

## **LICENSING SUB COMMITTEE B**

MINUTES OF A MEETING of the Licensing Sub Committee B held on Tuesday 3 October 2006 at 9.30am in the Guildhall, Portsmouth.

### **Present**

Councillors Lee Mason  
Frank Jonas  
Geoff Goble

#### **105 Appointment of Chair (AI 1)**

Councillor Lee Mason was appointed Chair for the meeting.

#### **106 Members' Interests in Accordance with Standing Order No 14 (AI 2)**

Councillor Frank Jonas declared a personal but non-prejudicial interest in item 2 – Chiquito's Restaurant, Unit R20, Blake House, Gunwharf Quays, Portsmouth, PO1 3TZ – in that his son works for a security firm at Gunwharf Quays but is not employed by the Gunwharf Quays Management direct.

#### **107 Licensing Act 2003 – Application for the grant of a premises licence – Chiquito's Restaurant, Unit R20, Blake House, Gunwharf Quays, Portsmouth, PO1 3TZ (AI 3)**

(TAKE IN REPORT BY THE LICENSING MANAGER)

Mr Heath Thomas (solicitor representing the applicant, City Centre Restaurants (UK) Ltd), Abbie Scudamore (Acquisitions Manager, City Centre Restaurants (UK) Ltd), Paula Sproston (the Designated Premises Supervisor ("DPS") and Area Manager), Barry Nicholson (architect and designer), Bradley Morgan (Purified Air representative) and Lee O'Brien (representing Focal, the acoustics company) were all in attendance.

Councillor Les Stevens (representing Mr&Mrs Martin), Mr Geoff Terry (also representing Mr William Fitzhugh), Mr L P Higgins (also representing Mrs E J Higgins and Chris Bestwick), Mr Alistair Rutherford-Warren (also representing Gunwharf Quay Residents' Association, Mr K G Nicholl and Mr&Mrs N R A Ford), Mr Trevor Watkins, Mr&Mrs M R Smith, Mr H K Warren, Mr B L Wright, Mr Graham Aymes, Miss Jaslyn Parish, Mr Chris Bestwick (represented), Mr S Hill and Mr Greg Fisher, as interested parties, were in attendance to object to the application.

Richard Chalmers, the Deputy Licensing Manager, introduced his report. He reported that members were asked to view the site in advance of the meeting and he circulated 14 colour photos showing the site in relation to Blake House and the other restaurants/bars. Richard reported that 35 letters of objection had been received, relating to a number of issues which are listed in the report.

Mr Thomas, the applicants' solicitor, explained that he had met with many local residents at a meeting two weeks ago, where he gave a presentation about the Chiquito's application. He outlined the background to Gunwharf Quays, which is a mixed waterfront development, including bars/restaurants, leisure, business, retail and the marina. In June 2002 planning consent was granted for B2 use at this site. All residential purchases were issued with a commercial information sheet prior to purchase, so they were aware that they were buying into a mixed use development. In the autumn of 2002 the site wide licence was granted under the Licensing Act 1964 and then by the Licensing Justices. In spring 2003 the unit was marketed. The restaurant chain, Harry Ramsden showed an interest in the site but later withdrew as there were concerns over the takeaway element. The site was re-marketed in spring 2006 and Chiquito's became interested.

The Restaurant Group plc, which owns Chiquito's, is one of the UK's largest independent restaurant companies. Mr Thomas circulated a colour brochure about Chiquito's and explained that the brand has moved forward to a friendly family restaurant. 72% of sales relate to food and therefore they are a mainly food led premises. Chiquito's is very experienced at operating in close proximity to residents.

Mr Thomas referred to the 4 licensing objectives and reported that there were no representations made by the Police, the Environmental Health Department or the Child Protection Officer. He outlined what measures Chiquito's had undertaken to address the residents' concerns.

With regards to the acoustics, additional monies have been allocated to adequately insulate the premises, by using quilt insulation, acoustic flooring and ceilings and double glazing on the doors and windows. Even the pipe work/columns are going to be clad to prevent any noise. Mr Thomas circulated a plan of the restaurant to the committee. He reported that a secondary wall is going to be constructed to the party wall adjacent to the residential properties.

