

Licensing Decision Record

14 June 2018

Councillors: Fi Hance, Mike Langley, Chris Windows (Chair)

Officers: Abigail Holman - Licensing Policy Advisor, Lynne Harvey - Legal Advisor and Allison Taylor Democratic Services Officer



Licensing Hearing.

Application for variation of a premises licence in respect of Cuban, Unit 2, Millennium Promenade, Bristol BS1 5SZ

1. The premises currently has the benefit of a premises licence which permits:

Sale of Alcohol Sunday to Thursday 11:00 - 23:00

Sale of Alcohol Friday and Saturday 11:00 - 00:00

Films Sunday to Thursday 11:00 - 23:00

Films Friday and Saturday 11:00 - 00:00

Live Music Sunday to Thursday 11:00 - 23:00

Live Music Friday and Saturday 11:00 - 00:00

Recorded Music Sunday to Thursday 11:00 - 23:00

Recorded Music Friday and Saturday 11:00 - 00:00

Performances of Dance Sunday to Thursday 11:00 - 23:00

Performances of Dance Friday and Saturday 11:00 - 00:00

Similar - live/recorded music or dance Sunday to Thursday 11:00 - 23:00

Similar - live/recorded music or dance Friday and Saturday 11:00 - 00:00

Late Night Refreshment Friday and Saturday 23:00 - 00:00

2. Hours the premises will be open to the public:

Sunday to Thursday 11:00 - 23:30



Friday and Saturday 11:00 - 00:30

3. The Applicant applied to the Authority to permit:

This variation application seeks to remove and replace conditions in the Operating Schedule as follows:

Condition 7 in Annex 3 to be replaced with the following:

There shall be a minimum of 2 door supervisors, who have been accredited by the Security Industry Authority or any accreditation scheme recognised by the Licensing Authority, on duty from 21:00 hours on every Friday and Saturday night and on Sundays preceding Bank Holiday Monday who shall remain on duty until the premises closes. A minimum of 2 door supervisors, who have been accredited by the Security Industry Authority or any accreditation scheme recognised by the Licensing Authority shall be on duty from opening until close of the business during Harbourfest. At least 14 days prior to any large scale public event in Bristol city centre, THE DPS shall undertake a written risk assessment in relation to the requirement for door supervisors and shall employ door supervisors in the numbers and for the times identified in that risk assessment.

Condition 6 in Annex 3 to be amended to:

At any time that door supervisors, who have been accredited by the Security Industry Authority or any accreditation scheme recognised by the Licensing Authority, are employed at the premises, they shall be used to vet customers and maintain public order. The vetting process must include implementation of the premises' proof of age policy. All door supervisors must ensure that identification bearing the customers photograph, date of birth and integral holographic mark or security measure is produced before allowing entry and where it is not, entry shall be refused. Suitable means of identification would include PASS approved proof of age card, photo-card driving licences and passports.

Condition 31 in Annex 3 to be replaced with the following:

With the exception of customers waiting in the Designated Bar Area to be seated in the restaurant, intoxicating liquor will only be sold and supplied to customers who are engaging in a sit down table meal and as an ancillary to that meal. No service of alcohol shall be over the bar directly to the customer, except to customers waiting in the



Designated Bar Area to be seated in the restaurant and in accordance with this condition, all other alcohol to be supplied by way of waiter/waitress service.

Condition 18 in Annex 18 to be amended as follows:

Items of glassware (such as glasses, bottles, etc) shall not be permitted in the outdoor area/ dance floor area after 22:00 hours. Items of glassware, (such as glasses, bottles, etc) shall not be permitted in the outdoor area from 17:00 hours during Harbourfest.

To add the following new condition:

Nothing in these conditions will supersede or otherwise require an authorised person or the premises licence holder to undertake any activities or provide data to an officer or other responsible authority in breach of data protection legislation in force in England and Wales. In the event there is a conflict, the premises licence holder or authorised person will inform the relevant parties requesting the data as to why the data requested cannot be provided as requested. Such information is to be provided in writing with an explanation as to why the request, in the opinion of the premises licence holder, breaches data protection legislation. For the avoidance of doubt, any data requested by a police officer directly relating to the investigation of a criminal offence shall be provided as required to the officer within the time frame agreed or at earliest possible time following the request of the police officer.

This application also seeks to vary the layout plan in order to show the 'Designated Bar Area' referred to in the proposed conditions.

The other times, conditions and licensable activities authorised by the premises licence are to remain unaltered.

The premises were located in the City Centre Cumulative Impact Area.

Relevant representations had been received from the following parties, all of whom had been notified of this hearing and their rights:

**Krystina Boydell
James Newcome
Pollution Control**



Avon And Somerset Police

The Committee considered the Application after hearing the representations made and decided:-

That the application be rejected.

