



City and County of Swansea

Notice of Meeting

You are invited to attend a Meeting of the

Statutory Licensing Sub Committee

At: Multi-Location Meeting - Council Chamber, Guildhall / MS Teams

On: Friday, 1 July 2022

Time: 10.00 am

Chair: Councillor Penny Matthews

Membership:

Councillors: V A Holland and L V Walton

Watch Online: <https://bit.ly/3HJlpXt>

Agenda

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- 1 Apologies for Absence.
- 2 Disclosures of Personal and Prejudicial Interests.
www.swansea.gov.uk/disclosuresofinterests
- 3 Licensing Act 2003 - Section 17 - Application for a Premises Licence - Flame Kebab House, 11 Wind Street, Swansea. SA1 1DP. 1 - 67

Next Meeting: Friday, 22 July 2022 at 10.00 am

Huw Evans
Head of Democratic Services
Thursday, 23 June 2022

Contact: Democratic Services - Tel: (01792) 636923

Agenda Item 3



Report of the Service Manager

Statutory Licensing Sub Committee - 1 July 2022

Licensing Act 2003 Section 17 Application for a Premises Licence

1. **Premises: Flame Kebab House, 11 Wind Street, Swansea. SA1 1DP**
2. **Applicant : Flame Kebab House Ltd.**
3. **Application For A New Premises Licence**
 - 3.1 An application for a new premises licence was received by this authority on the 9th May 2022. The applicant has applied to allow the following licensable activities to take place.

Late Night Refreshment - Monday to Sunday 2300hrs to 0500hrs

The opening hours are – Monday to Sunday 1600hrs to 0500hrs
 - 3.2 A copy of the application and plan is attached at **Appendix A** and **Appendix A1**
 - 3.3 The venue is situated on Wind Street, Swansea. There are mostly commercial properties along this street however there are residential properties, mainly apartment complexes situated along the upper levels of the street. Many of the commercial properties have Premises Licences which allow several licensable activities including the Sale of Alcohol, Regulated Entertainment, and Late Night Refreshment, however some, like just have Late Night Refreshment. Wind Street is an area known for its vibrant Night Time Economy with Student night on Wednesdays and Fridays with Saturdays being the busiest of evenings. The applicant seeks to open a Late Night Refreshment premises selling hot food and drink. Although opening at 1600hrs the premises requires a Premises Licence to remain open after 2300hrs selling hot food and drink and proposes to trade between the hours of 2300hrs to 0500hrs with the benefit of this licence, if granted.

4. Background

4.1 The premises at 11 Wind Street had the benefit of a Premises Licence which allowed the below licensable activities, issued in 2014. The premises was known as Tino's.

4.2 The times the licence authorises the carrying out of licensable activities

Performance of Live Music

Monday to Sunday 11.00 hours - 00.00 hours

Playback of Recorded Music

Monday to Sunday 08.00 hours - 01.00 hours

Late Night Refreshment

Monday to Sunday 23.00 hours - 01.00 hours

Supply of Alcohol

Monday to Sunday 08.00 hours - 01.00 hours

4.3 This Licence lapsed on 13th July 2019 and the premises has since remained empty.

4.4 There are several other Late Night Refreshment Licences along Wind Street some of which are held by premises offering other licensable activities including the sale of alcohol. The premises relative to this application on Wind Street which have only Late Night Refreshment as a licensable activity with no sales of Alcohol are listed on **Appendix B**.

4.5 The location of Flame Kebab House in relation to the business addresses of those who are represented in the submitted representation can be found on a map at **Appendix C**.

4.6 On 30th July 2013 the Council resolved to adopt a Cumulative Impact Special Saturation Policy for the following areas:

i) Wind Street and the surrounding area as defined

ii) The Kingsway and the surrounding area as defined 30.07.13 Policy review 26.01.17 CIP review 26.07.18 Policy review 13

iii) High Street and College Street as defined

However, due to Covid pandemic, the consultation and assessment as to whether the policy should continue was not conducted within the required time limits and therefore no regard can be given to section 6, Cumulative Impact And Special Policy within the Swansea Statement of Policy for Licensing.

The absence of a CIA however does not prevent any responsible authority or other person making evidence based relevant representations on a new application for the grant of an authorisation on the grounds that the premises will give rise to a negative cumulative impact on one or more of the licensing objectives.

5. Promotion of the Licensing Objectives

5.1 The Licensing Act 2003 contains four licensing objectives, namely: -

- (i) Prevention of Crime and Disorder;
- (ii) Public Safety;
- (iii) Prevention of Public Nuisance;
- (iv) Protection of Children from Harm.

Each of these objectives is of equal importance and the application must demonstrate how they are to be promoted.

Conditions consistent with the operating schedule and will be attached to the licence, if granted as applied for, are attached at **Appendix D.**

6. RELEVANT REPRESENTATIONS

6.1 Responsible Authorities

- a) **South Wales Police**
No representations
- b) **Trading Standards**
No representations.
- c) **Mid and West Wales Fire Authority**
No representations.
- d) **Health and Safety**
No representations.
- e) **Planning Authority**
No representations.
- f) **Pollution Division**
No representations.
- g) **Child Protection**
No representations.

h) Primary Care Trust/Local Health Board

No representations.

i) Licensing Authority

No representations

j) Immigration

No representations.

j) Other Persons

Representations

Submitted by Barrie Davies on behalf of five nearby business owners. The representation and clarification emails are attached at **Appendix E; 1 to 5.**

6.1 Additional information has been submitted by the applicant's representative and is attached at **Appendix F.**

7. Policy Considerations

7.1 In considering this application Members should have regard to the current Statement of Licensing Policy. A link to the policy is provided below.