The extraction system is designed to route away from residential properties. There are strict regulations on cleaning extraction systems and extraction noise, and the kitchen extractor will be fitted with silencers. £30,000 is planned to be spent on the kitchen extraction system.

With regards to the management and operation of the premises it is proposed that the opening hours be amended to Monday to Saturday 1100-2300hrs with the premises being vacated by 2330hrs, Sunday 1100-2230hrs with the premises being vacated by 2300hrs. New Years Eve terminal hour of 0100 vacated by 0130hrs. The terrace daily until 2200hrs. Customers are met and greeted by staff and a proof of age policy will also operate. A waiter/waitress service will operate in the restaurant and on the terrace. Queues will not be permitted outside of the premises and a pager system will be operated to prevent this. Customers will be given a pager and an estimated time when a table will be available, they will then be paged when their table is ready. There will be no regulated entertainment, only background music.

Mr Thomas explained to the committee that with regards to the terrace there would be additional planters, canopies and wind breakers to reduce noise transfer. The capacity of the terrace has also been reduced considerably. A condition could be

imposed to restrict the consumption of alcohol to persons seated at tables only. A pager system would also operate on the tables to electronically call for a waiter/waitress. The proposed access to the terrace area will be through the restaurant only and no music will be played directly onto the terrace.

The refuse collection and deliveries/servicing are restricted to no deliveries between the hours of 1900 and 0700hrs. There is on site security and there are 3 CCTV cameras to cover the front of Chiquito's. The peak hours at Chiquito's are between 1930 and 2130hrs. People tend to eat and then move on to other establishments to continue drinking. Notices will be erected on the premises requesting that customers leave responsibly and quietly.

Councillor Jonas asked how many of the 160 restaurants run by the Restaurant Group are located near to residential locations? Mr Thomas responded by saying that in both Derby and Cardiff there are residential flats immediately above the premises and in Brighton there is a hotel immediately above. In Southampton, Chiquito's is situated in close proximity to residential properties.

Councillor Jonas then asked how many people would be seated on the terrace and what time would the clearing up on the terrace finish? Mr Thomas responded by saying there would be 80 persons seated on the terrace. Paula Sproston, the DPS and Area Manager, responded by saying that staff operate on a clean as you go policy and that when the last customer leaves the terrace will close.

Councillor Mason asked if the former bin stores were to be piped for the ventilation system, would there still be room for the bins? Barry Nicholson, the architect and designer, responded by saying that there would still be room because the condensers would be fitted to the ceiling of the bin store. Councillor Mason then asked if there would be any SIA registered door staff on the premises? Mr Thomas said they are not required to have door staff because there would be no late night refreshment. Councillor Mason then asked where the terrace furniture would be stored and what is to stop people walking outside with their drinks whilst they are waiting for a table in the restaurant? Mr Thomas responded by saying that the tables will be left on the terrace, probably stacked to one side. With regards to customers taking drinks onto the terrace, Paula Sproston responded by saying that it was all about control by staff, which they were well trained on.

Interested parties were then given an opportunity to ask questions of the applicant. Councillor Les Stevens asked that with 3 opening doors onto the patio, below residential flats, how would transmission of noise from the restaurant be stopped? Mr Thomas explained that the canopies will reduce some noise from travelling. Barry Nicholson explained that 2 of the 3 doors were fire escapes and had panic bars fitted to them. Only the central door would be used by staff and customers. Mr Higgins, a local resident, asked who regulates the music level? Paula Sproston, the DPS, responded by saying that the manager would use his discretion and the maximum level would be set by Environmental Health. Mr Thomas reassured residents that if the music levels were breached it could be considered as a statutory noise nuisance.

Mr T Watkins, a local resident, asked if the extractor vent was going on the sidewall facing Madison's, within 6ft of residents? Barry Nicholson responded by saying that

the bin store would house the condensers only and that the treatment plant will treat the air before it is extracted. Bradley Morgan added that the system is tailored to cooking in the premises and that the system has been specified to increased efficiency. It will not cause a nuisance of smell or odour for residents. Councillor Goble asked if any decibel readings had been taken of this type of system? Lee O'Brien (Focal) responded by saying that the fan/filter system has been acoustically attenuated with silencers within the ductwork. Mr Thomas added that he was prepared for a condition to be attached the licence relating to compliance with any recommendations as suggested by Environmental Health.

