

LICENSING SUB COMMITTEE

14 MAY 2015

Present: Councillor J Brown (Chair)
Councillors G Derbyshire and M Mills

Also present: Councillor Ian Brown, Observer
Catherine Trollope, Environmental Health
Alexander Greaves, Applicant's representative,
Cengiz Erpolat (Woody Express), Applicant
Mert Gunseber, Translator for Applicant
Peter Young (Central Town Residents' Association),
Interested Party
Adam Mayling (Lux Watford), Observer

Officers: Licensing Manager
Solicitor
Committee and Scrutiny Officer
Committee and Scrutiny Support Officer (AG)

28 COMMITTEE MEMBERSHIP/ ELECTION OF A CHAIR

The Committee and Scrutiny Officer confirmed that the Sub-Committee would comprise Councillors J Brown, Derbyshire and Mills.

The Sub-Committee was asked to elect a Chair for the Hearing.

RESOLVED –

that Councillor J Brown be elected Chair for this Hearing.

29 DISCLOSURE OF INTERESTS (IF ANY)

There were no disclosures of interest.

30 APPLICATION FOR A NEW PREMISES LICENCE: WOODY EXPRESS, 109 THE PARADE, WATFORD, WD17 1LU

The Sub-Committee received a report of the Head of Community and Customer Services setting out details of an application for a new premises licence for Woody Express situated at 103 The Parade, Watford.

Catherine Trollope, the Environmental Health Officer circulated clearer copies of the plan that had been circulated prior to the meeting as they were more legible. All parties had been provided with the original version prior to the meeting.

The Licensing Manager informed the Sub-Committee that the previous application, considered in March 2015, had been refused and the applicant had submitted an appeal to the Magistrates' Court. He reminded Members that each application should be considered on its own merits; however some relevant information had been raised at the previous hearing and the Sub-Committee would need to consider what weight it wished to place on the historical information.

The Licensing Manager outlined the application and the information within the report. It was noted that the Police had not submitted a representation for the latest application, but representations had been received from Environmental Health, the Licensing Authority and an interested party. The representations referred to the prevention of public nuisance and the Council's Statement of Licensing Policy 2013-18, particularly policies LP2 and LP3.

Following a question from the Chair, the Licensing Manager responded that there was no significant difference between the application before the Sub-Committee and the one considered at the hearing on 2 March 2015.

Mr Greaves, representing the Applicant, questioned the officer's response. In respect of the previous application, the Police had submitted a representation which was not the case for the current application. He questioned whether or not this would be considered a significant difference.

The Licensing Manager responded that the Police had viewed the current application differently to the earlier submission.

Mr Greaves referred to the hours requested on the first application and that the latest version proposed to close earlier.

The Licensing Manager explained that the application still proposed to operate beyond the terminal hour of 1.00 a.m., which was set out in policy LP2.

Mr Greaves referred to other policies within the Council's Statement of Licensing Policy. He noted that the Applicant had co-operated with the Police, who were now happy with the additional conditions and the reduction in requested operating hours. He also commented that according to the policy that the starting point for an application would be to grant the application. He added that the policies should be flexible.

The Licensing Manager responded that the representations within the officer's report to the Sub-Committee did not refer to the prevention of crime and disorder objective, only to public nuisance. With reference to point two in policy LP3; the officer advised that Mr Greaves' comment was correct but it was subject to any representations being received and the content of policy LP2. Policy LP2 should be imposed as indicated. In addition he referred to the exceptions to policy LP3,

particularly to point three; this put the onus on the Applicant to prove why they should be considered an exception to the policy.

Following further comments from Mr Greaves, the Chair commented that the onus was on the Applicant to prove they were an exception to the Council's policies. She felt the Applicant's representative was being selective with the policies.

Mr Greaves replied that the policies should not be over-restrictive and in his presentation he would set out the reasons why the Sub-Committee should agree to depart from its policies. Referring to the policy LP4 'Sensitive Licensing Areas', he mentioned that the premises' location was not referred to in the policy, which would mean that the location was less sensitive.

The Licensing Manager advised that policy LP4 did not refer to the High Street or The Parade. The location of the premises under consideration was possibly more sensitive. The relevant policies were stricter and there was more control than those for the Sensitive Licensing Areas.

There were no further questions for the Licensing Manager.

The Chair invited Catherine Trollope, an Environmental Health Officer for the Council, to present the representation on behalf of the Responsible Authority.