<https://www.swansea.gov.uk/statementoflicensingpolicy>

8. Guidance Issued By the Home Secretary

8.1 Members should also have regard to the relevant parts of the current statutory guidance (The Guidance), issued by the Home Secretary in April 2018 in particular:

- (i) Introduction – Chapter 1
- (ii) Licensing Objectives – Chapter 2
- (iii) Applications For Premises Licences – Chapter 8
- (iv) Determining Applications – Chapter 9
- (v) Conditions attached to Premises Licenses – Chapter 10
- (vi) Statement of Licensing Policy – Chapter 14

A link to the Guidance can be found at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705588/Revised_guidance_issued_under_section_182_of_the_Licensing_Act_2003_April_2018_.pdf

9. Determination of the Application

9.1 The decision must be based on the individual merits of the application and the representations received, with a view to promoting the licensing objectives outlined in paragraph 5 of the report.

9.2 In arriving at the decision, Members should also have regard to the relevant provisions of the Policy and the Guidance as previously provided. Reasons must be provided for any departures from the Policy or Guidance.

9.3 In reaching the decision the Committee must, having regard to the representations, take such steps mentioned below (if any) as it considers appropriate for the promotion of the licensing objectives:-

- a. Grant the licence subject to:
 - i) conditions that reflect the operating schedule, modified to such extent as the authority considers appropriate for promotion of the licensing objectives.
 - ii) any mandatory conditions relevant to the licence
- b. Exclude any of the licensable activities to which the application relates.
- c. Refuse to specify a person in the licence as the premises supervisor.
- d. Reject the application

The Licensing Sub Committee's instructions are requested.

Background Papers: Licence Application
Contact Officer: Charles Gabe
Extension: 01792 635600

- iii as an unincorporated association or please complete section (B)
- iv other (for example a statutory corporation) please complete section (B)
- c) a recognised club please complete section (B)
- d) a charity please complete section (B)
- e) the proprietor of an educational establishment please complete section (B)
- f) a health service body please complete section (B)
- g) a person who is registered under Part 2 of the Care Standards Act 2000 (c14) in respect of an independent hospital in Wales please complete section (B)
- ga) a person who is registered under Chapter 2 of Part 1 of the Health and Social Care Act 2008 (within the meaning of that Part) in an independent hospital in England please complete section (B)
- h) the chief officer of police of a police force in England and Wales please complete section (B)

* If you are applying as a person described in (a) or (b) please confirm (by ticking yes to one box below):

- I am carrying on or proposing to carry on a business which involves the use of the premises for licensable activities; or
- I am making the application pursuant to a
 - statutory function or
 - a function discharged by virtue of Her Majesty's prerogative

(A) INDIVIDUAL APPLICANTS (fill in as applicable)

Mr <input type="checkbox"/>	Mrs <input type="checkbox"/>	Miss <input type="checkbox"/>	Ms <input type="checkbox"/>	Other Title (for example, Rev)
Surname			First names	
Date of birth		I am 18 years old or over <input type="checkbox"/>		Please tick yes
Nationality				
Current residential address if different from premises address				
Post town		Postcode		
Daytime contact telephone number				

E-mail address (optional)	
Where applicable (if demonstrating a right to work via the Home Office online right to work checking service), the 9 digit 'share code' provided to the applicant by that service (please see note 15 for information)	

SECOND INDIVIDUAL APPLICANT (if applicable)

Mr <input type="checkbox"/>	Mrs <input type="checkbox"/>	Miss <input type="checkbox"/>	Ms <input type="checkbox"/>	Other Title (for example, Rev)
Surname		First names		
Date of birth	I am 18 years old or over <input type="checkbox"/>		Please tick yes	
Nationality				
Where applicable (if demonstrating a right to work via the Home Office online right to work checking service), the 9 digit 'share code' provided to the applicant by that service (please see note 15 for information)				
Current postal address if different from premises address				
Post town		Postcode		
Daytime contact telephone number				
E-mail address (optional)				

(B) OTHER APPLICANTS

Please provide name and registered address of applicant in full. Where appropriate please give any registered number. In the case of a partnership or other joint venture (other than a body corporate), please give the name and address of each party concerned.

Name FLAME KEBAB HOUSE LTD

Address 11 WIND STREET, GROUND FLOOR, SWANSEA, SA1 1DP
Registered number (where applicable) 13964463
Description of applicant (for example, partnership, company, unincorporated association etc.) LTD
Telephone number (if any) 01222 514
E-mail address (optional) com

Part 3 Operating Schedule

When do you want the premises licence to start? DD MM YYYY
01 06 2022

If you wish the licence to be valid only for a limited period, when do you want it to end? DD MM YYYY

<p>Please give a general description of the premises (please read guidance note 1)</p> <ul style="list-style-type: none"> - KEBAB TAKE AWAY - LATE NIGHT REFRESHMENTS (HOT FOOD) - NO ALCOHOL SALE - RETAIL AREA OF ROUGHLY 24M² - NO PUBLIC TOILETS - MEMBERS OF PUBLIC WILL NOT BE PERMITTED BEHIND BAR
--

If 5,000 or more people are expected to attend the premises at any one time, please state the number expected to attend.

Type text here

What licensable activities do you intend to carry on from the premises?

