

Licensing Sub Committee Hearing Panel

Minutes of the meeting held on Monday, 25 November 2019

Present: Councillor Stone – in the Chair

Councillors: Flanagan and Grimshaw

LACHP/20/114. Urgent Business

The Chair agreed to the submission of an item of urgent business relating to a New Premises Licence for Kraka Chaai, 104 Wilmslow Road, Manchester, M14 5AJ – determination.

LACHP/20/115. Application for Premises Licence Variation - DFC Chicken 791 Stockport Road, Manchester, M19 3DL - determination

The Committee noted that the application was agreed by all parties prior to the meeting and was therefore treated as a determination.

In reaching its decision the Committee also considered the Council's Statement of Licensing Policy, the Licensing Act 2003, the Regulations made there under and the Guidance issued by the Secretary of State under Section 182 of that Act and the licensing objectives.

Decision

To grant the application.

LACHP/20/116. Application for a New Premises Licence - Raja's Pizza Bar 362 Cheetham Hill Road, Manchester, M8 9LS - determination

The Committee noted that the application was agreed by all parties prior to the meeting and was therefore treated as a determination.

In reaching its decision the Committee also considered the Council's Statement of Licensing Policy, the Licensing Act 2003, the Regulations made there under and the Guidance issued by the Secretary of State under Section 182 of that Act and the licensing objectives.

Decision

To grant the application.

LACHP/20/117. Application for New Premises Licence - Pizza Hut Delivery Unit D, Fallowfield Shopping Centre, Birchfields Road, Manchester, M14 6FS - determination

The Committee noted that the application was agreed by all parties prior to the meeting and was therefore treated as a determination.

In reaching its decision the Committee also considered the Council's Statement of Licensing Policy, the Licensing Act 2003, the Regulations made there under and the Guidance issued by the Secretary of State under Section 182 of that Act and the licensing objectives.

Decision

To grant the application.

LACHP/20/118. Application for a New Premises Licence - Kraka Chaai, 104 Wilmslow Road, Manchester, M14 5AJ

The Committee noted that the application was agreed by all parties prior to the meeting and was therefore treated as a determination.

In reaching its decision the Committee also considered the Council's Statement of Licensing Policy, the Licensing Act 2003, the Regulations made there under and the Guidance issued by the Secretary of State under Section 182 of that Act and the licensing objectives.

Decision

To grant the application.

LACHP/20/119. Application for a New Premises Licence - Bisous Bisous, 66c Beech Road, Manchester, M21 9EG

The Committee considered an application for a new premises licence.

The applicant attended the hearing and explained that the company had two existing premises in Manchester and this was their first application as a seating café. The main products proposed for the premises are cakes and pastries and with the offer of afternoon tea this may include an alcoholic drink, this was the main reason for the application.

Other alcoholic drinks to be served were limited to two white wines, two red wines and one rose to go with savoury servings. The applicant explained that alcohol was not the main product but a by-product i.e. complementary to main products to be offered.

Although the application was for the period 10am until 10pm, the applicant would not anticipate serving alcohol before 11 am and didn't anticipate serving beyond 8pm as the business did not appear to be as late as they were anticipating and they had thought they may get custom from people coming in for a late evening dessert.

The applicant confirmed there was no intention of utilising the premise as a 'vertical' drinking bar.

The applicant addressed the fact they were aware of the objection from a local resident and confirmed that they had engaged with them explaining the ancillary nature of the licence.

The applicant highlighted that most of the objections raised were in relation to the other surrounding businesses and the issue of parking.

The Committee considered the written representations that were received from a local resident who confirmed they would not be in attendance. Those representations were read out, in full at the hearing.

The Committee was satisfied the applicant had engaged with the local resident who had objected and appeared credible in their intention to maintain a good relationship with the local residents.

Similarly, the Committee was satisfied, the application to serve alcohol from the premises was ancillary and in order to complement their main food products and that none of the licensing objectives would be undermined.

In order to address any potential issues with the local residents, they did however impose an additional condition on to the licence regarding the availability and supply of the Manager's telephone number.

Decision:

To grant the Licence with the following additional condition:

A direct telephone number for the manager of the premises shall be publicly available at all times the premises are open. This telephone number is to be made available to residents in the vicinity.

LACHP/20/120. Application for a New Premises Licence - Name TBC, 518 Wilbraham Road, Manchester, M21 9AW

The Committee considered an application for a new premises licence.