Ms Trollope informed the Sub-Committee that she was making the representation on the grounds of the prevention of public nuisance. She stated that the premises had residential dwellings located immediately above it and there were also residential dwellings nearby. 64 residential units were currently being created opposite Woody Express. Planning permission was pending for a further 18 units in close proximity. The map which had been circulated prior to the meeting and at the start, showed the location of the residential units, other take-aways in the area and other licensed premises. This showed that there was potential for a substantial number of residents to be affected by noise coming from within the premises, for example the extractor fan and noise break out when the door was opened as people left the premises. In addition people often congregated outside take-away premises whilst they ate their food and talked to others. There was potential for people to sit and eat their food and not move away from the area.

She acknowledged that the premises proposed to close at 3.15 a.m. but people could still sit outside and therefore the noise could continue beyond 3.30 a.m. The bar nearest to Woody Express closed at 2.00 a.m. The other take-away premises on The Parade closed between midnight and 2.30 a.m. Some premises further away did open later, for example McDonalds, but this was located further away from residential dwellings. Kismet Kebabs was sufficiently far enough away from the residential dwellings in the building to not cause residents any problems. Ms Trollope cautioned that if Woody Express was open until 3.00 a.m., there was potential for the premises to become a focal point. If people start leaving Oceana at 3.00 a.m. there would be the potential for people

to go to Woody Express. The preference would be for people to leave Oceana and disperse.

Ms Trollope referred to complaints received from residents in the dwellings above the premises. It was necessary to mitigate against any potential impact. She suggested that if the time was cut back to 2.30 a.m., this would remove Environmental Health's concerns about the potential for public nuisance.

Ms Trollope informed the Sub-Committee that the other concern for Environmental Health was litter. She stated that people were careless and dropped litter. This was a public health issue; conditions could be added to address this matter.

The Chair invited Peter Young to present the representation on behalf of Central Town Residents' Association.

Mr Young stated that local residents were disturbed by people late at night. The issues included noise, litter and damage to property. If people were held longer in the Town Centre this increased the disturbance to residents on residential streets longer into the night. He advised that at night he left his radio on to help mitigate any external noise; this was the only way he could get to sleep. With regards to rubbish, he had continuously asked that packaging was marked with the businesses names. This would enable residents to know which company they could complain about. Litter was dropped in gardens or thrown at cars and property. Residents would further lose their quality of life if another premises was allowed to open later.

Mr Greaves noted the additional conditions proposed by Environmental Health and advised that the Applicant would accept them. He asked Ms Trollope to confirm whether Environmental Health's representation would be withdrawn if the premises were to close at 2.30 a.m. He also sought clarification as to how the concerns about public nuisance would be addressed by closing 45 minutes earlier and information about complaints regarding the premises.

Ms Trollope confirmed that a closure of 2.30 a.m. was acceptable and that public nuisance was likely to be less of an issue up to this time. With regard to complaints, she referred to the information circulated prior to the meeting and again at the start. She added that officers did not know how popular the premises had been when the previous licence had been held. Also, it was not known how the premises was previously managed. If the premises were to become popular it would be difficult to make a comparison with its operation under the previous licence, as there were two different operators.

Mr Greaves noted the two complaints in the document and commented that they did not relate to noise from people.

Ms Trollope explained that the legislation used by Environmental Health, meant that it was not possible to carry out enforcement requiring people to keep the level of noise in the streets lower. This was a matter that the Police would enforce. This meant that Environmental Health did not hold any information

about noise complaints regarding people outside the premises. She confirmed that noise abatement notices had not been issued; this was due to the fact that there had been no statutory noise nuisance. The Council had the power to manage noise complaints on an informal basis, whereby problems were addressed by businesses. Although the Council had a duty to serve a notice, the matter could be dealt with by a phased approach.

Mr Greaves noted that several of the complaints listed referred to Yates. He advised that Woody Express would not have any music playing and therefore there would be no problems caused by music. Mr Greaves commented that the list circulated by the Environmental Health Officer had not included Hayris Kebab House; this premises was open until 4.00 a.m. every day. He asked the officer why she felt that the area outside Woody Express would become a focal point for the public and not the areas outside any of the other premises she had listed.

Ms Trollope explained that Woody Express was close to Oceana and the concern was that people would go to the nearest takeaway. Hayris was some distance away from this part of the Town Centre. Other premises on the list were not located near to residential dwellings. In response to a further question about the acceptability of 2.30 a.m., Ms Trollope advised that the earlier closing time would mean that the premises be closed when large groups of people started leaving Oceana at 3.00 a.m.