(please see sections 1 and 14 and Schedules 1 and 2 to the Licensing Act 2003)

Provision of regulated entertainment (please read guidance note 2)

Please tick all that apply

- a) plays (if ticking yes, fill in box A)
- b) films (if ticking yes, fill in box B)
- c) indoor sporting events (if ticking yes, fill in box C)
- d) boxing or wrestling entertainment (if ticking yes, fill in box D)
- e) live music (if ticking yes, fill in box E)
- f) recorded music (if ticking yes, fill in box F)
- g) performances of dance (if ticking yes, fill in box G)
- h) anything of a similar description to that falling within (e), (f) or (g) (if ticking yes, fill in box H)

Provision of late night refreshment (if ticking yes, fill in box I)

X

Supply of alcohol (if ticking yes, fill in box J)

In all cases complete boxes K, L and M

A

Plays Standard days and timings (please read guidance note 7)			<u>Will the performance of a play take place indoors or outdoors or both – please tick</u> (please read guidance note 3)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish	<u>Please give further details here</u> (please read guidance note 4)		
Mon	-----	-----			
Tue	-----	-----			
Wed	-----	-----	<u>State any seasonal variations for performing plays</u> (please read guidance note 5)		
Thur	-----	-----			
Fri	-----	-----			
Sat	-----	-----			
Sun	-----	-----	<u>Non standard timings. Where you intend to use the premises for the performance of plays at different times to those listed in the column on the left, please list</u> (please read guidance note 6)		

B

Films Standard days and timings (please read guidance note 7)			Will the exhibition of films take place indoors or outdoors or both – please tick (please read guidance note 3)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish	Please give further details here (please read guidance note 4)		
Mon	-----	-----			
Tue	-----	-----			
Wed	-----	-----	State any seasonal variations for the exhibition of films (please read guidance note 5)		
Thur	-----	-----			
Fri	-----	-----	Non standard timings. Where you intend to use the premises for the exhibition of films at different times to those listed in the column on the left, please list (please read guidance note 6)		
Sat	-----	-----			
Sun	-----	-----			

C

Indoor sporting events Standard days and timings (please read guidance note 7)			<u>Please give further details</u> (please read guidance note 4)
Day	Start	Finish	
Mon	-----	-----	
Tue	-----	-----	
Wed	-----	-----	
Thur	-----	-----	
Fri	-----	-----	
Sat	-----	-----	
Sun	-----	-----	<u>State any seasonal variations for indoor sporting events</u> (please read guidance note 5)
			<u>Non standard timings. Where you intend to use the premises for indoor sporting events at different times to those listed in the column on the left, please list</u> (please read guidance note 6)

D

Boxing or wrestling entertainments Standard days and timings (please read guidance note 7)			<u>Will the boxing or wrestling entertainment take place indoors or outdoors or both – please tick</u> (please read guidance note 3)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
Day	Start	Finish		Both	<input type="checkbox"/>
Mon	-----	-----	<u>Please give further details here</u> (please read guidance note 4)		
Tue	-----	-----			
Wed	-----	-----	<u>State any seasonal variations for boxing or wrestling entertainment</u> (please read guidance note 5)		
Thur	-----	-----			
Fri	-----	-----	<u>Non standard timings. Where you intend to use the premises for boxing or wrestling entertainment at different times to those listed in the column on the left, please list</u> (please read guidance note 6)		
Sat	-----	-----			
Sun	-----	-----			

E

Live music Standard days and timings (please read guidance note 7)			Will the performance of live music take place indoors or outdoors or both – please tick (please read guidance note 3)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish	Please give further details here (please read guidance note 4)		
Mon	-----	-----			
Tue	-----	-----			
Wed	-----	-----	State any seasonal variations for the performance of live music (please read guidance note 5)		
Thur	-----	-----	Non standard timings. Where you intend to use the premises for the performance of live music at different times to those listed in the column on the left, please list (please read guidance note 6)		
Fri	-----	-----			
Sat	-----	-----			
Sun	-----	-----			

F

Recorded music Standard days and timings (please read guidance note 7)			Will the playing of recorded music take place indoors or outdoors or both – please tick (please read guidance note 3)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish	Please give further details here (please read guidance note 4)		
Mon	-----	-----			
Tue	-----	-----	State any seasonal variations for the playing of recorded music (please read guidance note 5)		
Wed	-----	-----			
Thur	-----	-----	Non standard timings. Where you intend to use the premises for the playing of recorded music at different times to those listed in the column on the left, please list (please read guidance note 6)		
Fri	-----	-----			
Sat	-----	-----			
Sun	-----	-----			

G

Performances of dance Standard days and timings (please read guidance note 7)			<u>Will the performance of dance take place indoors or outdoors or both – please tick</u> (please read guidance note 3)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish	<u>Please give further details here</u> (please read guidance note 4)		
Mon	-----	-----			
Tue	-----	-----	<u>State any seasonal variations for the performance of dance</u> (please read guidance note 5)		
Wed	-----	-----			
Thur	-----	-----	<u>Non standard timings. Where you intend to use the premises for the performance of dance at different times to those listed in the column on the left, please list</u> (please read guidance note 6)		
Fri	-----	-----			
Sat	-----	-----			
Sun	-----	-----			

