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LICENSING PANEL

Friday, 22 October 2021

Present: Councillors A Hodson (Chair)
D Burgess-Joyce
D Mitchell

18 APPOINTMENT OF CHAIR

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

19 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.

20 APPLICATION TO REVIEW A PREMISES LICENCE UNDER THE PROVISIONS OF THE LICENSING ACT 2003 - FREDDIES, 36 STANLEY ROAD, NEW FERRY

The Director of Law and Governance reported upon an application that had been received from local residents for a Review of a Premises Licence in respect of Freddie's, 36 Stanley Road, New Ferry, under the provisions of the Licensing Act 2003.

The Director of Law and Governance advised that the Panel may, having regard to the application for a Review and any relevant representations, take such of the following steps as it considered appropriate for the promotion of the licensing objectives:

- Modify the Conditions of the Licence.
- Exclude a licensable activity from the scope of the Licence.
- Remove the Designated Premises Supervisor.
- Suspend the Licence for a period not exceeding three months.
- Revoke the Licence.

Members were informed that the Licensing Authority may decide that no action would be appropriate if it found that the review did not require it to take any steps that were appropriate to promote the licensing objectives.

The grounds for review were in relation to anti-social behaviour being caused by customers of the premises, public nuisance being caused to local residents and concern in respect of public safety, in particular the safety of children.

It was reported that the premises held a Premises Licence allowing the licensable activities as set out within the report.

In respect of the review application, twelve representations had been received from local residents who supported the application.

A representation had been received from a local resident who considered that the way in which the premises operates does not undermine the licensing objectives.

A representation had been received from the Licensing Authority who had reported that complaints had been received from local residents in respect of the operation of the premises. The complaints related to a number of issues which residents advised were linked to the premises, these included anti-social behaviour, noise nuisance and drug use. As a result of these complaints the premises had been visited a number of times by a Licensing Enforcement Officer.

A representation had been received from Environmental Health who advised that complaints had been received from local residents regarding potential statutory nuisances from the premises relating to odours from cooking, light nuisance and noise nuisance. Environmental Health had been liaising with the premises regarding these matters.

A representation had been received from the Planning Authority who had reported that in accordance with the planning permission the premises were permitted to operate as a restaurant. The Planning Authority had received complaints from local residents who had indicated that the premises were not operating as a restaurant. These allegations were currently being investigated by the Planning Authority. The Planning Authority also advised that a number of physical alterations had been made to the premises, some of which had been carried out in breach of planning control and the premises had submitted a retrospective planning application in relation to these physical changes.

Copies of all representations were available.

The Premises Licence Holder attended the meeting together with her legal representative.

A number of local residents were also in attendance. A Licensing Officer, Environmental Health Officer and Planning Enforcement Officer also attended the meeting.

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

The local residents in attendance advised that the current operation of the premises had caused crime and disorder and public nuisance to the neighbourhood. Local residents informed Members of the Panel that the premises was located amongst a diverse community which included vulnerable adults and young people who were being adversely affected by the operation of the premises due to anti-social behaviour which they considered was caused by customers of the premises.

It was felt strongly by local residents that this was the wrong location for this type of premises which they considered should be on a high street in New Ferry.

Local residents reported that since the premises had opened in June 2021 they had been subjected to incidents of anti-social behaviour, which included but was not limited to individuals urinating in the street, shouting and swearing and using sexually explicit language, drunkenness and community drug use. It was further reported that customers had been permitted to leave the site of the premises with glasses in their hands to smoke drugs and return gaining access to the premises unchallenged. Local residents also expressed concerns regarding posts on social media by the premises which they considered undermined valid concerns of residents in respect of how the business was operating.

Local residents informed Members that they had suffered intimidation from individuals parking their cars in the vicinity of the premises. They provided pictorial evidence of cars parked on pavements, on the bend of the road leading to the premises and in a way that made it difficult for other vehicles to pass, putting the safety of the public at risk.