Councillor Derbyshire said that it was important to distinguish between the hours that alcohol sales stopped, which was 3.00 a.m. at Oceana. People would start to exit from that time over the remaining hour the premises was open.

Following a comment from Mr Greaves about Kismet Kebabs, Ms Trollope advised that people living in the High Street were aware of the situation, but as premises were allowed to open later, this became less acceptable to residents. She said that 2.30 a.m. was in line with other premises. It was important that people were encouraged to move away from the Town Centre. She reiterated that the other premises were not close to residential dwellings.

The Chair commented that many of the premises referred to by Mr Greaves had grandfather rights and had not been considered under the current policy.

Mr Greaves acknowledged the Chair's comments, but added that the current premises had operated until the requested hours under the previous premises licence.

Ms Trollope stated that The Parade was a busy area and the Council was trying to reduce the impact on residents; the aim was to get people to leave in a graduated manner and move from the Town Centre.

Ms Trollope referred to the condition about the provision of a door supervisor. She said that she did not understand the role they would have at the premises. She noted Mr Greaves had suggested that they would ask customers to leave the area quietly; but in practice she did not know how this would work.

Mr Greaves reminded those present that the Council was not able to hold the premises supervisor responsible for any noise made away from their premises.

Ms Trollope responded that it was necessary to consider what was reasonable. It should not be burdensome on the business but it was also important to protect residents above the premises. She said that at 2.30 a.m. there was less likely to be a problem.

Mr Greaves suggested that it was necessary to take account of the character of the area. Woody Express was in the heart of the High Street and close to a large night club. He added that although there was noise it was not necessarily a nuisance.

Ms Trollope agreed about the location of the premises but added that noise was an aspect of nuisance to be considered. She said that Watford was not a 24 hour town.

Following a comment from Mr Greaves about other premises being open beyond 3.30/4.00 a.m., Ms Trollope responded that those premises were not takeaways. She repeated the information about the various takeaways and their proximity to residential dwellings. She advised that the Council did not hold any data about the 'pooling' of people. She acknowledged that this particular area would have a higher level of noise when compared to a residential area, but it was the volume level that needed to be considered.

Mr Greaves spoke to Mr Young and said that his understanding of the residents' association's representation was not about people within the High Street but when they left that area.

Mr Young advised that residents' concern related to the dispersal of premises' clientele. He noted that the applicant's representative had said that his client was not responsible for customers once they had left the premises. The rubbish which was left in gardens did not identify the premises. If residents were able to identify which premises the rubbish had come from, then residents would be able to make a complaint about that premises. He thought the problem would get worse as the economy improved. Takeaways caused problems by delaying people in the Town Centre.

In response to a question from Mr Greaves, Mr Young acknowledged the reduced opening time but felt it would be preferable that the premises did not operate at all.

Mr Greaves commented that the Applicant had purchased the premises and wanted the same operating hours as the previous premises licence. He remarked that his client had advised him that the packaging would show the Woody Express brand label. He suggested that a condition might be added requiring his client to use labelled packaging.

Mr Young welcomed this suggestion.

There were no further questions for the Responsible Authority or Interested Party.

The Chair invited Mr Greaves to present his client's application.

Mr Greaves informed the Sub-Committee that his client had submitted an application to provide late night refreshment. They had not requested the sale of alcohol and therefore would not contribute to the problems caused by people who drank late at night. The premises had been licensed until the licence had been surrendered by the previous owner. Having looked at the list of complaints circulated by the Environmental Health Officer, the service had received only one complaint over a period of 10 years. The premises had not caused any nuisance other than that which was considered to be acceptable.

Mr Greaves outlined the differences between the previous application, which had been considered in March and the current one before the Sub-Committee. The Applicant had taken on board the previous concerns and made amendments. For four days the application was compliant with policy LP2; the other three days did extend beyond the 1.00 a.m. deadline but were in line with other takeaways in the area and the previous premises licence. The original premises licence had been surrendered to the Council by mistake. The Applicant had been confused and had opened the premises in line with the original premises licence. Since the matter had been raised, the premises had been closed. The Applicant operated a restaurant at the other end of the High Street. He wanted to maintain a good relationship with the Council. Woody Grill was a family friendly brand which was licensed until 2.00 a.m. There were also premises throughout London. The takeaway was ancillary to the brand's other uses. It would not draw people to the Town Centre.

