

CITY OF
WOLVERHAMPTON
COUNCIL

Statutory Licensing Sub - Committee

20 July 2021

Report title	Licensing Act 2003 – Application for a Premises Licence in respect of Bar Havana, 44 Berry Street, Wolverhampton, West Midlands, WV1 1HA	
Wards affected	St Peter's	
Accountable director	Ross Cook, Director of City Housing and Environment	
Originating service	Licensing	
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Recommendation for decision:

1. To submit for consideration by the Statutory Licensing Sub-Committee an application for a new premises licence.

1.0 Purpose

- 1.1 To submit for consideration by the Statutory Licensing Sub-Committee an application for a new premises licence.

2.0 Background

- 2.1 The application was received on 25 May 2021 from Bar Havana Ltd for a premises licence in respect of Bar Havana, 44 Berry Street, Wolverhampton, West Midlands, WV1 1HA. A copy of the application is attached at Appendix 1.
- 2.2 The premises are in St Peter's ward and a location plan is attached at Appendix 2.
- 2.3 The application is in respect of the provision recorded music and the supply of alcohol on and off the premises.
- 2.4 This premises is situated within the Cumulative Impact Zone. A copy of the policy and the area which it covers is attached at Appendix 3.
- 2.5 It is the understanding of the Licensing Authority that the application for this premises licence has been properly made. The statutory requirement to give notice of the application has also been complied with.
- 2.6 All Responsible Authorities have been consulted on this application.
- 2.7 Relevant representations have been received from, the Licensing Authority and West Midlands Police. Copies of the representations can be found at Appendices 4 and 5.
- 2.8 The applicant has agreed to a West Midlands Fire Service Voluntary Undertaking, this is attached at Appendix 6.
- 2.9 The applicant's solicitor, applicant and all those who have submitted representations have been invited to attend the hearing.

3.0 Policy Implications

- 3.1 In the 2020 Statement of Licensing Policy, the Cumulative Impact Policy (CIP) was revised and consideration was given to the five Cumulative Impact Zones (CIZ) and problem areas bordering them (Special Consideration Areas). Applications received for premises within these areas will be subject to a matrix approach contained within the Statement of Licensing Policy.
- 3.2 This decision supported the view that the number, type and density of premises selling alcohol for consumption and/or late-night refreshment in areas within Wolverhampton City was causing problems of nuisance and disorder and therefore causing an adverse impact on the licensing objectives of prevention of crime and disorder and prevention of public nuisance.
- 3.3 The effect of this CIP is to create a rebuttable presumption that applications in respect of the sale or supply of alcohol and/or late-night refreshment for new Premises Licences,

Club Premises Certificates or Provisional Statements and applications for variations of existing Premises Licences, Club Premises Certificates, where the premises are situated in the Cumulative Impact Zone will be refused.

- 3.4 Essentially this means that applications that are likely to add to the existing cumulative impact will normally be refused, unless the applicant can demonstrate in their operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives. (This policy does not act as an absolute prohibition on granting new licences in the Cumulative Impact Zones).
- 3.5 To rebut the presumption, explained in 3.4 above, the applicant is expected to demonstrate through their operating schedule and where appropriate with supporting evidence that the operation of the premises will not add to the cumulative impact already being experienced and not therefore have an adverse impact in the Licensing Objectives.

4.0 Financial implications

- 4.1 There are no direct financial implications associated with the recommendations in this report. The fee for this application is £190.00 and is non-refundable. The fees and charges in relation to the Licensing Act 2003 are set by the Secretary of State. This was noted by the Licensing Committee on 20 January 2021 [SB/05012021/W]

5.0 Legal implications

- 5.1 Part 4(1) of the Licensing Act 2003 states that a Licensing Authority must carry out its function under the Act with a view to promoting the Licensing Objectives, namely:
- (a) The prevention of crime and disorder
 - (b) Public safety
 - (c) The prevention of public nuisance
 - (d) The protection of children from harm.
- 5.2 The general duties imposed on Licensing Authorities means proper consideration must be given to the Licensing Objectives when determining a premises licence application.
- 5.3 Regard shall be had to guidance issued by the Secretary of State under Section 182 of the Licensing Act 2003 and City of Wolverhampton's Council Licensing Policy Statement which includes a cumulative impact policy.
- 5.4 Section 18 of the Licensing Act 2003 provides the Licensing Authority with the power to grant an application, subject to conditions, where appropriate.
- 5.5 City of Wolverhampton Council have five Special Policies or Cumulative Impact Zones (CIZ's)
- 5.6 Within the WCC Statement of Licensing Policy, Cumulative Impact is defined as the potential impact upon the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area.

5.7 The special policy will only be overridden in exceptional circumstances. The effect of this special policy is that applications for new premises licences within the area which are likely to add to the existing Cumulative Impact, will be refused following relevant representations. This presumption can be rebutted by the applicant if they can show that their application will have no negative Cumulative Impact. In order for the Cumulative Impact Policy to be relevant to this application the Sub-Committee:

I. Should be satisfied it applies due to:

- (a) Premises being located within the Cumulative Impact Zone;
- (b) The likelihood that the activity will have an impact on the licensing objectives.

And where the Cumulative Impact Policy is deemed to apply:

II. Should refuse an application following relevant representations, unless the applicant can show that their application will have no negative Cumulative Impact.

[SH/08072021/A]

6.0 Equalities implications

6.1 This report has human rights implications for both the premises licence holder and the residents from the local neighbourhood. Any of the steps outlined in Section 4 of this report may have financial implications for a licensee's business and livelihood and/or may have impact upon the day to day lives of residents living in close proximity to the premises.

6.2 Article 8(i) of the European Convention of Human Rights provides that everyone has the right to respect for his/her private and family life and his/her home (which includes business premises). This right may be interfered with by the Council on a number of grounds including the protection of rights and freedoms of others. The First Protocol – Article 1 – also provides that every person is entitled to the peaceful enjoyment of his possessions and shall not be deprived of his possessions except in the public interest and conditions provided for by law. Members must accordingly make a decision which is proportionate to the hearing and endeavour to find a balance between the rights of the applicant, residents and the community as a whole.

7.0 All other Implications

7.1 There are no other implications in relation to this report.

8.0 Schedule of background papers

8.1 None

9.0 Appendices

9.1 Appendix 1 – Application

- 9.2 Appendix 2 – Location Plan
- 9.3 Appendix 3 – Culminative Impact Policy
- 9.4 Appendix 4 – Licensing Authority Representations
- 9.5 Appendix 5 – West Midlands Police Representations
- 9.6 Appendix 6 – West Midlands Fire Service Voluntary Undertaking