This application was agreed by all parties prior to the hearing, subject to the agreed conditions and therefore treated as a determination.

In reaching its decision the Committee also considered the Council's Statement of Licensing Policy, the Licensing Act 2003, the Regulations made there under and the Guidance issued by the Secretary of State under Section 182 of that Act and the licensing objectives.

Decision

To grant the application.

LACHP/20/121. Application for a Premises Licence Variation - ON Bar, 46 Canal Street, Manchester, M1 3WD

The Committee considered an application for a variation of premises licence.

Pre-Hearing Matters

LOOH notified the Legal Adviser to the Committee they had an additional statement from one of their LOOH Officers dated 24.11.19 which had not yet been served. This was served on the applicant and their appointed solicitor prior to the hearing and time allowed for instructions to be taken.

The Committee had not had sight of the statement and upon commencement of the hearing this was provided and the Committee given time to consider the statement.

Additional Statement

The applicant's solicitor confirmed that the statement referred to observations over the previous weekend at a different premises, 'Vanilla' and that the applicant was the DPS of that premises also. A DPS variation had been submitted 4 weeks previously in the name of a staff member but subsequently removed following disciplinary issues with this staff member. In view of the statement provided today, the applicant had taken immediate action and suspended the staff member from duties. The applicant thanked the Committee for bringing this to light.

It was outlined the applicant had an excellent record. The applicant had worked in The Village for 20 years. The applicant had been the DPS at ON bar for 3 years, had been at Via Bar on Canal Street for 8 years and former vice chairman of the Village Business Association.

The application was for an extension of two hours daily, (and a reduction in hours on a Saturday).

The reason for the application was due to customers increasingly drifting away from ON bar after midnight to go to other late bars in The Village which are open later. This put the premises at a commercial disadvantage and as it is only a small bar, proportionately the effect was greater.

The purpose was to retain existing customers rather than see them go to other bars. Examples of other premises opening times:

GAY: Opens until till 4am and 8am on a Saturday

WREN bar: 4am Friday and 6am Saturday

Bar POP: Friday and Saturday 5am

EVA: Opens throughout the week until 6am

It was put to the Panel that ON Bar was struggling to compete with the above and other bars and clubs with the current hours of operation.

When questioned, the applicant explained that, ultimately, the application was to give their customers a choice i.e. to leave an hour/half an hour before the terminal hour or they can leave us to go to a bar with longer hours. The applicant accepted that they

couldn't say that this wouldn't attract new customers but that that wasn't the drive behind the application. In addition, the style of the venue i.e. soft furnishings etc. and the very rigorous standards with clientele attracted a certain type of customer.

Late night impact/Egress

It was submitted that the proposed operating hours would allow for a more gradual, slower and quieter dispersal. These would be existing, not new patrons and the clientele tended to be more middle-aged with the venue turning its music down 20 minutes before the end of night.

The applicant also stated the venue was happy to say no one would be admitted after 5am.

The applicant also highlighted the current hours on a Saturday are until 09:30 and the effect of this variation would be to give those hours up and reduce them to a more stable 06:00. This was amended after the hearing under the Slip Rule as it was noted that ON Bar had applied to reduce their closing time on a Saturday from 09:30 to 06:30. It has been agreed that 06:30 shall be the closing time on Saturdays.

Licensing History

There had been no licensing issues with the police.

There had been no complaints of noise from neighbours and in fact no noise complaints at all. It was submitted that the thrust of the representations from LOOH were unfair in respect of allegations of public nuisance. Other bars on Canal Street also played loud music and were also vibrant and busy. It was therefore unfair to isolate ON Bar in this regard.

The premises had had a TENs application in March enabling them to operate until 8am. There had not been any noise issues and the event had been a successful evening.

The premises previously had extensions for PRIDE and again, there had not been any complaints, in fact there had been praise and complements from neighbours. The applicant explained that ON Bar had worked very hard engaging with the neighbours and residents and when questioned the applicant explained that they had taken over the premises three years previously and engaged with the neighbours on the first day. As a result of this the applicant had removed the bass bins from the sound system completely so that the premises' sound system did not generate unnecessary bass vibrations and that there had not been any noise complaints since.

The applicant confirmed that ON Bar did not have a noise limiter as the middle floor was very much a lounge/bar area and in any event, this had not been a condition of their licence.

