

# LICENSING PANEL

Wednesday, 22 September 2021

Present:

Councillors D Burgess-Joyce  
D Mitchell  
C O'Hagan

11 **APPOINTMENT OF CHAIR**

**Resolved – That Councillor D Burgess-Joyce be appointed Chair for this meeting.**

12 **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.

13 **APPLICATION TO VARY A PREMISES LICENCE UNDER THE PROVISIONS OF THE LICENSING ACT 2003 - ANDRE'S, 140 BANKS ROAD, WEST KIRBY**

The Director of Law and Governance reported upon an application that had been received to vary a Premises Licence in respect of Andre's, 140 Banks Road, West Kirby.

It was reported that the premises currently has a Premises Licence and the hours permitted under the current Premises Licence together with details of the application 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.

Further to discussions with Merseyside Police, the applicant had agreed to include a number of conditions being placed on the Premises Licence should the application be granted. Following discussions with the Licensing Authority, the applicant had also agreed to include conditions relating to the use of the outside areas of the premises as detailed within the report.

In respect of the application seven representations had been received from local residents. The representations related to public nuisance being caused to local residents from customers using the seating area outside of the premises. Copies of the representations were available.

The Designated Premises Supervisor attended the meeting together with the legal representative of the applicant. Three local residents were also in attendance.

The Licensing Manager confirmed that all documentation had been sent and received and that written confirmation had been provided from the applicant for the Designated Premises Supervisor to speak on his behalf.

With the agreement of all parties, the applicant's legal representative submitted a number of letters in support of the application.

The Licensing Manager outlined the report.

The applicant's legal representative informed the Panel that the application to permit the sale of alcohol for consumption off the premises had been made in order to enable customers to consume alcohol in both the garden terrace area and on the pavement at the front of the premises which was subject to a Pavement Licence.

The applicant's legal representative advised Members that the front terrace was not used very often due to it being windy and there being a lot of foot traffic. They further advised that there was no intention to play music in the outside areas. Details were provided by way of average temperatures and times of sunsets from April to October to explain why the use of the outside areas may be limited at different times of the year and late at night. Details of the operational hours of other premises in the area were also provided.

The applicant's legal representative responded to questions from local residents, Members of the Licensing Panel and the Legal Advisor to the Panel.

In response to questions from local residents, Members were made aware that there are both heaters and sun shades situated within the garden terrace area and it was reiterated that the pavement area at the front of the premises is used less often than the garden terrace area.

The local residents in attendance at the meeting provided details of noise nuisance they had experienced caused by customers attending the premises, particularly after the easing of restrictions on licensed premises in April 2021 which resulted in local residents having to formally complain to the premises in July.

The local residents advised that their complaints related to noise being caused by customers in the outside areas of the premises at a late hour. They expressed concern regarding the lack of management of the outside areas resulting in the use of these areas beyond the permitted hours which had been causing a nuisance. They also expressed concern regarding the inconsistency of the timings permitted in the garden terrace and the pavement area at the front of the premises and believed that the times permitted for the use of the outside areas should be the same. Residents further submitted that they would like a commitment from the premises that the outside areas would be cleared within the permitted times and that they be compliant with any restrictions imposed on the Premises Licence.

In response to questions regarding a terminal hour for the use of the outside areas, residents advised that they considered 9.00 pm to be an appropriate terminal hour.

Members of the Panel were made aware of the planning restriction on the garden terrace which restricts the use of this area after 9.00 pm.

The local residents responded to questions from the applicant's legal representative and Members of the Panel.

In response to the representations made, it was submitted by the applicant's legal representative that they would be content for local residents to contact them by email or telephone to address any issues which may arise in the future.

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.

In coming to their decision, Members gave consideration to the operation of the premises as a restaurant. Members had regard to the fact that residents were content for the outside areas to be used up until 9.00 pm.

Members also took into account the willingness of the applicant to liaise with local residents and address any concerns they may have.

**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 or Environmental Health.**

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 Andre's, 140 Banks Road, West Kirby to allow the consumption of alcohol both 'on' and 'off' the premises be granted.**

**(3) That in addition to the conditions set out in the operating schedule, the conditions proposed by Merseyside Police be placed on the Premises Licence.**

**(4) That the following conditions also be placed on the Premises Licence:**

- No customers are permitted to consume food or drink in the outside areas of the premises beyond 9.00 pm. For the avoidance of doubt this includes the garden terrace area adjoining Church Road and the area at the front of the premises on Banks Road.**