

LICENSING SUB-COMMITTEE

Thursday, 13th November, 2014 at 10.30 a.m.

In a Conference Room, Council House, Walsall

Present

Councillor Anson (Chairman)
Councillor Sarohi
Councillor Sears

In attendance

Mr Steven Knapper – Principal Licensing Officer – Walsall MBC
Miss. Hazel Powell – Senior Licensing Officer – Walsall MBC
Mrs. Emma Oliver – Legal Services – Walsall MBC
PC Gardiner – West Midlands Police
PC Liz Foster – West Midlands Police
Nigel Blair – Fever Nightclub
Andrew Wood – Woods Whur Solicitors
Andrew Millichamp – Fever Nightclub
Malcolm Nicholls – Viking Pubs Limited on behalf of Pitch Sports Bar, Bridge Street, Walsall

Appointment of Chairman

Resolved

that Councillor Anson be appointed Chairman of the Licensing Sub-Committee for this meeting only.

Councillor Anson in the Chair

Welcome

The Chairman extended a welcome to all persons present at the Licensing Sub-Committee which had been established under the Licensing Act, 2003.

Apologies

There were no apologies for non-attendance.

Declarations of Interest

There were no declarations of interest.

Licence Hearing

Application for a premises licence variation under Section 34 of the Licensing Act, 2003 – Fever, 133 Lichfield Street, Walsall, WS1 1SL

The report of the Interim Head of Communities and Public Protection was submitted:-

(see annexed)

Councillor Anson explained the purpose of the meeting and requested the Principal Licensing Officer (Mr. Knapper) to explain the variation application.

The Principal Licensing Officer (Mr. Knapper) enlarged upon the report for the benefit of the Sub-Committee and indicated that the application for a premises licence variation in respect of Fever, 133 Lichfield Street, Walsall, WS1 1SL had been made under Section 34 of the Licensing Act, 2003. The application could be granted as requested, granted with additional/modified conditions or rejected. The current premises licence which included the layout of the premises was given in Appendix 1 to the report and the premises licence variation which had been received on 18th September, 2014 was given as Appendix 2.

Mr. Knapper drew the Sub-Committee's attention to Paragraph 3.3 of the report and indicated that a street map showing the location of the premises was given as Appendix 3 to the report. He confirmed that the application had been submitted to the statutory "Responsible Authorities" and had been advertised by way of a blue site notice displayed at the premises and a Licensing Notice had been placed in a newspaper circulating in the area to comply with the requirements of the Licensing Act.

On 29th September, 2014 the Licensing Authority had received a written representation from West Midlands Police, a Responsible Authority under the terms of the Act, (Appendix 4 refers) and on 13th October, 2014 a written representation was received from an "other person" (Appendix 5 refers).

Mr. Knapper also drew attention to Paragraph 4.2 of the report which explained the legal position and continued that on 8th September, 2008 the Council had introduced a Cumulative Impact Policy for Walsall town centre and these premises lay within that area. (Appendices 6 and 7 refer). He added that in determining the application the Sub-Committee must have regard to the statute; its statement of licensing policy and the statutory guidance issued under Section 182 of the Licensing Act, 2003.

Parties had no questions for Mr. Knapper.

PC Gardiner was invited to address the Sub-Committee and stated that, in his opinion, this variation application had been made on purely commercial grounds and would not reduce crime and disorder in Walsall town centre if it was granted. He drew the Sub-Committee's attention to the costs of alcohol abuse in the NHS and indicated that opening to 4.30 a.m. without creating additional problems for the

emergency services was inconceivable. He referred to an informal meeting between the Police and the Fever Group representatives held on 23rd October, 2014 when the Police had informed Fever's management that they would be objecting to the variation application. PC Gardiner referred to the problems arising in Walsall town centre from the pre-loaded drinks culture and stressed that it was important for the Police to remain in control. He was concerned that if Fever was allowed to open to 4.30 a.m. then other town centre venues would apply for later opening until 6, 7, or 8 a.m..

With reference to the Police incident logs which had been supplied, PC Gardiner stated that there was evidence that people were leaving Fever in an intoxicated state and Fever made double the number of calls for Police assistance than other venues in the town centre.

PC Gardiner then referred to the Community Impact Policy which had been introduced by the Local Authority in Walsall town centre in 2008 and drew attention to the effect granting this application would have on the emergency services. He felt that Fever must accept responsibility for their actions. He informed the meeting that Fever had applied for the maximum number of Temporary Event Notices in the course of the year and these had been managed well with only one incident arising which related to a Temporary Event Notice. However, with Christmas fast approaching, the venue would lose out if it could not offer later opening.

PC Gardiner referred to the variation application submitted by Fever and highlighted the fact that no additional steps had been offered to promote the licensing objectives. He then advised the Sub-Committee of the costs involved in policing of Walsall's night-time economy.

Mr. Wood (Solicitor representing Fever) stated that not all of the logs referred to by PC Gardiner could be attributed to Fever's clientele. PC Gardiner replied that all the logs quoted related to people who had been within the premises or outside or in close proximity to the nightclub when the incidents had occurred.