When questioned as to how the premises would manage intoxication and dispersal of customers after them having been drinking for a six-hour period, the applicant explained that there were already strong policies in place regarding intoxication, floor walkers, experienced door staff, strong signage behind the bar re: refusal of service, signage around making patrons aware of free tap water and they also had an extensive range of soft drinks which they promoted widely. In addition, the drinking

was not necessarily due to be over a six-hour period as customers still joined and left the premises.

The applicant stated that ON Bar was also very selective in terms of their clientele and pricing in that their pricing appealed to a certain type of customer; they sold a decent Sauvignon Blanc, brandies and vodkas. They were not in line with the surrounding cheap bars aimed at the younger market attracting the 'inch' drinkers with drinks for £1.60. In addition, ON Bar differentiated itself from these other bars with their décor and music policy.

When questioned regarding the incidents of noise escape i.e. one that was after 11pm; next night was before the water shed of 11pm with a door being left open, but more worrying was an incident 7 days later with doors and windows closed – and as to how a condition on the licence could/would make a difference, the applicant explained it was difficult when there are competing bars, all playing their loud music simultaneously.

The first occasion concerned the external balcony door and that had been addressed; the second night was pre 23:00; the third occasion when a Licensing Enforcement Officer attended, that Licensing Enforcement Officer didn't say anything to, or approach the DPS.

When these issues were identified it transpired there was an issue with door closure in that the door was broken. When issues had been brought to the applicant's attention they had been resolved and the applicant highlighted that in three years ON Bar had never received a noise complaint from the neighbours or businesses. The only issues were those brought up by the enforcement officers and then, it was only following the variation application.

Finally, all of their visits took place in a two-week period between the times of 23:00 and 23:40. There had been no issues, no complaints; no problems.

The applicant went on to confirm that he worked on the door every night. The applicant had used the same reputable door staff company for years. On the 18 October 2019, when the door staff had not signed in, this had been an oversight by the new door supervisor and an isolated incident. When LOOH carried out checks they always checked the records and there had been no prior incidents in this regard.

Future Developments

Considerations as a result of the impending opening of Manchester New Square apartments would affect The Village as a whole. The Committee was referred to the National Policy Framework and the Agent of Change principle where a planning applicant is applying for planning permission for a development, the existing businesses should not have unreasonable restrictions placed on them. The applicant should be allowed to present suitable mitigation. The Committee should not refuse the application on the basis that there could be a problem in the future due to the new development of Manchester New Square.

Statements Interested Parties

LOOH

Representations were made that the two-hour extension may not sound extensive but the hours in question were sensitive hours to surrounding population. It was accepted there had not been any complaints re noise but their evidence did show that LOOH had had to intervene on a number of occasions.

In their capacity, LOOH had sought the prevention of public nuisance and any intervention had been to prevent the same.

Case law of *East Lindsey Council v Abu Hanif T/a Zara's Restaurant 2016* was referred to although copies were not provided and the principles of the case not outlined.

They also considered the cumulative impact although when questioned, the officer confirmed this was not a cumulative impact area.

When questioned by the applicant, the officer confirmed the following: -

- There are no noise conditions on the premises licence
- No breaches of the licence
- There were residential premises in area and there had been no complaints from them
- When any issues had been brought to the attention of the DPS they had been addressed however, the officer was of the opinion that ideally, issues should never have been raised

When questioned, the officer confirmed the venue had been approached regarding the noise breakout and the applicant had complied with requests. However, in their professional opinion, from the evidence of the officer attending on that day, all the doors were closed and yet there was significant noise breakout.

The officer also confirmed that the last visit had been a month ago on 18 October 2019 and the officer could not provide any information as to where the visiting officer was with any follow-up enquiries, if any. The officer did however confirm that no action had been taken against the premises.

When questioned regarding the issue of the door staff not signing in, the officer also confirmed it was his understanding this was an isolated incident. LOOH requested the application be refused.

GMP

The premises are in The Village which has significant issues with crime. Operation Custodian operates at the weekends in Manchester City Centre and a number of resources are deployed in The Village. The officer highlighted that whereas the applicant had mentioned his clientele leaving earlier to go to other premises. These later premises, more often than not, are where the problems occur.

Although the applicant had today discussed addressing noise issues with respect to keeping the doors and windows closed, no further steps had been proposed as to how late night issues will be tackled.

The officer confirmed that their references were to crimes in The Village as a whole and not ON Bar specifically, although The Village was not a Cumulative Impact area, that did not mean that the Committee could not give consideration to the Cumulative Impact if the licence was extended and issues then arose from continued drinking, dispersal and/or problems because patrons cannot access the premise if refused.

