

Licensing Sub Committee Hearing Panel

Minutes of the meeting held on Tuesday, 2 May 2023

Present: Councillor Andrew – in the Chair

Councillors: Connolly and T Judge

LACHP/23/24. Application for a New Premises Licence - Dixy Chicken, 5a Wilbraham Road, Manchester, M14 6JS

The Hearing Panel considered a report from the Director of Planning, Building Control and Licensing. The Hearing Panel also considered the written papers of the parties submitted and the oral representations of the parties who attended as well as the relevant legislation.

The applicant's agent addressed the Hearing Panel, noting that the application was for late-night refreshments. They stated it was a relatively small premises, with room for 16 customers to sit, with 4 staff working. The agent noted that the premises would not be a destination venue, in that people would not travel to the area for this premises. The only effect of the application, in their opinion, was that local residents would have a wider choice.

The agent felt that the premises was well-run; they had received no complaints or police visits. The applicant had proposed a set of conditions that were aimed at ensuring the premises upheld the Licensing Objectives. The agent noted that the panel must make their decision based on evidence, rather than speculation on what may happen in the future. The agent felt there was no evidence to suggest that the applicant would not uphold the Licensing Objectives and noted that the Cumulative Impact Policy (CIP) for the area had recently expired.

The applicant had previously applied for late-night refreshments in 2021 when the CIP was in place. The agent stated that the previous application had no relevance to the decision to be made at this hearing as the CIP was no longer in place. The agent stated that the applicant had proposed a complete set of enforceable conditions such as staff managing the external area of the premises and identifiable packaging. A condition had been proposed that two members of staff would complete a litter pick at closing time, lasting for at least 30 minutes. The applicant understood the ramifications of conditions not being met.

The applicant's agent then addressed the resident objections received. They noted that in relation to crime and disorder, there had been no previous issues at the premises. They also informed the panel that the Section 182 guidance states that the Licensing authority should look to the police as the main source of advice on crime and disorder. It was then noted that GMP had not objected to the application. They stated that from the objections received, there was four key themes to them, all related to public nuisance: customers and delivery drivers arriving at the premises, the operation of the premises, dispersal of customers and delivery drivers knocking on doors when arriving to customers. The agent noted that those residents directly above and adjacent to the premises had not objected to the application. The

extraction fan used by the premises would not cause a nuisance, evidenced by no complaints having been received regarding it. The applicant would turn down the extraction fan after midnight to reduce noise further. The agent accepted it was inevitable that customers leaving would create some noise but that it was wrong to assume all customers would be from the night time economy. They stated that the majority of customers currently were family's, shift works and emergency service workers and it was expected this would continue. The agent said there was no evidence to show that people would come to the area specifically for this premises to have a cumulative impact.

The applicant's agent noted that pictures had been supplied as evidence by objector's to highlight issues with litter in the area. The agent was satisfied that those images did not contain any packaging from the premises but accepted that litter was a wider concern in the area. They felt that the condition related to litter picking would improve the area and street scene. Concerns regarding door knocking would be alleviated by orders being placed through third-party apps. Part of the drivers code of conduct is that they do not knock on doors but communicate with customers via telephone when they arrive.

The applicant's agent reiterated that the CIP was no longer in place and it would be wrong for any weight to be attached to the policy in the panel's decision making. It had been suggested that the application was taking advantage of the lack of a policy but the agent stated this was incorrect. All applications are judged on their own merits and the agent felt that the application would uphold the Licensing Objectives.

LOOH questioned how the litter pick would be implemented, if the premises would only collect their own litter, the risk assessments completed for the later hours applied for and how additional training would be provided. The agent noted it was a significant undertaking for the premises to complete the litter pick but that it was not an unusual condition, with other similar premises having this attached to their licences. Training will be provided to staff for the litter pick and strong management controls will ensure it is completed appropriately. They noted this was not a deep clean of the street but that any litter from any premises could be collected. In terms of any risk assessments, it was stated that the applicant was an experienced operator, having previously ran a late night licence before. Strong conditions had been suggested to uphold the Licensing Objectives. The applicant noted that they expected drunk customers late at night and had offered a condition to refuse service. Any training for staff would be provided by the parent company.

The Licensing Unit officer questioned what the training would consist of and if the applicant had evidence that the litter pick condition was effective at other premises. The agent noted that the contents of training programmes would not be provided as part of an application as it was not required by the Licensing Act 2003 or Manchester's Licensing Policy. The agent was unsure what the evidence suggested would look like but again repeated that this would not usually be provided.

