

LICENSING ACT 2003 SUB-COMMITTEE

Wednesday, 5 August 2015

Present:

Councillors A Hodson
 S Niblock
 J Salter

4 **APPOINTMENT OF CHAIR**

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

5 **MEMBERS' CODE OF CONDUCT - DECLARATIONS OF INTEREST**

Members of the Sub-Committee 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.

Councillor S Niblock declared a personal interest by virtue of being a Member of the Fire Authority as they had originally made a representation in respect of the application however this representation had subsequently been withdrawn.

All parties confirmed they had no objection to Councillor Niblock considering the application.

6 **APPLICATION FOR A PREMISES LICENCE UNDER THE PROVISIONS OF THE LICENSING ACT 2003 - FUSION BAR AND GRILL, 28 UPTON ROAD, CLAUGHTON**

The Strategic Director of Regeneration and Environment reported upon an application that had been received from Christopher Nolan for a Premises Licence in respect of Fusion Bar and Grill, 28 Upton Road, Claughton, under the provisions of the Licensing Act 2003.

Following a meeting between the applicant and local residents, the applicant had agreed to withdraw the request for Live Music from the applications. Also, following discussions with Merseyside Police, the applicant agreed to amend the application to include a number of conditions in the Operating Schedule.

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. Amendments to the operating schedule were set out within the report. Members were advised that the proposals set out in the operating schedule may become conditions of the licence should the licence be granted.

Representations had been received from twenty six local residents. The representations related to public nuisance and anti-social behaviour which it was

considered would be caused by customers of the premises should the application be granted. A petition signed by 29 local residents who were against the application had also been received.

A petition had also been received signed by 133 persons who were in support of the application. A Facebook extract in support of the premises had also been submitted by the applicant.

A representation had been received from the Fire Authority which had subsequently been withdrawn.

A representation had also been received from the Planning Authority who had advised that, on 8 June 2015, the premises had been granted approval for the change of use of the premises to a restaurant subject to it not being open between the hours of 23:00 and 08:00.

The applicant and a number of local residents attended the meeting.

The Licensing Manager confirmed that all documentation had been sent and received and that Mr Petty would be speaking on behalf of a number of residents. The Licensing Manager informed Members that Mr Petty and Ms Johns would make reference to photographic evidence and that the applicant was content for these documents to be considered by Members.

Mr Nolan addressed the Sub-Committee and advised that he currently operated a licensed restaurant in Claughton Village and had done so for over eight years and that he lived above these premises. He reported that he had built up a reputation for his business and that it had been voted one of the best restaurants in Merseyside. He advised that he had held a Premises Licence for many years and had never received any complaints and that the new premises would allow him to develop his business and would create a number of jobs for local people. He reported that the current premises was a community hub used by local school teachers, doctors and churches for meetings.

In response to questions from Members, the applicant advised that the new premises would seat up to fifty people with a holding area for a small number of people who could purchase a drink at the premises. He also advised that he had arranged for waste collection and that he would comply with any conditions imposed in respect of this.

In response to questions from residents, the applicant advised that he had withdrawn the request for live music to be played at the premises and that he was willing to work with local residents to resolve any issues they may have. He also advised that the back yard would not be used as a smoking area and that the designated smoking area would be under a canopy at the front of the premises. He believed that the new premises would not add to any existing problems in respect of traffic. Mr Nolan also stated that he had no intention to change the premises into a bar and that it would be a restaurant that served drinks rather than a bar serving food.

The local residents in attendance addressed Members of the Sub-Committee and expressed their concerns in respect of the discrepancies between the hours permitted by the Planning Authority and the application for a Premises Licence and

also the lack of consultation from the Planning Authority in respect of the change of use of the building. Local residents expressed concerns in respect of live music being played at the premises and late night refreshment being permitted until midnight. Residents further expressed their fears in respect of an increase in traffic flow which was currently a problem in Scotts Place and Mona Street and the risk of an increase in poor behaviour from people in close proximity to residents houses. The local residents believed that the new venue would be unsuitable and had great concerns that the operation of the premises would change in the future from a restaurant to a bar. Concerns were further expressed in respect of people smoking outside the premises, the access for waste disposal not being suitable and concerns in respect of fume extraction and requested that the application be refused.

In determining the application the Licensing Act 2003 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.

In considering the application, Members had particular regard to the location of the premises in that it was situated close and adjacent to residential properties. Members also had regard to the representation made by the Planning Authority which referred to a decision made by the Planning Authority to restrict the hours that the premises is open to the public due to the location of the premises and the impact of the premises on local residents. Members also took into consideration the representations made by local residents and gave particular consideration to the Council's Licensing Policy in respect of the proximity of licensed premises to residential properties and circumstances where planning restrictions are different to licensing applications.

In determining the application Members had regard to the fact that the applicant had had discussions with Merseyside Police and agreed to adopt conditions suggested by them to prevent crime and disorder and public nuisance. Members also noted that a number of the conditions proposed by Merseyside Police were disproportionate and not appropriate for the operation of a restaurant at this particular location.

In determining the matter, Members took into account the fact that the applicant was currently operating a licensed restaurant in Upton Road a short distance away from the proposed premises and had done so for over eight years. It was noted by Members that local residents had not had cause to make complaints regarding the operation of these premises and there had been no representations from Merseyside Police, Trading Standards, Environmental Health or the Licensing Authority to advise that the current management of these premises had undermined the licensing objectives. Furthermore these Responsible Authorities had raised no concerns regarding the operation of the proposed premises by the applicant.

Members noted that the applicant advised that the reason for the application was to move the current restaurant operation to larger premises and that should the Premises Licence be granted, the future operation of the existing premises would be a Yoghurt Bar.

Members heard concerns from local residents that the proposed premises would operate purely as a bar in the future, however, in determining the application Members took into account the fact that the applicant clearly stated that his business operation was as a restaurant and he had no intention to operate the premises as a bar.

Members had regard to the concerns raised in respect of the disposal of waste and the use of taxis by patrons of the premises. Members heard from the applicant that he would implement measures to prevent public nuisance being caused by either of these activities.

In determining the application 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 for a Premises Licence in respect of Fusion Bar and Grill, 28 Upton Road, Claughton be agreed with the following hours:

Sale by Retail of Alcohol

Monday to Saturday 10:00 to 23:00

Sunday 10:30 to 23:00

Hours Open to the Public

Monday to Saturday 09:00 to 23:00

Sunday 10:30 to 23:00

Recorded Music

Monday to Saturday 09:00 to 23:00

Sunday 10:30 to 23:00

(3) That the application be granted in accordance with the conditions proposed in the operating schedule and discussed with Merseyside Police with the following amendments:

- **Any disposal of bottles and glasses outside of the premises must take place between 9.00 am and 9.00 pm**
- **Customers must not take drinks outside the premises for consumption within the immediate vicinity of the curtilage of the building**

(4) That the following condition discussed with Merseyside Police was not proportionate, necessary or appropriate to be attached to the Premises Licence:

A zero tolerance drugs policy must be adopted at the premises. This must include regular checks of the toilet area and a record kept which must be available to the Police or Local authority approved officer on request. Appropriate signage to be displayed in prominent positions.

Members further resolved that the Age Check Policy proposed by the applicant be adopted, that the condition relating to staff training to include a requirement for refresher training, the removal of empty bottles to the waste storage area be amended to be no later than 21.00 hours and the condition relating to alcohol being taken from the premises to be replaced by the above condition.