Local residents referred to the licensing objective of public safety and raised concerns in respect of fire safety prevention measures, which it was considered may not be adequate within the premises, glasses and bottles being discarded in the street by customers, the children's play area and the behaviour of the owner which it was claimed was threatening to local residents.

Local residents advised that since the premises had been operating they had suffered public nuisance in the form of noise, light and noxious smells. It was reported that residents had been disturbed by general noise from customers shouting and screaming as well as noise emanating from music from the premises, light pollution through light shining into resident's property and smells from food being cooked at the premises. The nuisance caused by

vehicles parking in the vicinity of the premises was highlighted as it was considered this had led to trespassing on people's property.

Local residents believed that the protection of children from harm had been undermined by the operation of the premises due to alcohol being served to individuals under the age of 18 years, children supervised by parents who had consumed alcohol, children no longer having the freedom to play in the street and children having their sleep disturbed which was all having a negative impact due to the operation of the premises.

The local residents responded to questions from the Premises Licence Holder's legal representative, Members of the Licensing Panel and the legal advisor to the Panel.

In response to questions local residents provided further details regarding the location of the premises and the surrounding area and explained that it was surrounded by residential properties some of which were open plan with no boundary fences or walls leaving them exposed and subject to trespassing.

Local residents informed Members of the Panel that there had been no productive engagement with the operators of the business prior to the opening of the premises or since the business had been operating. The Panel were informed of the contrast between the impact of the current premises and the type of venues that had previously operated on the site. It was highlighted that one of the most significant impacts had been the lack of parking which was due to the removal of parking spaces to allow for the development of the area immediately outside the building. Members of the Panel were made aware that wooden huts had been constructed on the site, that a cocktail bar had also been located in this area as well as a children's play area. Local residents submitted that this had resulted in the removal of 17 car parking spaces and had caused them much distress due to the displacement of car parking into the surrounding area and noise nuisance emanating from the playing of music as well as general noise generated from customers using the outside area and that following the opening of the premises the volume of traffic had massively changed in the area.

The Licensing Officer addressed the Panel and provided details of the complaints received by the Licensing Authority in respect of how the premises had been operating. These included but were not limited to problems relating to parking, noise, underage drinking at the premises, drug use in and around the premises and customers urinating in public, customers being served alcohol when intoxicated and general anti-social behaviour associated with the premises. Members of the Panel were informed that this had resulted in a number of unannounced visits being made to the premises by a Licensing Enforcement Officer. The observations made by the Licensing Enforcement Officer during these visits did not substantiate the reports made by the local residents. It was reported that on one of the visits it was found that a DJ had

been operating in the outside area and was subsequently advised that such activity should not take place in the outside area of the premises. As a consequence this activity had been moved inside the premises. It was further reported that when the officer visited the premises they observed families either eating food or waiting for food and that no customers were seen to be rowdy or drunk. Members of the Panel were made aware that these visits took place on either a Friday, Saturday or Sunday.

The Licensing Officer advised the Panel that the Licensing Authority had been informed by Merseyside Police that they had also undertaken visits to the premises following complaints they had received but had not identified any issues of concern that resulted in them having to take any action in respect of how the premises were operating.

The Licensing Authority advised that whilst the issues reported by local residents had not been substantiated by independent evidence from either the Licensing Authority or Merseyside Police for the purpose of promoting the Licensing Objectives, the Licensing Authority believed that it would be appropriate for conditions to be added to the Premises Licences. These proposed conditions were viewed and considered by the premises during a short adjournment and later submitted to the hearing in the presence of all parties.

The Licensing Officer responded to questions from the Premises Licence Holder's legal representative and Members of the Panel. In response to questions a Licensing Enforcement Officer who was present at the meeting clarified responses to questions from Members of the Panel.