Councillor Sears asked whether the Police would like to see the variation application refused or controlled by additional conditions. PC Gardiner replied that the Police would prefer to see the application refused.

Mr. Nicholls (Viking Pubs Limited on behalf of the Pitch Sports Bar) was invited to address the Sub-Committee and indicated that he was objecting under the Prevention of Public Nuisance, Public Safety and Prevention of Crime and Disorder objectives. He drew attention to the culture of discounted drinks which was entrenched in Walsall and stated that the applicants had been aggressive price discounters for some time with buy one get two free offers on Thursdays and all drinks for £1.99 on Saturdays. These promotions and the proposed extension of hours would add to the pre-loading culture as people would come into the town centre later knowing that they could stay out for longer.

Mr. Nicholls continued that responsible operators of premises would refuse entry to drunken revellers who would then wander around the town centre trying to get into other premises. This could lead to the creation of flash points. He added that

between 8.00 p.m. and 11.00 p.m. the town centre was usually very quiet and the Pitch Sports Bar barely covered the cost of opening. It was only after 11.00 p.m. that the town centre livened up. He added that if the variation application was granted then the Pitch Sports Bar would have to submit a similar application in order to compete.

Mr. Wood asked if Mr. Nicholls felt that pre-loading was good for the town centre. Mr. Nicholls replied no. He felt it only exacerbated problems within the town centre.

Mr. Wood asked if the Pitch Sports Bar used drinks promotions. Mr. Nicholls replied that it did, but not to the same extent as Fever.

Mr. Wood was invited to present his case and informed the Sub-Committee that every applicant had a commercial interest in making an application under the Act. He stated that Fever's management team was not simply trying to maximise profits and would not have made this variation application if it felt it would create more problems in the town centre. He referred to the fact that Fever had had a number of Temporary Event Notices during which the premises stayed open to 4.30 a.m. on Thursdays, Fridays and Saturdays and to 3.30 a.m. on Sundays without any problems arising. He added that the company was aware of the Council's Cumulative Impact Policy and to its importance for the town centre. As a result this was a significant application for the Sub-Committee to determine.

Mr. Wood explained that the management team had a good working relationship with the Police and this would continue whatever the decision reached on the variation application considered today. He added that if the Sub-Committee refused to grant the application then his clients could always appeal the decision to the Local Magistrates Court.

Mr. Wood referred to the fact that the Cumulative Impact Policy was a rebuttable presumption and if it could be shown that this application would not exacerbate any existing problems then it could be granted. He continued that if the application was granted then it could prove to be beneficial to the town centre as Fever's clientele could remain within the building until 4.30 a.m. and then disperse to their homes rather than at present leaving the premises at 2 or 3.00 a.m. to move to one of those venues open to 5.00 a.m.. He added that Mr. Blair had owned Fever for five years and was well aware of the Cumulative Impact Policy. Mr. Blair also knew that during this time some applications had been granted and others refused. He asked the Sub-Committee to consider this application on its individual merits.

Mr. Blair explained that the team had taken over an empty premises and refurbished it putting in booth seating. He explained that on Friday and Saturday evenings Fever catered for an older clientele in the age range of 25 plus. He stated that Fever was a safe and popular venue catering for around 1500 customers per week. He continued that there had never been a need to hold meetings with the Police over the running of the premises during that period and drew the Sub-Committee's attention to the fact that Oysters Fish Bar was next door to Fever and acted as a magnet for late night revellers from all the town centre nightspots.

Mr. Wood then drew the Sub-Committee's attention to the amendments to the operating schedule referred to in the documents circulated to Members prior to the meeting:-

(see annexed)

and indicated that Paragraphs 18 to 24 would become conditions on the licence if the variation application was granted. He then referred to the incident logs submitted by West Midlands Police and indicated that numbers 218 and 402 had not been actioned as no statements had been submitted. He also referred to log number 368 where a male who was intoxicated had been refused entry to Fever and had then caused a disturbance in Lichfield Street. He felt that Fever had acted correctly in not admitting the male to the nightclub.

Mr. Wood then drew attention to log 347 where it was alleged that a person had been assaulted by Fever's door staff. This had proved to be a malicious call again because an inebriated customer had been denied entry to the nightclub. He added that a large number of the logs related to the Police being called to deal with disturbances in Lichfield Street but in only two was there a reference to the people having been in Fever prior to the altercation taking place.

Referring to log number 436 – serious assault – Mr. Wood stated that both the victims and the attackers had been in Fever but had left the premises and gone into Oysters Fish Bar and left that premises before the assault had occurred. He could not see what Fever could have done to prevent the disturbance. He drew attention to several other incident logs relating to Lichfield Street where there was no link to Fever Nightclub.

Mr. Wood then stated that if the extra hour was agreed it could be beneficial to the town centre as the clientele would remain in Fever until 4.30 a.m. and would then be much more likely to go home rather than trying to get into other nightclubs in the town centre which opened until 5.00 a.m.. He continued that the incident logs had referred to drunken people being refused entry to Fever which showed that the nightclub was acting responsibly. He added that, in his view, Fever had been used as a scapegoat for bad behaviour which had nothing to do with the nightclub.