H

Anything of a similar description to that falling within (e), (f) or (g) Standard days and timings (please read guidance note 7)			Please give a description of the type of entertainment you will be providing		
Day	Start	Finish	Will this entertainment take place indoors or outdoors or both – please tick (please read guidance note 3)	Indoors	<input type="checkbox"/>
Mon	-----	-----		Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Tue	-----	-----	Please give further details here (please read guidance note 4)		
Wed	-----	-----			
Thur	-----	-----	State any seasonal variations for entertainment of a similar description to that falling within (e), (f) or (g) (please read guidance note 5)		
Fri	-----	-----			
Sat	-----	-----	Non standard timings. Where you intend to use the premises for the entertainment of a similar description to that falling within (e), (f) or (g) at different times to those listed in the column on the left, please list (please read guidance note 6)		
Sun	-----	-----			

I

Late night refreshment Standard days and timings (please read guidance note 7)			Will the provision of late night refreshment take place indoors or outdoors or both – please tick (please read guidance note 3)	Indoors	<input checked="" type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish			
Mon	23:00	05:00	Please give further details here (please read guidance note 4) ONLY ACTIVITY PROVIDED IS THE PROVISION OF LATE NIGHT REFRESHMENTS		
Tue	23:00	05:00			
Wed	23:00	05:00	State any seasonal variations for the provision of late night refreshment (please read guidance note 5) N/A		
Thur	23:00	05:00			
Fri	23:00	05:00	Non standard timings. Where you intend to use the premises for the provision of late night refreshment at different times, to those listed in the column on the left, please list (please read guidance note 6) N/A		
Sat	23:00	05:00			
Sun	23:00	05:00			

J

Supply of alcohol Standard days and timings (please read guidance note 7)			Will the supply of alcohol be for consumption – please tick (please read guidance note 8)	On the premises	<input type="checkbox"/>
				Off the premises	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish	State any seasonal variations for the supply of alcohol (please read guidance note 5)		
Mon	-----	-----			
Tue	-----	-----			
Wed	-----	-----			
Thur	-----	-----			
Fri	-----	-----			
Sat	-----	-----			
Sun	-----	-----			
			Non standard timings. Where you intend to use the premises for the supply of alcohol at different times to those listed in the column on the left, please list (please read guidance note 6)		

State the name and details of the individual whom you wish to specify on the licence as designated premises supervisor (Please see declaration about the entitlement to work in the checklist at the end of the form):

Name	
Date of birth	
Address	
Postcode	
Personal licence number (if known)	
Issuing licensing authority (if known)	

□□□□

K

Please highlight any adult entertainment or services, activities, other entertainment or matters ancillary to the use of the premises that may give rise to concern in respect of children (please read guidance note 9).

L

Hours premises are open to the public Standard days and timings (please read guidance note 7)			State any seasonal variations (please read guidance note 5)
Day	Start	Finish	
Mon	16:00	05:00	Non standard timings. Where you intend the premises to be open to the public at different times from those listed in the column on the left, please list (please read guidance note 6)
Tue	16:00	05:00	
Wed	16:00	05:00	
Thur	16:00	05:00	
Fri	16:00	05:00	
Sat	16:00	05:00	
Sun	16:00	05:00	

M Describe the steps you intend to take to promote the four licensing objectives:

a) General – all four licensing objectives (b, c, d and e) (please read guidance note 10)

b) The prevention of crime and disorder

- CCTV will be provided in the form of a recordable system, capable of providing pictures of evidential quality in all lighting conditions, particularly facial recognition. Cameras shall encompass all ingress and egress to the premises, fire exits, all areas where the public have access and any external areas. Equipment must be maintained in good working order, the system must continually record whilst the premises is open for licensable activities and during all times when customers remain at the premises. Recordings must be correctly timed and date stamped and kept in date order, numbered sequentially and kept for a period of 31 days and handed to a Police Officer/Local Authority Officer on demand. The Premises Licence Holder must ensure that at all times a Designated Premises Supervisor (DPS) or appointed member of staff is capable and competent at downloading CCTV footage in a recordable format to a Police Officer/Local Authority Officer on demand. The Recording equipment shall be kept in a secure environment under the control of the DPS or other responsible named individual. An operational daily log must be maintained, endorsed by signature, indicating the system has been checked and is compliant. In the event of any CCTV system failings the actions taken are to be recorded, and the Premises Licence holder/DPS must report the failure to the Police/Local Authority.
- SIA registered door staff shall be employed on occasions when a requirement is identified by the licence holders written risk assessment. Consideration will be given to events within the local area, public holidays and days considered to be major event days in the city centre.
- Register of door supervisors will be maintained at all times
- An incident book, bound in numerical order, shall be maintained at the premises showing details of the date and time of all assaults, injuries, accidents, interventions by staff or ejections, as well as details of the members of staff involved, the nature of the incident and the action/outcome. The book must be kept available for inspection by the Police and authorised officers of the Local Authority.

c) Public safety

- The number of persons permitted in the premises at any one time (including staff) shall not exceed 30 persons
- Door staff, managers and employees will be instructed to count the number of persons in the premises, especially during busy times
- The premise shall keep a first aid kit available and ready to use whenever an incident occurs that requires the application of a first aid kit
- The premise will have at least one employee trained in first aid on duty

d) The prevention of public nuisance

- The premise does not make use of any loudspeakers
- Signs and notices to leave quietly shall be prominently displayed at the exists
- A direct telephone number for the manager at the premises shall be publicly available at all times the premises is open. This telephone number is to be made available to residents in the vicinity.
- Removable seating areas shall be removed from the premise by 23:00 each day
- All external seating will be removed by 2300hrs
- All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
- No rubbish, including bottles, shall be moved, removed or placed in outside areas between 2230 hours and 0900 hours.

e) The protection of children from harm

- Customers will not be served with drinks which are in glass containers or leave the premises with glasses or glass bottles.