Mr Greaves referred Members to the Secretary of State's guidance. Members should be flexible when considering an application. If the application were to be granted and the premises did not meet the licensing objectives the application could be reviewed. The premises was not responsible for people beyond the premises and therefore would not be responsible for the anti-social behaviour or public nuisance caused by them. He reminded the Sub-Committee that the Police had not objected to the application and they were the key authority who could submit a representation on the grounds of crime and disorder. He agreed that the Sub-Committee had to make its decision based on the evidence before it.

Mr Greaves said that the prevention of public nuisance appeared to be the main concern. The concerns about litter could be addressed by condition. Mr Young had appeared to be satisfied with the suggestion of branded packaging.

Mr Greaves stated that the Sub-Committee needed to consider any exceptions to the policy. With reference to noise, it was fundamental that the character of the area where the premises was located was understood. The premises was in the heart of the Town Centre. It was 50 paces from Oceana which had capacity for over 2,000 people. Oceana was open until 4.00 a.m. and served alcohol to 3.00 a.m. On Fridays and Saturdays Woody Express would only be open for 15

minutes, if people start leaving Oceana at 3.00 a.m. This would not be sufficient time for people to gather outside Woody Express. He considered it to be a benefit that people would be able to get a takeaway from Woody Express before going to the taxi rank, rather than people going to other places within the town. The residents living in the Town Centre had to accept that the area where they lived had a lively aspect. The premises would not increase the levels of noise. There was already a large number of people in the area. The premises would not be serving alcohol or playing music.

Mr Greaves commented that the premises had a proven record and reiterated that there had only been one complaint about the premises. He considered that the Sub-Committee should attach significant weight to this matter. The premises would not be adding to the number of premises operating in the area as it had operated in the past. The Applicant had voluntarily offered to provide door staff, and would restrict the hours that rubbish could be removed from the premises. The Applicant had done all he could within his control.

Mr Greaves informed Members that the premises would only be viable if it was able to open until the same times as others; if it closed earlier it would not be viable. The Applicant had spent £100,000 refurbishing the premises. It was currently closed and did not contribute to Watford.

Mr Greaves summarised the points he had raised in support of the application.

There were no questions from Mr Young.

In response to a comment from Ms Trollope, Mr Greaves said that the earlier complaint had been prior to the Licensing Act coming into force. When the Licensing Act had come into force more control of premises was introduced.

Further questions from Councillor Derbyshire, Mr Greaves acknowledged that the Council's licensing policy was a material consideration that needed to be taken into account. The application was compliant for four days out of seven. He also agreed that market considerations were not something that the Sub-Committee needed to take into account, but the explanation had been given in order for Members to understand the reasons the Applicant had made the application. Mr Greaves commented that the policy should not be rigidly applied. The Applicant wished to open the same times as other premises in order to be competitive. The Council's policy should not stifle business. The Deregulation Act 2015 would require authorities to look at the economic impact of decisions. It would reduce the restriction on late night refreshment premises.

Councillor Derbyshire said that the Council's licensing policy was dynamic and regularly reviewed. The current version had been agreed in 2013. The policy was not retrospective and could not affect premises that were already operating.

Mr Greaves agreed with Councillor Derbyshire's comments but added that this did not mean that exceptions could not be made. The Sub-Committee also needed to take into consideration the statutory guidance and the promotion of the licensing objectives. He considered that the evidence before the Sub-

Committee would not cause any significant nuisance. The application ensured that the four licensing objectives had been promoted.

Councillor Derbyshire stated that policy LP2 had allowed for exceptions and that it was for the Applicant to prove it.

Mr Greaves agreed but added that the application was for a takeaway and not a bar. The starting point for the closing time was 1.00 a.m. but then the Sub-Committee needed to consider whether the application would cause any harm or public nuisance. The Applicant had demonstrated that there would not be any harm. He stated that the Council had departed from its policy, for example in the case of the license granted to Oceana.

The Chair said that it was important to understand the original reasons for the policies about takeaways. When people stayed later to get something to eat or drink they tended to drift away slowly. The licensing authority had a great deal of experience in this matter.

Mr Greaves agreed that the policy could not be retrospective. The requested hours were in line with other premises in the area. The request would not cause or add to problems. The use of door staff at the premises was described as an asset. The evidence before the Sub-Committee suggested that the application would be acceptable up to 2.30 a.m.; this application added a further 15 minutes on Mondays and 45 minutes on Fridays and Saturdays.

