consumed in the outside area subject to a Pavement Licence beyond 21:30.**

- **The outside area that is subject to a Pavement Licence must be cleared of customers by 21:30.**
- **From 17:00 the premises must operate a Table Service to customers both inside and outside the premises.**
- **Customers waiting for taxis must be encouraged to remain inside the premises until their taxi arrives.**