Checklist:

Please tick to indicate agreement


- I have made or enclosed payment of the fee. X
 - I have enclosed the plan of the premises. X
 - I have sent copies of this application and the plan to responsible authorities and others where applicable. X
 - I have enclosed the consent form completed by the individual I wish to be designated premises supervisor, if applicable. X
 - I understand that I must now advertise my application. X
 - I understand that if I do not comply with the above requirements my application will be rejected. X
 - X
- [Applicable to all individual applicants, including those in a partnership which is not a limited liability partnership, but not companies or limited liability partnerships] I have included documents demonstrating my entitlement to work in the United Kingdom (please read note 15).

IT IS AN OFFENCE, UNDER SECTION 158 OF THE LICENSING ACT 2003, TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION. THOSE WHO MAKE A FALSE STATEMENT MAY BE LIABLE ON SUMMARY CONVICTION TO A FINE OF ANY AMOUNT.

IT IS AN OFFENCE UNDER SECTION 24B OF THE IMMIGRATION ACT 1971 FOR A PERSON TO WORK WHEN THEY KNOW, OR HAVE REASONABLE CAUSE TO BELIEVE, THAT THEY ARE DISQUALIFIED FROM DOING SO BY REASON OF THEIR IMMIGRATION STATUS. THOSE WHO EMPLOY AN ADULT WITHOUT LEAVE OR WHO IS SUBJECT TO CONDITIONS AS TO EMPLOYMENT WILL BE LIABLE TO A CIVIL PENALTY UNDER SECTION 15 OF THE IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006 AND PURSUANT TO SECTION 21 OF THE SAME ACT, WILL BE COMMITTING AN OFFENCE WHERE THEY DO SO IN THE KNOWLEDGE, OR WITH REASONABLE CAUSE TO BELIEVE, THAT THE EMPLOYEE IS DISQUALIFIED.

Part 4 – Signatures (please read guidance note 11)

Signature of applicant or applicant’s solicitor or other duly authorised agent (see guidance note 12). **If signing on behalf of the applicant, please state in what capacity.**

Declaration	<ul style="list-style-type: none"> • Applicable to individual applicants only, including those in a partnership which is not a limited liability partnership] I understand I am not entitled to be issued with a licence if I do not have the entitlement to live and work in the UK (or if I am subject to a condition preventing me from doing work relating to the carrying on of a licensable activity) and that my licence will become invalid if I cease to be entitled to live and work in the UK (please read guidance note 15). • • The DPS named in this application form is entitled to work in the UK (and is not subject to conditions preventing him or her from doing work relating to a licensable activity) and I have seen a copy of his or her proof of entitlement to work, if appropriate (please see note 15)
Signature	
Date	05/05/2022
Capacity	Manager

For joint applications, signature of 2nd applicant or 2nd applicant's solicitor or other authorised agent (please read guidance note 13). If signing on behalf of the applicant, please state in what capacity.

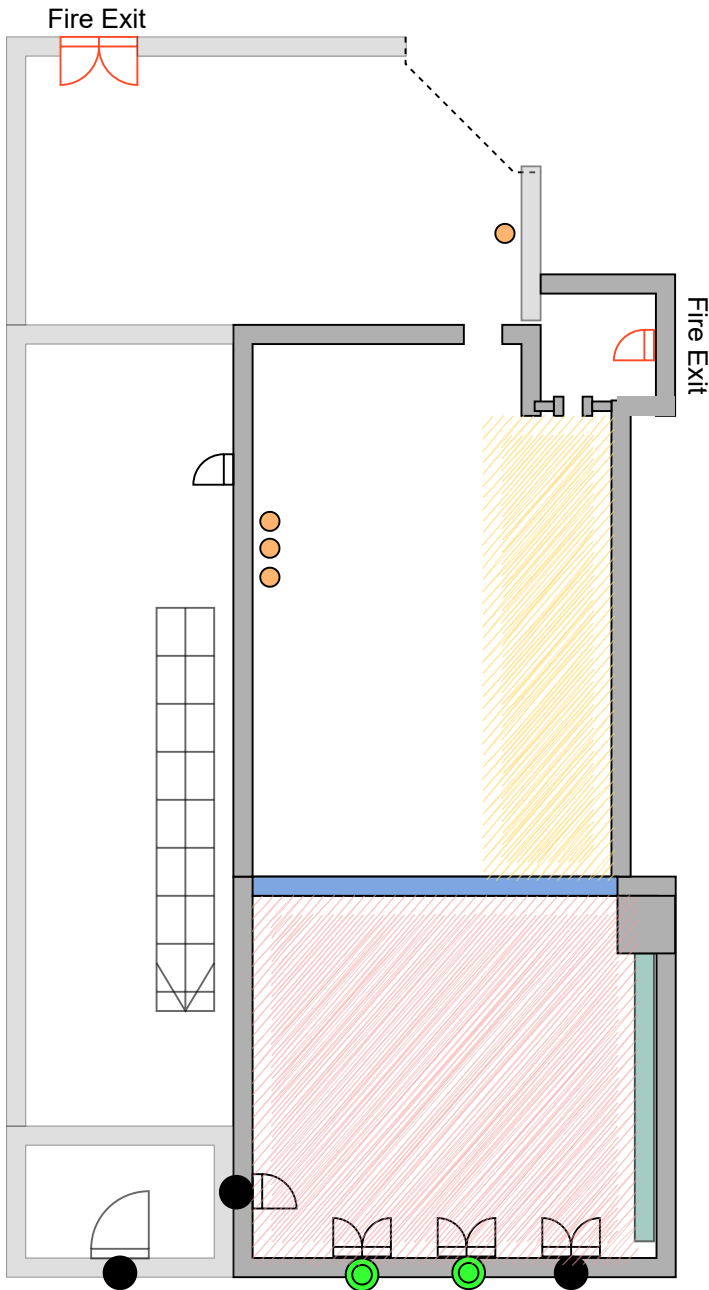
Signature	
Date	
Capacity	

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 14)			
Post town		Postcode	
Telephone number (if any)			
If you would prefer us to correspond with you by e-mail, your e-mail address (optional)			