Mr Fisher, a local resident, was concerned to hear the possibility of 110 diners sitting outside until 10.30pm being supervised by generally young, part-time staff. Mr Thomas reassured Mr Fisher that the premises would be adequately managed at all times. Mr Thomas added that signs would be erected internally and externally clearly indicating to customers that it is a residential area. Mr Fisher also raised his concerns that when residents purchased their properties in 2001 they were informed that the trading style of the restaurant would be desirable to residents. He disagreed that Chiquito's was desirable to residents and that they are a volume operator. Mr Fisher wanted to question the Berkeley Homes representative about the information that they had previously been given. Richard Orridge, the legal advisor, informed the committee that Berkeley Homes were an interested party because they had made written representations. Richard Chalmers, the Deputy Licensing Manager read out the letter from Berkeley Homes Limited (dated 13 September 2006) to the committee. Mr Fisher was unable to seek clarification from the Berkeley Homes representative because they did not request to speak at the meeting.

The interested parties were then given an opportunity to have their say. Mr Higgins, who was also representing William Fitzhugh and are both residents of Blake House, spoke about his anger about the application, particularly in relation to the terrace and the noise, smell and smoke pollution to the residential properties. He felt that the constant noise and smell and sleep deprivation would push residents' tolerance levels to the limit. He was concerned about the passive smoking from customers on the terrace particularly for the adjacent flat and those immediately above the terrace. If Chiquito's are such a family friendly restaurant then why are they staying open so late? He raised concern about the 'lively party nights' referred to on the website, the noise from clearing up after closing and the noise from residents when leaving the premises. He felt there was a general intrusion on residents' privacy. He was also concerned about staff controlling customers. He mentioned that a ground floor resident was concerned about the safety of his grandchildren. In conclusion, residents would rather the licence was not granted but if it is could the restaurant close at 10pm and the terrace at 6pm?

Mr Rutherford-Warren said that the applicant has presented Chiquito's as a family friendly restaurant not a destination restaurant, as is. The re-branding of the Chiquito's chain took place in 2003/04 and the website reads 'lively Mexican music, lunch, tea and lively evenings'. This has supposedly been inaccurate for 2 years now.

Councillor Les Stevens, who was representing Mr&Mrs Martin, felt that under the 4 licensing objectives the main issue is public nuisance and in particular noise from the terrace entering the flats above. Apart from the moving of tables and chairs, clanking

of glasses and conversations from customers he felt that this will be a severe detriment to residents quality of life. He felt that 10pm closing is too late for the terrace and that 6pm would be better.

Mr Terry, who was also representing William Fitzhugh, felt that the site is unique but that because of the large amount of money City Centre Restaurants Ltd are prepared to pay they are going to want a high turnover. There will be a constant noise from scraping chairs, the clattering of glasses and chatter. When the terrace is full it will be the time of year when residents will want their windows/doors open. The quality of life of the residents is now in the hands of the committee.

Mr Fisher, a resident of Blake House, explained that Berkeley Homes have refused to talk about this site and that residents bought their properties in the hope that the occupier would come under the 'fine wine and dine' heading which was how Berkeley Homes described the site, not this type of high volume lively restaurant. He felt there was no natural justice when the documents which were referred to when they bought their properties have been ignored.

Mr Hill of Blake House requested to speak but because the letter of representation which had been sent in by his partner had arrived in the Licensing office on 22 September, after the period for making representations had expired (13 September) he was unable to speak.

Interested parties were then given an opportunity to sum up. Mr Higgins agreed that Gunwharf Quays is a lively mixed-use development, the problems arise when patrons disperse from the various bars/clubs/restaurants. The security does their best but there are still problems. This venue is in an even worse location. Mr Higgins felt sure that staff at Chiquito's will look after the drunken customers, it's the noisy 'tiddly' ones that concern me. He asked if railings could be erected on the terrace to prevent people from wandering onto the terrace and then into the restaurant. The smell will invade our curtains and carpets.

Mr Rutherford-Warren, Mr Fisher and Mr Terry were given the opportunity to sum up but had nothing to further to add to the comments already made.