The Environmental Health Officer reported that since the premises had opened local residents had reported concerns regarding potential statutory nuisance from the premises relating to cooking odours, light and noise pollution. In response to these reports Environmental Health officers had liaised with local residents and the premises and had made a number of visits for monitoring and advice purposes. Members of the Panel were advised that as part of the investigations by Environmental Health noise monitoring equipment had been offered to a number of local residents but these offers had not been taken up by the residents concerned. It was further reported that following a complaint of light nuisance caused to a local resident Environmental Health had liaised with the premises and that the premises had taken measures to reduce the impact of their lighting on local residents, however it was unknown whether these measures had been effective as the local resident who had reported the concerns had not made any recent contact with Environmental Health and therefore this matter had remained open for further investigation if necessary.

Members of the Licensing Panel were informed of the visits made by Environmental Health to investigate the reports of noxious smells being

caused by the premises and that during these visits to date evidence had not been found to identify a statutory nuisance in this regard.

Environmental Health submitted that whilst no statutory nuisances had currently been substantiated, Members of the Licensing Panel may wish to take into consideration the concerns raised by local residents and attach appropriate conditions to the Premises Licence for example a condition to restrict the emptying and filling of external bottle bins.

The Environmental Health Officer responded to questions from local residents, the Premises Licence Holder's legal representative, Members of the Panel and the legal advisor to the Panel.

The Planning Enforcement Officer reported on the Planning history of the premises. This included the most recent Planning Application which had been submitted retrospectively to extend the existing property to include an outdoor covered terrace, the installation of seating pods, a children's play equipment area and a boundary fence and gate. The Planning Officer advised that it was this development that had caused much concern to the residents as it had displaced the parking of cars onto the highway. Members of the Licensing Panel were advised that this Planning Application had been refused due to the impact of the development on the highway.

Members of the Licensing Panel were informed that the type of business that could operate from this site included a restaurant. Members of the Panel were advised that reports had been received from local residents that the premises had not been operating as a restaurant, but as a bar with an element of food provision. The Planning Officer advised that a number of unannounced visits had been made to the premises to investigate whether the current use of the premises has resulted in an unauthorised material change of use of the land, however, it was reported that to date no evidence had been identified for them to consider that there had been an unauthorised material change of use of the land.

The Planning Enforcement Officer responded to questions from local residents, the Premises Licence Holder's legal representative, Members of the Panel and the legal advisor to the Panel.

In response to the application and the representations made, the Legal Advisor representing the premises advised Members of the Panel of the experience of the Premises Licence Holder in respect of licensed premises and their investment into these premises which employed 25 staff. Members of the Panel were informed that the business model for the premises was to attract respectable local families and operate as a family friendly venue offering food and drink. It was highlighted that the complaints reported by local residents had not been substantiated by the Responsible Authorities that had made representations in respect of the application and that it was

therefore not appropriate to determine that conditions should be attached to the licence. It was submitted that there had been a concerted campaign on the part of residents who did not want the premises in this location and that the owner of the business and staff had been subject to abuse and harassment from local residents which on one occasion had been witnessed by a Licensing Enforcement Officer.

The Premises Licence Holder's legal representative referred to paragraph 9.12 of the Statutory Guidance under the Licensing Act 2003 which provides guidance in respect of representations made by Responsible Authorities. It was submitted that whilst residents had logged concerns with Merseyside Police no representation had been made by this authority and therefore the Members of the Licensing Panel should conclude that Merseyside Police have no issues with the operation of these premises in relation to the licensing objectives. It was reaffirmed on behalf of the Premises Licence Holder that investigations carried out by the Responsible Authorities, in particular Environmental Health, did not identify any matters that had required enforcement action to be taken and it was submitted that the premises had co-operated at all times with officers.

The Premises Licence Holder's legal representative stated that conditions on a Premises Licence should not replicate offences set out in the Licensing Act 2003 or the duties of regulatory officers. He requested that Members of the Panel consider that the police have powers in respect of anti-social behaviour and informed that whilst parking is not a matter to be considered by the Licensing Authority the premises had taken steps to discourage both staff and customers from using their own vehicles when going to the premises. He advised that as a consequence of the refusal of the Planning Permission for the development of the outside area of the premises, the relevant structures would be removed to create parking spaces in this area. He further advised that whilst the premises refute that alcohol had been sold to any person under the age of 18 years they had taken the decision not to take bookings for 18th birthday parties.