Swansea Council is the data controller for the personal information you provide on this form. We are collecting this information as part of our obligation under **Licensing Act 2003**. Your information will be used to help us fulfil our legal obligation and will not be used for any other purpose. We will not share your data with third parties unless we are required or permitted to do so by law.

Data protection law describes the legal basis for our processing your data as necessary for compliance with a legal obligation. For further information about how Swansea Council uses your personal data, including your rights as a data subject, please see our corporate **privacy notice** on our website (www.swansea.gov.uk/privacynotice).

Appendix A1



Key

-  Licensable area
-  Kitchen
-  Bar
-  Seating area (non-removable)
-  Ingress & Egress
-  Closed doors
-  Fire extinguishers

1:100

Other Late Night Refreshment premises in Wind Street

Pizza Emporium 1 Wind Street			
Post town	Swansea	Post code	SA1 1DE
Telephone number	01792 461678		

The times the licence authorises the carrying out of licensable activities

Late Night Refreshment

Monday to Sunday 23.00hours - 05.00hours

Part A1 – Premises Details

Chick O Land 62 Wind Street			
Post town	Swansea	Post code	SA1 1EG
Telephone number	01792 465050		

The times the licence authorises the carrying out of licensable activities

Late Night Refreshment

Monday to Sunday - 2300 hours to 0500 hours

Part A1 – Premises Details

Big Daddy's Pizza & Kebab 55 Wind Street City Centre			
Post town	Swansea	Post code	SA1 1EG
Telephone number			

The times the licence authorises the carrying out of licensable activities

Late Night Refreshment
Monday - Sunday 23.00 - 04.00

Part A1 – Premises Details

The Dog House 61 Wind Street Swansea			
Post town		Post code	SA1 1EG
Telephone number	01792 477650		

The times the licence authorises the carrying out of licensable activities

Late Night Refreshment
Monday - Sunday 23.00 - 05.00

Part A1 – Premises Details

Swansea Kebab House 7 Wind Street City Centre			
Post town	Swansea	Post code	SA1 1DF
Telephone number			

The times the licence authorises the carrying out of licensable activities

Late Night Refreshment
Sunday to Tuesday and Thursday 23:00hrs to 04:00hrs
Wednesday, Friday and Saturday 23:00hrs 05:00hrs

Appendix C

Pizza Emporium

Swansea Kebabs

Flame (Applicants Premises)

Chic O Land

The Dog House

Big Daddy's Pizza and Kebab

WIND STREET

Page 29

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Flame, 11 Wind Street, Swansea

Application for a premises licence and locations of Flame in relation to those businesses objecting

Scale: 1:500
Date: 09/06/2022
Created by: Charles.Gabe

Conditions offered by the Applicant in the application

1 CCTV will be provided in the form of a recordable system, capable of providing pictures of evidential quality in all lighting conditions, particularly facial recognition. Cameras shall encompass all ingress and egress to the premises, fire exits, all areas where the public have access and any external areas. Equipment must be maintained in good working order, the system must continually record whilst the premises is open for licensable activities and during all times when customers remain at the premises. Recordings must be correctly timed and date stamped and kept in date order, numbered sequentially and kept for a period of 31 days and handed to a Police Officer/Local Authority Officer on demand. The Premises Licence Holder must ensure that at all times a Designated Premises Supervisor (DPS) or appointed member of staff is capable and competent at downloading CCTV footage in a recordable format to a Police Officer/Local Authority Officer on demand. The Recording equipment shall be kept in a secure environment under the control of the DPS or other responsible named individual. An operational daily log must be maintained, endorsed by signature, indicating the system has been checked and is compliant. In the event of any CCTV system failings the actions taken are to be recorded, and the Premises Licence holder/DPS must report the failure to the Police/Local Authority.

2 SIA registered door staff shall be employed on occasions when a requirement is identified by the licence holders written risk assessment. Consideration will be given to events within the local area, public holidays and days considered to be major event days in the city centre.

3 Register of door supervisors will be maintained at all times

4 An incident book, bound in numerical order, shall be maintained at the premises showing details of the date and time of all assaults, injuries, accidents, interventions by staff or ejections, as well as details of the members of staff involved, the nature of the incident and the action/outcome. The book must be kept available for inspection by the Police and authorised officers of the Local Authority.