Mr. Wood concluded by stating that Fever had not created a problem for Walsall's night time economy in the past and he could not see the extra hour requested on Thursday, Friday, Saturday and Sunday evenings having an effect. He requested the Sub-Committee to grant the variation application as set out.

PC Gardiner referred to log 574 (the drink spiking incident) and Mr. Wood replied that there was no evidence to show the victim's drink had been spiked but she had consumed various amounts of alcohol and had passed out in a toilet cubicle.

PC Gardiner referred to Paragraph 2 of the late submission by Fever's Management and asked if the company had taken account of the Cumulative Impact Policy. Mr. Wood replied that management had taken account of the Cumulative Impact Policy and by opening longer Fever would retain its clientele within the building

rather than allowing them to wander the streets of the town centre trying to get into other later opening nightclubs.

PC Gardiner referred to Paragraph 6 of the submission and felt that the Cumulative Impact Policy showed that there were already enough nightclubs open to 5.00 a.m. or later to satisfy demand. Mr. Wood replied that Fever intended to match existing nightclubs open to 5.00 a.m. not to extend the terminal hour beyond 5.00 a.m..

PC Gardiner expressed concern that if Fever's clientele were leaving the premises at 4.30 a.m. there could be a glut of people in the town centre at that time. Mr. Wood replied that Fever employed a system of phased leaving using taxis which picked up from outside the premises which should improve the situation not exacerbate it.

PC Gardiner referred to Paragraph 13 of the submission and to the close proximity of Oysters Fish Bar. Mr. Wood replied that Oysters was a magnet for people in the town centre and could be a flashpoint for trouble but this did not relate solely to Fever's clientele.

Mr. Nicholls commented that Vogue and Coliseum/Club X were not situated in Lichfield Street. He indicated that although WS1 had a licence to 5.00 a.m. it rarely remained open beyond 3.00 a.m..

Mr. Millichamp (Fever's personal licence holder) reported that Vogue and WS1 were sister organisations so when WS1 closed its clientele tended to move onto Vogue. Councillor Sarohi asked what time Fever was open to the public. Mr. Millichamp replied from 9.30 p.m.. He added that drinks promotions only applied to 11.00 p.m. or midnight to attract people into the venue before midnight.

Councillor Sarohi asked what happened at the end of the night when Fever was closing. Mr. Millichamp replied that management tried to encourage the clientele to disperse slowly.

Mr. Nicholls referred to the fact that Fever's facebook page offered drinks at £1.99 with no hours restriction. Mr. Knapper drew the meeting's attention to the standard conditions attached to premises licences regarding responsible drink promotions. He felt that to offer drinks for £1.99 all night would not only be irresponsible but illegal under the Licensing Act, 2003.

All parties were invited to sum up and PC Gardiner drew the Sub-Committee's attention to the existing situation in Lichfield Street. He felt that a 4.30 a.m. closure for Fever would attract more people to attend the venue increasing the risk of disturbances in Lichfield Street and stretching Police resources even more. He added that if the decision was made to grant the application then it would have an adverse effect on Police and ambulance personnel.

Mr. Wood informed the Sub-Committee that he had challenged the evidence provided by the Police in the form of incident logs as most did not relate specifically to patrons of Fever Nightclub. He stated that on the 21 occasions when the nightclub had been granted Temporary Event Notices where the premises were open to the times now being applied for there had been no trouble and no additional

impact on the Cumulative Impact Policy. He urged the Sub-Committee to grant the application.

Mr. Knapper drew the Sub-Committee's attention to Paragraph 4.2 of the report.

Councillor Anson asked if all parties were satisfied that they had had ample opportunity to air their views fully. This was confirmed then all parties withdrew from the meeting at 11.35 a.m..

The Licensing Sub-Committee considered carefully all the evidence submitted and the representations made during the hearing and it was:-

Resolved

That the Sub-Committee grants the premises licence variation in respect of Fever, 133 Lichfield Street, Walsall, WS1 1SL as requested subject to the non-standard Christmas Day opening times remaining at 12.00 – 00.00 hours. In addition the following additional conditions offered by the applicants in their written submission dated 11th November, 2014 be added to the licence as follows:-

- All glasses with the exception of Champagne glasses at the premises will be polycarbonate.
- There will be a last entry of 3.00 a.m..
- The applicant will risk assess the number of SIA door staff required on a Thursday, Friday, Saturday and Sunday evening and will provide the number of door staff as required by the risk assessment.
- The premises will provide digital CCTV which will be retained by the premises for up to 90 days and will be made available to West Midlands Police or any other responsible authority.
- The applicant will operate a dispersal policy and will call taxis for customers leaving the premises.
- The applicant will operate a Challenge 25 policy.
- Refresher training will be provided to staff on the licensing objectives quarterly and records will be kept in accordance with the company training plan of the refresher training.

All parties were re-admitted to the meeting at 12.04 p.m. and informed of the Sub-Committee's decision. The parties were informed of their right of appeal to the Local Magistrates Court within 21 days of the receipt of the determination letter.

Termination of meeting.

The meeting terminated at 12:08 p.m.

Chairman

Date