The officer confirmed that there had been no issues with premises. The officer explained there had been some incidents directly attributable but they were low level matters e.g. theft etc. and therefore not relevant to these proceedings and not evidence that premises is badly run.

When questioned regarding the concern that a late night premises is an attraction, the officer explained that the concern around the venue being selective regarding its clientele and pricing, and therefore, any people refused entry on this basis could potentially create trouble. Quite often for example, people would migrate from Deansgate Locks, which closes earlier. If they were turned away that in itself could be a good thing however, it could also result in doormen being assaulted and then the police being called. Alternatively, people may seem agreeable but once inside the venue, they then create trouble. From GMP's point of view the concern was the change in the operating hours could/would bring that negative change with it.

They therefore requested the application be refused but if the Committee was minded to grant it, that the hours be reduced and ask last entry set at: -

Sun – Thurs: 02:00

Fri – Sat: 04:00

Reasons

During the evidence, it was clear the applicant and solicitor were conversant with the Licensing Objectives and the applicant was an experienced Manager.

The Committee accepted the applicant's explanation in respect of the additional evidence served and the immediate steps he had taken to address the issue. They did not however deem the statement relevant to these proceedings.

The Committee also made their decision based on the assertion by the applicant that this application was to retain existing customers and whereas they did not rule out the possibility this could also attract new customers, they accepted the submissions by the applicant that this was not the main drive behind the application.

On this basis, the applied for opening hours were permitted with the alcohol sales hours being reduced to a terminal hour of 30 minutes prior to closing and with no admission of patrons one hour prior to that.

In granting the extension, the Committee noted that in respect of upholding the licensing objective of 'Prevention of Public Nuisance', there had been no complaints from any residents or businesses and that the applicant had engaged with local residents from the outset and removed bass bins. They also had regard to close proximity of other venues in the area playing loud music simultaneously.

The Committee considered the case of East Lindsey District Council, the principle of which was that a prosecution or conviction is not required for the Local Authority Crime Prevention objective to be engaged but also that each case would be deliberated on its own facts.

The application by LOOH of this case appeared to be that enforcement action was not required by them for this licensing objective to be engaged although this was not articulated.

They noted the observations by LOOH but also noted these visits had been subsequent to the submission of the Application, the visits had been between 23:00 and 23:40 hours and there had been no action taken against the venue or any contact since 18 October 2019.

They did, however, accept that noise breakout had clearly been observed and with regard to the Statement of Licence and Policy, consideration should be given to the risk of nuisance from music breakout from the premises and include all appropriate measures.

Consideration was given as to whether the installation of a sound limiter should be made a condition of the licence. However, they were of the opinion for the extension of hours applied for this could be disproportionate in respect of cost and given the applicants willingness to ensure doors and windows were closed, they imposed a further condition on the licence to that effect namely: -

All windows and external doors shall be kept closed between 23:00 and closing time or at any time when regulated entertainment takes place except for immediate access and egress of persons.

After the hearing it was noted by the solicitor to the Legal Advisor for the hearing that the external door also acts as the fire door and has to be kept open during trading but there is an internal lobby door which is on a self-closer and so will be closed during the relevant times, other than for access and egress.

In respect of the licensing Objective relating to the Prevention of Crime & Disorder, the Committee noted the GMP Officer's comments that there was nothing of relevance concerning poor management of the premises but also noted their comments that, 'If that's how it played out', regarding retaining existing customers in the premises would be of great assistance. They also noted that although GMP opposed the application generally, but if it was to be granted he requested specific hours for last entry to uphold the objective.

In reaching its decision the Committee also considered the Council's Statement of Licensing Policy, the Licensing Act 2003, the Regulations made there under and the Guidance issued by the Secretary of State under Section 182 of that Act and the licensing objectives.

Decision

Variation granted as follows: -

Opening Hours:

Sun – Thurs:	07:00 – 04:00
Fri – Sat:	07:00 – 06:30

Alcohol Sales:

Sun – Thurs:	10:00 – 03:30
Fri – Sat:	10:00 – 05:30

No Patrons shall be admitted to the premises after:

Sun – Thurs:	02:30
Fri – Sat:	04:30

All windows and doors (disregarding external fire doors) shall be kept closed between 23:00 and 06:30/closing time or at any time when regulated entertainment takes place except for immediate access and egress of persons.