Summary of Representations:

Local Resident

Upon the agreement of all parties, a local resident was allowed to speak first as she had other commitments and needed to leave early.

The local resident explained that she had lived at Anchor Point for 2 ½ years and she was part of a residents' group. The Cuban had caused a lot of distress to local residents over the years because of the level of noise which was sometimes so high that it was necessary to have all windows in her home closed. There were evenings when the Cuban had remained open beyond allocated times and the noise of customers leaving could be pretty immense. There were no particular incidents the resident could refer to but it was the general level of noise from the Cuban that was very disruptive. She could not get a quiet evening at home even on a Sunday.

A residents meeting took place in October/November last year because the residents needed help. They met with the Police and put forward their concerns which related to the premises not operating within the regulations on the licence since it had opened. The premises appeared to be operating primarily as a bar and that was how the residents saw it – not as a restaurant. The conditions the Licensee was now seeking to remove/relax today had never been adhered to so residents were very concerned.

The noise from the premises occurred during the week as well as during the weekend but in the Summer it gets worse as customers are sitting outside and there appears to be no controls to keep the noise at a reasonable level. Other restaurants in the area move people on at around 10pm but that is not the case with the Cuban. There was no control of customers outside of the premises by the management.



Applicant

The Applicant's legal representative referred to his skeleton argument and letters in support of the application.

It was clarified that the Applicant was now only seeking a variation in respect of the following two conditions: -

1. Doorstaff
2. Glassware – the applicant wished to remove the restriction on glassware in the outside area

Reference was made to the history of the premises and Nicholas Wallace, the DPS and manager, made a statement in which he apologised to the police for previous shortcomings. He had blinded himself of his obligations and realised that he had caused the Police additional and unnecessary work but he now hoped to work closely with the Police and move forward.

Meran Allipour, the owner of the business, also apologised to the Police and stated that he too wanted to work with them to ensure compliance with the licence conditions.

It was further submitted on behalf of the applicant that the management were seeking to draw a line under the past and look forward to the future. If the Members were minded to allow the variation sought, that would allow a window of 6 weeks to enable the applicant to come back to the review and demonstrate compliance and that the proposed changes will not undermine the licensing objectives.

Variation of the two conditions today would not undermine the licensing objectives and would allow the business to continue to operate. The restaurant business today is not as it used to be. Casual dining is now a huge part of the licensing trade since it is not always necessary to book a table. Diners want to have an experience and enjoy the facilities on offer. When the Cuban was established it intended to do just that, but the conditions imposed have fettered the ability to do this and have killed the atmosphere in the premises. It is often half empty and has gone from an establishment that was surviving to one that is losing money.



It was unfair of the Police to say that there had been a complete disregard of the conditions. The management have apologised for what had gone on before.

Nor was it reasonable to expect a restaurant to have a condition requiring door staff every day of the week. Stopping people from going outside, the glassware condition and having door staff on duty all give the impression that there are crime and disorder issues. There are no such issues at these premises. There are staff to manage the outside area but if that needs to be improved, this can be done.

It was contended that the breaches of condition were not directly tied to a definitive undermining of the licensing objectives. The Council's cumulative impact policy is intended to deal with new licences, extended hours, increased capacity or adding people to the area. There was no intention to extend the hours or add people to the area. Having glassware outside cannot be said to touch upon the CIA policy.

The conditions in question are disproportionate to the aims the management are seeking to deal with. Door staff cost £30k per annum and no business can afford that. The business is going into debt week after week. Reference was then made to the Regulators Code which states that regulators should avoid imposing unnecessary regulatory burdens on businesses.

The nature of this application will not change the premises into a bar – it will still have the same restaurant style conditions. The application in question could have gone through as a minor variation if the Police had agreed. A lot of the issues put forward by the Police are historic and the subject of the pending review. The Applicant intends to put forward a different operating schedule on the day of the review.

The Applicant's legal representative thanked the licensing officer for drawing the committee's attention to paragraphs 9.43 and 9.44 of the statutory guidance which refers to the potential burden that a condition would impose on the premises licence holder – such as the financial burden due to restrictions on licensable activities.

There were 25 jobs at the heart of this application and the apologies for the previous issues are sincere.

Police



The Police always start by saying that they are willing to engage with premises. They have done that and acknowledge the apologies from the applicant. The Police have received apologies before but hope to move on from that.

When the licence was originally granted, it was relevant that the premises were located in a CIA, as there were already a large number of bars there. It is in an area where police resources are already stretched. Residents had raised concerns and the Police were keen to ensure that the premises operated as a restaurant but a balance was achieved whereby some conditions were imposed that were relevant to a restaurant and others were imposed that were of more relevance to a bar. The Applicants went in with their eyes open and the Police would be hesitant about any elements of the premises becoming closer to a bar.