The legal representative of the Premises Licence Holder reported that the premises go above and beyond to comply with any requirements in respect of their licence and referred the Panel to paragraphs 9.3, 9.5, 11.5 and 11.10 of the Statutory Guidance issued under the Licensing Act 2003. In addition he advised that the premises had sought to address the concerns raised in respect of light shining into the property of a resident. He therefore believed that no steps were necessary to be taken to promote the licensing objectives as the premises had put measures in place to promote these objectives and that the Premises Licence Holder wanted to work with the local community.

The Premises Licence Holder addressed the Members of the Licensing Panel and advised that they wanted to invest in the area and provide employment for people living in the area. It was explained that the development in the

outside area had resulted from the restrictions that had been placed on licensed premises to prevent the spread of the COVID 19 virus and the encouragement to make use of outside areas. The Premises Licence Holder advised that they want to engage with local residents, welcome them to the venue and for them to be happy with the operation of the premises. Details of the measures in place to uphold the licensing objectives were provided, which included staff training, a Challenge 25 policy and undertaking perimeter walks of the premises.

In response to questions regarding the number of car parking spaces that could be accommodated in the outside area the Premises Licence Holder advised that as many spaces that could be put there following the removal of the structures would be put in place.

The Members of the Licensing Panel were advised that whilst it was not considered necessary to have conditions imposed on the Premises Licence, having viewed the conditions proposed by the Licensing Authority the premises were content for all of these conditions to be attached to the Premises Licence with the exception of a limit being imposed on the use of the outside area which was being reduced considerably following the refusal of the Planning application.

The Premises Licence Holder and her legal representative responded to questions from local residents, the Licensing Officer, Members of the Licensing Panel and the legal advisor to the Panel.

In determining the Review application the Members of the Licensing Panel gave serious consideration to the submissions made by the local residents as well as the representations made by and on behalf of the Premises Licence Holder, the Licensing Officer, Environmental Health Officer and Planning Enforcement Officer.

Members of the Licensing Panel considered the reports made by local residents in respect of how they considered that the premises had not been operating in accordance with the licensing objectives and the impact that the premises was having upon them. In considering these reports the Licensing Panel had regard to the representations made by the Responsible Authorities who had made numerous unannounced visits to the premises but had not identified any matters that caused them to take any enforcement action against the premises. The Members of the Licensing Panel were made aware that the premises had been co-operative with officers during these visits. Also in respect of these reports, Members considered the willingness of the Premises Licence Holder to meet with local residents to discuss their concerns and to engage in network meetings organised or promoted by the Licensing Authority. It was also noted that the Premises Licence Holder was agreeable to having conditions attached to the Premises Licence that would reaffirm measures to ensure that the premises operated in accordance with

the licensing objectives. Members also took into consideration the actions taken by the Premises Licence Holder to address the concerns raised in respect of light pollution.

In determining the review application the Licensing Panel gave consideration to the business model as described by the Premises Licence Holder being that of a family orientated venue providing food and drink to customers.

Whilst the Licensing Panel noted the concerns of local residents in respect of the manner in which vehicles had been parking within the vicinity of the premises they considered that this was not a relevant matter for them to take into account when determining the review application as this matter had been dealt with by the Planning Authority who had refused a recent retrospective application to approve alterations to the site. Members were advised by the Premises Licence Holder that the effect of this would be to restore parking spaces on site.

In determining the review application Members also had regard to the fact that there were no representations from Merseyside Police in respect of crime and disorder associated with these premises or from Merseyside Fire Service in respect of any fire safety concerns.

In coming to their decision in respect of determining the most appropriate step to take in response to the review application the Licensing Panel had regard to the Statutory Guidance which directs them to give consideration to the circumstances giving rise to the review application and to consider evidence provided by all parties. The Panel had particular regard to their responsibility to reach a conclusion that was appropriate and proportionate having considered all the submissions and representations made.