5 The number of persons permitted in the premises at any one time (including staff) shall not exceed 30 persons

6 Door staff, managers and employees will be instructed to count the number of persons in the premises, especially during busy times

7 The premise shall keep a first aid kit available and ready to use whenever an incident occurs that requires the application of a first aid kit

8. The premise will have at least one employee trained in first aid on duty

9 The premise does not make use of any loudspeakers

10. Signs and notices to leave quietly shall be prominently displayed at the exists
11. A direct telephone number for the manager at the premises shall be publicly available at all times the premises is open. This telephone number is to be made available to residents in the vicinity.
12. Removable seating areas shall be removed from the premise by 23:00 each day
13. All external seating will be removed by 2300hrs
14. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
15. No rubbish, including bottles, shall be moved, removed or placed in outside areas between 2230 hours and 0900 hours.
16. Customers will not be served with drinks which are in glass containers or leave the premises with glasses or glass bottles

Our Ref: BD/22.186
Date: 06 June 2022

Unit 9 Oak Tree Court
Mulberry Drive
Cardiff Gate Business Park
Cardiff
CF23 8RS

Charles Gabe
City and County of Swansea
Licensing Division
Environment Department
Civic Centre
Oystermouth Road
Swansea
SA1 3SN

Tel: 029 2073 2652
www.asbriplanning.co.uk

By email: evh.licensing@swansea.gov.uk / charles.gabe@swansea.gov.uk

Dear Charles

LICENSING ACT 2003 - APPLICATION FOR A NEW PREMISES LICENCE TO BE GRANTED UNDER THE LICENSING ACT 2003
FLAME KEBAB HOUSE LTD, GROUND FLOOR, NO. 11 WIND STREET, SWANSEA, SA1 1DP

I refer to the above application for a new premises licence and write to object to the application on behalf of a group of concerned business owners on Wind Street. The objectors' businesses are located in the following locations.

The objection to the application is made on a number of grounds, as set out below.

Background

As you will be aware, the application property at No. 11 Wind Street was formerly operated as an all-day café lounge bar under the name of 'Tino's'. Following the closure of Tino's, the property re-opened in March 2022 as a kebab house takeaway called 'Flame Kebab House' and from the outset, the premises operated until the early hours of the morning.

However, the owner/operator did not have a premises licence for the provision of late-night refreshment in place and was therefore operating in breach of The Licensing Act 2003.

Following complaints, it would appear that the premises was shut down in mid-April only to re-open again at the end of April.

After trading for several weeks without a premises licence, it now appears that a premises licence for the provision of late-night refreshment has been formerly applied for.

Track Record

My clients have serious concerns that the owner/operator of the premises is not operating the premises in accordance with established good practice, leaving significant risk of public harm or nuisance. The very fact that the owner/operator thought that it was in anyway acceptable to open a food and refreshment business such as this without a premises licence shows a blatant disregard for rules, regulations and, crucially, the licensing system and is an immediate 'red-flag' that this owner/operator is unlikely to comply with any conditions which may be applied by the Authority should a premises licence be granted.

In short, based on previous behaviour, this owner/operator cannot be trusted to run a premises of this

nature.

Door Supervisors

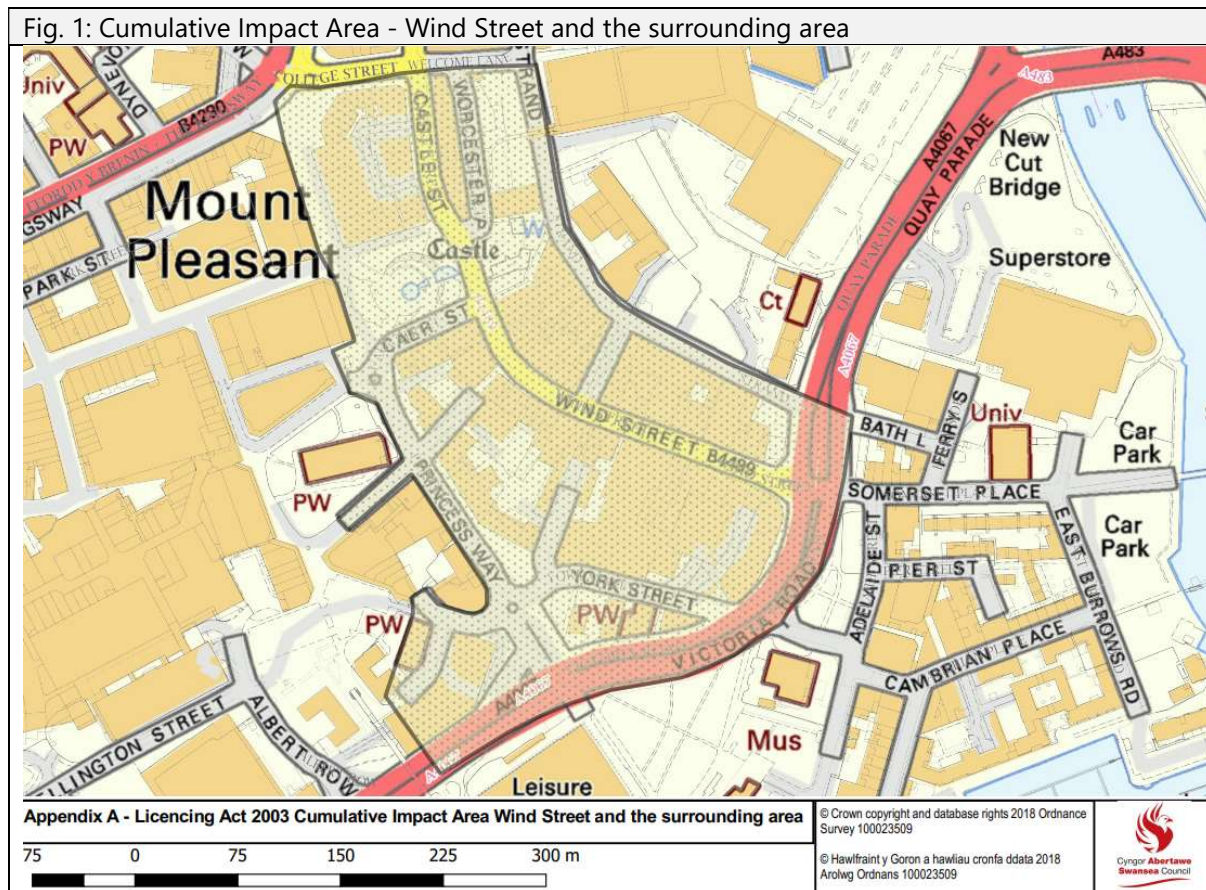
To date, the owner/operator of the premises has not had any SIA registered door supervisors on duty, despite this being a licensing condition for other premises along Wind Street. The absence of any registered door staff places an additional burden on the Police and door supervisors stationed at other nearby premises. Again, this shows a blatant disregard for public safety and places the operator's staff, customers and the general public at significant risk should an incident occur.