Mr Thomas, on behalf of the applicant, summed up by saying that the committee must consider that any conditions the committee feel should be imposed are reasonable and proportionate to all parties. Nuisance is the main concern of residents. The applicant has made concessions in reducing the opening hours and intends to spend considerable sums of money to allay residents' fears with noise and odour. Paula Sproston, the DPS, will be looking to appoint an expert team. The acoustics and extraction have been specified to these premises. The fact that it is a windy site, this he felt would aid dispersal of noise and any odours. He asked the committee to grant the licence.

**RESOLVED that the premises licence for Chiquito's Restaurant, Unit R20, Blake house, Gunwharf Quays, Portsmouth, PO1 3TZ be amended so as to permit the following licensable activity, which is subject to the conditions outlined below and which have been agreed by the applicant;**

- Supply of alcohol, Monday-Saturday 1100-2300 hours, Sunday 1100-2230 hours and on New Years Eve the terminal hour of 0100 hours.

**Conditions;**

- There will be a waiter/waitress service throughout the restaurant and terrace affording control and supervision,
- There will be substantial refreshment throughout licence trading hours,
- No deliveries between 1900 and 0700 hours,
- Consumption of alcohol only by persons seated at tables on the terrace,
- No music to be played directly on to the terrace,
- Legible and clear notices to be erected requesting that customers respect residents' when leaving the premises,
- That the applicant will comply with the recommendations of the Environmental Health Department,
- There will be no consumption of alcohol on the patio area after 1800 hours daily except for New Years Eve.

**REASONS:** The committee had regard to its statement of licensing policy and the statutory guidelines provided, specifically having regard to the locality of the patio area of the premises in relation to residential properties. The committee also had regard to the representations submitted by all the interested parties. The human rights of both the local residents and the applicants were also taken in account. The committee in reaching their decision, also had regard to the amendments and conditions proposed by the applicant, and considered that the conditions imposed were necessary, reasonable and proportionate to prevent late night nuisance to neighbours living in close proximity of the premises by limiting the hours of sale of alcohol on the patio area, and to promote the licensing objectives.

The Deputy Licensing Manager advised all parties that they have the right of appeal to the Magistrates' Court within 21 days of the Notice of the Decision of the hearing being received by them.

**108 Exclusion of the Press and Public (AI 4)**

**RESOLVED** that the public be excluded from the meeting during consideration of the following item of business because it is likely that if members of the public were present, there would be disclosure to them of "exempt information" within Paragraph 1 of Part I of Schedule 12A to the Local Government Act 1972.

Item	Paragraph
5 – Application for Private Hire Driver's Licence – Mr P	1

#### **109 Application for Private Hire Driver's Licence – Mr P (AI 5)**

(TAKE IN EXEMPT REPORT BY THE SENIOR ENFORCEMENT OFFICER)

Mr P was in attendance.

The Deputy Licensing Manager asked the committee if they felt it relevant to have regard to spent convictions to assist them in assessing whether Mr P is a “fit and proper” person, and asked Mr P if he had any objections to members seeing the summary. The committee felt that it was relevant and Mr P raised no objection, therefore an exempt summary was circulated.

The simplified hearing procedure was followed.

During the procedure Mr P handed in a letter, dated 3 October, written by Mrs P, who was unable to attend the hearing, in support of his application.

**RESOLVED that the hearing be adjourned to enable the Deputy Licensing Manager and Mr P to seek clarification from the Police with regards to the point raised in Mrs P's letter. The Committee to reconvene in a months time.**

**The following items were dealt with in open session.**

#### **110 Licensing Act 2003 – Application for the variation of a premises licence – Walkabout, 11 Guildhall Walk, Portsmouth, PO1 2RY (AI 6)**

(TAKE IN REPORT BY THE DEPUTY LICENSING MANAGER)

The Deputy Licensing Manager informed Members that the applicants' solicitor had requested an adjournment because they had not been given the statutory 14 days notice of the meeting date. Although the 'notice of meeting' had been sent out on the 18<sup>th</sup> of September 2006 they had not received the notice until 22nd September 2006. It was suggested that the hearing be adjourned until 31 October 2006.