The panel questioned if a litter pick was not already in place, why the extractor fan would only be turned down post-midnight and not permanently, the type of customers the premises anticipated post-11pm and how SIA staff would be utilised. The agent noted again that none of the litter shown in the photographs supplied were from the

premises. Conditions being considered at the hearing were only those relating to post-11pm, as part of the application. The agent stated that the extractor would be turned down post-midnight as this is when most regular noise usually reduces and this would therefore reduce the impact of the premises in the local area. The premises anticipated their customers post-11pm to be local residents, shift-workers and emergency service workers. SIA staff would be used on a risk assessed basis, when there are specific events in the area or it is recommended by GMP.

LOOH then addressed the Hearing Panel, noting that the premises was situated in a row of shops containing four takeaways and only one of those has a licence until 3am. LOOH had received complaints relating to that takeaway. LOOH felt the premises would attract intoxicated customers, increasing noise and disturbance in the area. They felt there was no comprehensive risk assessment in place for a late night licence. They believed that the delivery drivers code of conduct was idealist. They also noted parking problems in the area. Litter was also a concern, with resident groups regularly completing litter picks. The pictures provided showed a typical weekday morning of litter in the area and LOOH felt the premises would add to those litter problems.

The Principal Licensing Officer noted that whilst the CIP was no longer in effect, it will soon be going to public consultation. They felt there was a feeling of 'open season' in the area due to the policy having lapsed. They noted that the area was saturated with takeaways, creating problems with litter. They was shocked regarding the appearance of the area and residents continually raise those concerns. They stated there was evidence that the number of takeaways in the area was the problem and that this application would only add to that. They had concerns that there was nothing in the application to show what training would be provided to staff and how effective that training would be. A general cumulative impact could be considered, according to the Principal Licensing Officer, as the application was more of the same and would add to the issues in the area.

The Principal Licensing Officer summed up by stating that it was the job of the Licensing Unit to make rational judgements to avert risk whilst it was the job of decision makers (the panel) to promote the Licensing Objectives. They felt it was a risk to add to the number of similar premises in the area. They felt there was no evidence that the applicant would uphold the Licensing Objectives.

LOOH summed up by stating that local resident objections highlight the problems of noise and litter in the area, which undermines the Licensing Objectives. The Daniel Thwaites plc v Wirral Borough Magistrates' Court [2008] EWHC 838 (Admin) ruling stated that drawing on local knowledge was an important feature of decision making. There was concerns that the additional hours would add further public nuisance to the area.

The applicant's agent summed up by stating that the effect of Thwaites is sometimes overstated and that to listen to local knowledge still requires evidence to be presented. Any decision of the panel must consider the evidence presented to them. There was no evidence that additional people would come to the area to use the premises if the opening hours were extended. There was no evidence to suggest that the Licensing Objectives would not be upheld. They noted that the premises had not

previously received any complaints about their operation. The agent felt that the Principal Licensing Officer's objection mainly related to the expired CIP and what policy could be in place in the future. They reminded the panel that it would be unlawful to consider an expired policy or what may come in the future. They felt that the evidence favours the granting of the application and noted that there are procedures in place should any future problems arise with the premises, although there was no evidence to suggest that would happen. The agent finished by stating that there was a strong set of conditions contained within the operating schedule to ensure that the premises upheld the Licensing Objectives.

In reaching its decision the Panel 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. The Panel noted that the CIP had expired and the policy could not be considered as part of their decision. The Panel were satisfied that the applicant had proposed a strong set of conditions, particularly relating to litter. The Panel were satisfied that there was no evidence to suggest the applicant would not uphold the Licensing Objectives.

Decision

Grant the Application subject to the conditions proposed in the application and the following:

1. At close of business each day, a minimum of two members of staff shall carry out a litter pick around the vicinity of the premises removing and clearing litter and disposing this in suitable waste bins. The litter patrol shall last a minimum of 30 minutes and shall include sections of the following streets/roads:

- *Landcross Road*
- *Furness Road*
- *Cawdor Road*
- *Mabfield Road*
- *Langley Road*
- *Albion Road*
- *Ridge Road*
- *Wilbraham Road*
- *Sherwood Street*
- *Wellington Road*
- *Sherwood Avenue*
- *Redmere Grove*
- *Boland Drive*
- *Ladybarn Road*
- *Wilmslow Road from junction with Wilbraham Road to Sherwood Street*

2. Noise from the extractor fan in operation at the premise shall not cause a noise nuisance within any residential premises.