The Chair responded that she had heard the evidence from the Environmental Health Officer but she was not a Licensing Officer. The premises had to be looked at from a licensing perspective. The Chair referred those present to the Council's licensing policy for the Prevention of Public Nuisance and said it referred to the 'potential for nuisance occurring on those premises or immediately outside'. The Chair noted the addition of a door supervisor and that the premises would not be selling alcohol, however those visiting the premises were likely to have drunk alcohol. She asked for clarification on the role of the door supervisor.

Mr Greaves responded that the condition required the person to hold an SIA qualification. At the previous hearing the Police had considered the addition of a door supervisor to be beneficial. The person would be able to keep control of this small premises and remind people it was a residential area and to leave quietly. Most people would follow the advice. They would not be required to carry out identity checks. They would ensure that any potential for nuisance was reduced.

The Chair questioned whether they would stop people queuing outside or be able to turn people away.

Mr Greaves said that they would actively manage any potential for noise from people in a queue. They would be a benefit to the High Street.

The Chair noted that Mr Greaves had referred to the area as residential, if that were the case then the terminal hour would be midnight.

Mr Greaves responded that it was the High Street with some residential dwellings. Irrespective of the number of dwellings the area would always have a night time economy. The policy recognised different hours for the Town Centre compared to residential areas. Residents had to recognise where they were located. Businesses should not be penalised for operating in the area.

Mr. Greaves referred to the fact that the applicant had spent £100,000 on refurbishing the premises. The Chair responded that the onus was on the applicant to have checked the Council's policy before doing so.

Mr Greaves explained that his client had agreed to the purchase of the licensed premises. It was a mistake that the previous licence had been surrendered. His client had taken on the premises understanding it to be licensed. Mr. Greaves said that it was not the applicant's fault that the licence had been surrendered. He had already tried to accommodate the concerns raised by the Police.

The Chair replied that it was not the Council's fault and that the applicant should seek redress from whoever handled the purchase of the premises for him.

In response to a question from the Chair about the family friendly town centre description, Mr Greaves again referred to policy LP3 and that the starting point was to grant the application. He reiterated his client's experience in managing premises; the statutory guidance and the licensing objectives.

In response to a question from the Licensing Manager about door staff, Mr Erpolat advised that only Woody Grill, in Watford, had door staff. These premises were open until 2.00 a.m.; his London venues were open until 5.00 a.m. He would not have purchased the premises without the licence. He informed Members that he also owned a night club on the High Street, but due to problems from customers he had closed it. He did not want to cause any problems in the area.

Mr Greaves reminded Members that if there were any problems at the premises they had powers that could be used.

In response to a question about staff training, Mr Erpolat advised that all staff were trained in-house by their managers.

Mr Greaves suggested that a condition could be imposed related to training. With regards to the role of the door staff, he proposed that a condition could be added that required a scheme to be put forward for approval by the licensing authority.

The Licensing Manager suggested that this proposal allowed some flexibility if circumstances changed.

Mr Greaves commented that the Applicant had already scaled back the hours as much as possible and could not reduce to 2.30 a.m.

Mr Greaves asked the Sub-Committee to grant the application and allow the Applicant to demonstrate that he could allay any concerns and would promote the licensing objectives. He requested that they considered the application on its own merits.

Following a comment by the Environmental Health Officer about sound insulation, Mr Erpolat advised that this had already been done but if more was required he would ensure it was done.

Mr Greaves added that the Applicant wanted to run his business. The refurbishment should have improved any problems with the previous situation. Any concerns Members had could be allayed by the addition of conditions.

There were no further comments from those present.

The Sub-Committee retired to consider their decision.

On the Sub-Committee's return, the Chair announced the decision.

RESOLVED –

that, having taken into account the provisions of the Licensing Act 2003 and the Guidance thereon, the Council's Statement of Licensing Policy 2013 and the representations made on the application, the Sub-Committee has decided as follows:

that the application be approved with the amended hours of operation of 2300 to 0100 the following day, Monday to Saturday and 2300 to 0000 (midnight) on Sunday.

The Sub-Committee was not persuaded that the applicant had made a case for an exception to be made to policy LP2 whereby the hours of operation for takeaways in the town centre will be 2300 to 0100.

Chair

The Meeting started at 10.30 am
and finished at 1.55 pm