**RESOLVED that the item be adjourned until the meeting on 31 October 2006.**

#### **111 Licensing Act 2003 – Application for the variation of a premises licence – Liquid & Envy (formerly Life & Liquid), Former Connaught Drill Hall, Stanhope Road, Portsmouth, PO1 (AI 7)**

(TAKE IN REPORT BY THE DEPUTY LICENSING MANAGER)

The applicant, Mr Dennis (Director of Luminar Leisure Limited) and Mr Allen (solicitor representing the applicant's) were in attendance.

PC O'Malley, representing a responsible authority, was in attendance.

The Deputy Licensing Manager, Mr Chalmers, introduced his report.

Mr Allen, representing the applicant, reported that at the last hearing on 20 June 2006, the applicant had undertaken to make a fresh application to allow the premises to be open for the period from 0230 hours to 0300 hours Sunday-Thursday. This had been submitted and advertised and no objections had been received.

Mr Allen reported that the application today was to vary the premises licence to allow them to open until 0400 on Bank Holiday Sundays, Maundy Thursday and six other occasions throughout the year. The applicant was also proposing to add a smoking terrace to the roof area and to amend the layout of Bar 4, to avoid the existing steelwork. A plan showing the amendments to the layout of Bar 4 was circulated to the committee.

Mr Allen reported that the Police had raised objection to the proposed location of the furniture on the roof area, with it being too close to the edge. The applicant was prepared to fix the furniture so they could not be moved about. The applicant was also prepared to have a door steward on duty to prevent drinks being taken onto the roof area and to reposition the glazed barrier 2m from the edge of the building. The positioning of the barrier, at a 45degree angle, would prevent people from climbing over it.

PC O'Malley felt that the maximum number of persons on the roof terrace should be 60. CCTV is already covered by the existing premises licence. He requested that no music be played in this area and that drinks should be in plastic tumblers and restricted to one per person at all times.

Mr Dennis confirmed that the 60 person's capacity was not in addition to the number of persons allowed in to the club. The reason for the smoking terrace was because most venues allow clients to go out of the front door to smoke. It was not practical for that to happen at this particular venue. Other venues in the UK have 'smoking terraces' and with CCTV and proper supervision by staff, they work well.

Councillor Goble raised concern about the health implications of having a 'smoking terrace' and that this was not promoting a 'healthy city'. In response to Councillor Goble's concerns Mr Allen said that Luminar Leisure are trying to anticipate what will happen in the future when tobacco is banned.

Mr Dennis also confirmed that a steward would be on duty on the roof after 2030 hours daily.

Councillor Jonas asked how the applicant would regulate the number of persons on the roof at any one time. Mr Dennis responded by saying that they operate a 'clicker' system so they can monitor the capacity.

PC O'Malley raised concern that if patrons were consuming alcohol on the roof, whilst smoking, it would prolong their stay up there, and the longer they stay the more likelihood of problems occurring. He was noted that the barrier is proposed to be raised to 2.1m in height but raised concern of the proximity of the spine of the seat to the partition and felt that this could offer a 'step' to climb the glass partition. He also raised concern about objects being thrown onto the street below. He requested that a roof type structure be fitted on to the roof.



In summing up, Mr Allen, reiterated that patrons will have paid to enter the premises and as nothing is being sold on the roof terrace patrons are unlikely to stay up there for long periods. Clientele who smoke have to be catered for and the alternative of allowing smoking out side of the front of the premises is not desirable. There will be no fixed seating within 1m of the glass screening, plastic tumblers will be used instead of glasses and ashtrays will be non-glass.

**RESOLVED that the premises licence for Liquid & Envy (Formerly Life & Liquid), Former Connaught Drill Hall, Stanhope Road, Portsmouth, PO1 be varied as follows and subject to the conditions outlined below, which have been agreed by the applicant and by the Police;**

- To extend the provision for late night refreshment and regulated entertainment from 1100 to 0300 the following morning Sunday to Thursday.
- To vary the layout of the premises. Such variation to have effect upon the completion of the works as notified to the Licensing Authority in writing:
  1. Smoking terrace added to the roof area;
  2. Bar 4 layout undergone minor amendments to avoid existing steelwork.
- The types of regulated entertainment are:
  - Films
  - Boxing or wrestling
  - Live music
  - Recorded music
  - Performances of dance
  - Facilities for making music
  - Facilities for dancing.
- Late night refreshment Sunday to Thursday 2300 to 0300 hours.
- With the following non-standard times for both regulated entertainment and late night refreshment –
  - An additional hour to the standard and non-standard times on the day when British Summertime commences.
  - New Year's Eve – from the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.
  - Until 0400 on Bank Holiday Sundays, Maundy Thursday and six other occasions throughout the year. Seven days notice of such events to be given to the Police and Licensing Authority. The Police to have a right to veto the event by giving notice to the Designated Premise Supervisor 72 hours before the event.