Over the years, trust had been lost in the management. There have been a number of issues which on their own might not seem huge, but because this is a CIA, the issues are of particular relevance.

There was an incident involving an assault. On another occasion there was no door staff on duty and the premises was operating as a bar, beyond the hours of operation - all in breach of the conditions on the licence.

The Police did not understand the Applicant's argument that the breaches of condition did not link in with an undermining of the licensing objectives. The Police believed that the conditions were imposed on the licence in order to promote the licensing objectives otherwise why on earth would they be there? Any breach of condition undermines the licensing objectives.

A further incident was referred to where a member of staff was unable to operate the CCTV and no regard appeared to be had to the licence conditions.

On 9 February 2018 a meeting took place at the premises when various breaches of condition were noted and a number of them were all relevant to the position of the management wanting to operate the premises as a bar and not a restaurant. The view of the Police is that the conditions in question were imposed for good reason which resulted in a licence in a CIA being granted in good faith. The Police suggested the conditions had been disregarded resulting in a breach of trust.



Contact had been made with Michael Nabarra who was believed to be the DPS and it was discovered that he hadn't been the DPS for a number of years – but then he subsequently said that he would take on the role as DPS. However, on subsequent visits to the premises, the Police have never seen him there.

Further issues were referred to where the incident register was not completed – which indicated to the Police that this is a premises that does not call the Police – so it is difficult for the Police to confirm that this is a premises that does not suffer from significant issues.

There were concerns regarding the CCTV conditions as during numerous police visits to the premises, staff have been unable to operate it.

In regard to the sexual assault at the venue last year, the CCTV was retrieved but the clock was wrong. However, incidentally it showed that the venue was very busy and open after the time it should have been closed.

During a visit of 13 April glassware was being used outside in breach of condition which might indicate that the management are not supervising where they should be. It was also noted that no door staff were on duty. Upon checking an entry in the register, it was established that a person was signed in as being present on the day was actually working somewhere else. The register had therefore been forged. Although the Police received an apology for this, it took the wind out of their sails and left the Police with little alternative but to bring a review of the licence. It was the final straw for the Police in terms of losing trust.

The Police completely understood the financial arguments advanced by the Applicant and would be open to working with the management to secure compliance with conditions but it was far too soon for the Police and residents to agree to relax the current conditions. The Police could not support this application as it stood and respectfully requested the Committee to turn it down. The Police wanted the management to demonstrate pending the review that they could comply with existing conditions before looking to relax them.

Summary of Reasons:

1. The Committee considered all of the representations from all parties including the local residents who had objected to the variation along with all the supporting information from the police and applicant.



2. Although the Committee recognised the economic arguments raised by the applicant, this did not override the promotion of the Licensing Objectives. In particular, paragraph 9.44 of the Guidance which covers that particular issue, further states that: -

“As with the consideration of licence variations the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the LO’s **and the track record of the business.**”

3. It was noted that even as recent as April of this year breaches of conditions of the Premises Licence were found in addition to there having been numerous breaches of the licence in the past. Repeated breaches of condition of the licence were also reported by the local resident who spoke at the hearing, which had resulted in an undermining of the public nuisance licensing objective.
4. The conditions in question had been imposed on the licence as they were considered to be appropriate and proportionate for a premises located in an area which was already saturated with licensed premises. Consequently, it was plain that these conditions were in place to mitigate potential negative impact on the promotion of the Licensing Objectives. To relax them at this stage, would be premature and posed a real risk of the licensing objectives being undermined, particularly as there was a pending review of the premises licence.
5. The Committee considered that the proposed amendment of conditions would amount to a material variation of the licence since it was directly relevant to the Council’s Cumulative Impact policy. The policy was adopted to deal with not only crime and disorder but also prevention of public nuisance and was aimed at alcohol led establishments, which this premises appeared to have been operating as. The purpose of the door staff condition was to ensure the management and control of customers both inside and outside the premises. The lack of compliance with this condition, of which there was evidence, added to the cumulative impact already experienced in the area.
6. As with the glass ware condition – if the area was not being properly managed there was a risk of the crime and disorder licensing objective being undermined. This



condition was clearly proportionate and appropriate in an area that had been designated as a Cumulative Impact area.

7. Therefore the rebuttable presumption to refuse this application applied. The Committee had heard nothing to satisfy it that an exception to the policy applied in this particular case.
8. Even if the Committee had reached a view that the Cumulative Impact policy did not bite, it would still have refused this application on its merits. This was because it was considered that a relaxation of the conditions in question, particularly with a pending review, would be premature and undermine the promotion of the Licensing Objectives.

CHAIR