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 Conditions of the Premises Licence in respect of Freddie's, 36 Stanley Road, New Ferry be modified as follows:**
 - CCTV must be installed at the premises in the form of a recordable system which is capable of providing clear, good quality images in all lighting conditions.**
 - CCTV cameras must encompass all entrances and exits to the premises, any external seating or smoking areas, all areas where the sale, supply or consumption of alcohol occurs and all other areas where licensable activity takes place.**

- **The CCTV equipment must be maintained in good working order and checked on a regular basis to ensure it displays the correct time and date.**
- **The CCTV system must record in real time and operate at all times whilst the premises are open to the public.**
- **CCTV recordings must be retained for a minimum period of 31 days and made available to an Authorised Officer on request in accordance with data protection legislation.**
- **There must be sufficient members of trained staff available to be able to view and download CCTV footage with the minimum of delay at the request of an Authorised Officer.**
- **An incident log book must be kept and maintained at the premises which must be used to record any incidents of crime and disorder. The incident log book must be made available to an Authorised Officer upon request.**
- **The premises must operate a Zero Tolerance Drug Policy. This must be a written policy and must include details of actions to be taken upon suspicion or discovery of drug use on the premises. All staff must be trained on the policy, with written evidence that the training has been conducted.**
- **All staff engaged in the sale of alcohol must undertake training in their responsibilities under the Licensing Act 2003 prior to selling alcohol at the premises. A written record of this training must be kept on the premises and made available to Authorised Officers upon request.**
- **Notices must be clearly displayed in the outside areas of the premises advising customers they are close to residential properties and to respect the neighbours whilst at the premises and when coming to, or going from the premises.**
- **Regular noise assessments must be carried out. This must involve listening outside the premises to ascertain whether the noise being emitted is at a level which may disturb neighbours and then taking any required remedial action. A written record of the noise assessments must be maintained by the premises and made available to an Authorised Officer upon request.**

- **A written record of any noise complaints received by the premises must be kept and must include details of the complaint and any remedial action taken.**
- **All windows and doors must be closed by 22:00 except to permit ingress and egress**
- **The outside garden area must be cleared of customers consuming food and drink by 22:00.**
- **The children's play area must not be used beyond 21:00.**
- **The disposal of bottles or broken glasses into bins outside the premises must not take place between 21:00 and 09:00.**
- **Bottles or broken glasses must not be collected from the premises between the hours of 21:00 and 09:00.**
- **Notices must be placed at all exits of the premises requesting customers leave the premises quietly and have consideration for local residents.**
- **The premises must operate a Challenge 25 Policy to ensure that only persons over 18 years of age are sold alcohol. A written copy of the Policy must be kept at the premises and made available to an Authorised Officer upon request.**
- **Notices must be clearly displayed within the premises advising customers of the Challenge 25 Policy.**
- **A record of all occasions where a person has been refused alcohol must be maintained on the premises, and made available to an Authorised Officer upon request.**
- **All staff involved in the sale of alcohol must receive training in relation to the Challenge 25 Policy and responsible alcohol retailing, including the requirement not to serve alcohol to under 18s, or people who are drunk or appear to be drunk. A written record of this training must be made, kept at the premises, and made available to an Authorised Officer upon request.**
- **Regular refresher training must be carried out with all staff involved in the sale of alcohol, at least every 6 months. Refresher training must incorporate the Challenge 25 Policy, including the requirement not to serve alcohol to persons under the age of 18, or people who are drunk or appear to be drunk. A written record of this training must be made, kept at the premises, and made available to an Authorised Officer upon request.**

In determining these conditions the Panel considered that whilst it was noted that the premises would be reducing capacity in the outside area of the premises, Members took into account the reports from residents in respect of the general noise created from customers in the outside area and the proximity of residents' houses and considered it was appropriate to limit the use of this area to 22:00.