**Subject to the following conditions;**

- No fixed seating within 1m of the screening.
- The maximum of one drink at any one time to be carried up by the patron.
- No glasses to be taken on to the roof terrace area, plastic only.
- All ashtrays to be non-glass.

- All furniture to be fixed, including bins.
- One steward/supervisor to be present on the roof terrace after 2030 hours daily.

**REASONS:** The committee had regard to its statement of licensing policy and had taken into consideration the representations from a relevant authority, namely the Chief Officer of Police. They had regard to the conditions, as agreed by the applicant and by the Police and believed them to be both reasonable and proportionate to the prevention of crime and disorder, particularly public safety and prevention of nuisance. The human rights of the applicant were also taken into consideration.

The Deputy Licensing Manager advised all parties that they have the right of appeal to the Magistrates' Court within 21 days of the Notice of the Decision of the hearing being received by them.

#### **112 Licensing Act 2003 – Application for the variation of a premises licence – Wig & Pen, 1 Landport Terrace, Southsea, Portsmouth, PO1 2RG (AI 8)**

(TAKE IN REPORT BY THE LICENSING MANAGER)

Mr David Going, the Designated Premises Supervisor, was in attendance.

Richard Lee, Public Protection Service of the City Council, was in attendance as a responsible authority.

The Deputy Licensing Manager introduced his report.

Mr Going gave a presentation and mentioned that it was only because he had received the notice of the meeting from the Licensing Department and had rung in to confirm his attendance, that he was made aware of the representations made by Environmental Health. He agreed to undertake the works proposed by Environmental Health in terms of noise insulation measures.

Mr Going reported that they have had 3 events so far using DJ amplified equipment and no complaints from residents or Environmental Health have been received. He reiterated that he would instruct an acoustic consultant to assess the premises so as to prevent any nuisance occurring in the future.

Richard Lee, Public Protection Services, summed up by saying that only 70% of the building is double-glazed, there are concerns about north façade and the existing ventilation. Although the Wig and Pen is structurally detached from residential properties it is only 6metres away. There is very little distance between properties for noise attenuation. Richard recommended that various works be undertaken to sound proof the building.

**DECISION:** that the premises licence for The Wig & Pen, 1 Landport Terrace, Southsea, Portsmouth, PO1 2RG be varied as follows;

- To permit the sale of alcohol daily between 1100 and 2359 hours with non-standard times New Year's Eve 1100 hours until 0200 hours.
- Permit regulated entertainment as follows;
  - Live music (indoors only) on Monday to Thursday inclusive between 1800 and 2300 hours, Friday and Saturday 1800 to 2359 and Sunday 1200 to 2200 with non-standard times New Year's Eve 1800 to 0030 hours and Sunday preceding Bank Holiday 1200 to 2359;
  - Recorded music daily between 1100 and 2359 hours with non-standard times New Year's Eve 1800 to 0030 hours and Sunday preceding Bank Holiday 1200 to 2359 hours.
- Permit the sale of late night refreshment daily between 2300 hours and 0030 hours the following day with non-standard times New Year's Eve 2300 to 0230 hours.
- Permit the premises to be open to the public daily from 1100 hours to 0030 the following day with non-standard times New Year's Eve 1100 to 0230 hours.

**REASONS:** The Committee had regard to its statement of licensing policy and the statutory guidelines provided, specifically having regard to the locality of the premises in relation to residential properties. The committee had also taken into consideration the representations from a relevant authority, namely the Public Protection Service of the City Council.

The Deputy Licensing Manager advised all parties that they have the right of appeal to the Magistrates' Court within 21 days of the Notice of the Decision of the hearing being received by them.

The meeting concluded at 4.45pm.

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Signed by the Chair of the meeting.