CCTV

It is not at all clear as to whether the premises is operating with a working CCTV system, despite this being a licensing condition for other similar premises. As above, this shows a blatant disregard for public safety and places the operator's staff, customers and the general public at significant risk should an incident occur.

Cumulative Impact

The property lies within the "Licencing Act 2003 Cumulative Impact Area Wind Street and the surrounding area" as illustrated at Fig. 1 below:



Section 182 of the guidance allows a licensing authority to make a policy within its Statement of Licensing Policy to deal with cumulative impact. Where there is evidence that the number of licensed premises in an area has had a negative cumulative effect upon crime and disorder, public nuisance and public safety the licensing authority will consider making a Cumulative Impact Policy (CIP).

On 30th July 2013 the Council resolved to adopt a Cumulative Impact Special Saturation Policy for the following "Wind Street and the surrounding area".

The special policy was reviewed as part of the review of the statement of licensing policy undertaken in 2018 and it was agreed that the CIP needed to remain in place.

The CIP does make certain exceptions for premises which may not add to existing cumulative impact. These include pubs, nightclubs, restaurants, hotels, theatres and other types of premises which sell alcohol, serve food and provide entertainment but with different styles and characteristics and due to the nature of the premises will not add to existing cumulative impact.

In respect of all other premises located in the special policy areas, there is a presumption that any application for a premises licence, club premises certificate or a variation that is likely to add to the existing cumulative impact will be refused.

This is exactly the case at hand here where the application made for a premises license at Flame Kebab House does not meet any of the exemptions set out within the Cumulative Impact and Special Policy. Therefore, the application before the Authority for a premises license at this premises should be refused in line with the Council's adopted policies.

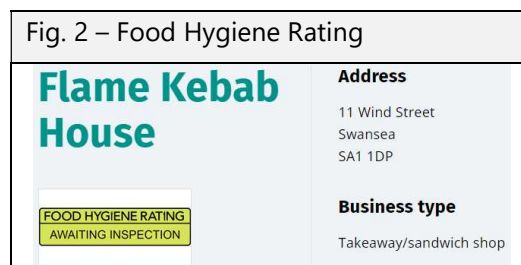
The purpose of the policy is to prevent further licenses being granted for premises which could exacerbate existing levels of nuisance. It is also critical to ensure that there is an appropriate mix of uses in streets like Wind Street. Late night premises such as this are more often than not closed during normal working hours only opening during the evening and early hours. Where there is a continued build up of such premises, streets become increasingly 'dead' and uninviting during the day leading to a general decline in positive activity and a rise in anti-social behaviour.

If the Authority does not enforce the Cumulative Impact Policy, then Wind Street could become dominated by late night food premises and could quickly become Swansea's own version of the infamous Caroline Street (aka 'Chip Alley') in Cardiff.

The Authority needs to continue to resist premises such as this in the interest of encouraging a diversity of mixed uses and importantly, active uses that encourage daytime activity including outdoor sitting, and outdoor dining. A failure to do so could lead to a snowball, cumulative effect and the deterioration in environmental, economic and social vibrancy in an important area which is also a Conservation Area.

Food Hygiene Rating

Whilst it is acknowledged that Food Hygiene is not a matter for the Premises Licence, it is noteworthy that despite the premises opening in March 2022, it still has not obtained a Food Hygiene Rating. This is a further indicator that the premises is not operated by an owner/operator that respects rules and procedures which are set out and enforced in the interest of protecting public health and protecting against public nuisance.



For all of the above reasons, it is considered that a new premises licence should not be granted.

I look forward to receiving acknowledgement of this objection letter and I would be grateful if you could keep me informed of any significant developments.

Yours sincerely,



Barrie Davies
Director

cc **Councillor Penny Matthews (Chair)**
 Councillor Matthew Bailey
 Councillor Sam Bennett
 Councillor Jan Curtice
 Councillor Philip Downing
 Councillor Victoria Holland
 Councillor Sandra Joy
 Councillor Paul Lloyd
 Councillor Hazel Morris
 Councillor Cheryl Philpot
 Councillor Brigitte Rowlands
 Councillor Lesley Walton
 Councillor Patience Bentu (Local Member)
 Councillor Fiona Gordon (Local Member)
 Councillor Hannah Lawson (Local Member)
 Councillor David Phillips (Local Member)
 South Wales Police Licensing Officer PC Jon Hancock

From: Charles Gabe <Charles.Gabe@swansea.gov.uk>

Sent: 06 June 2022 16:30

To: Barrie Davies <Barrie@asbriplanning.co.uk>

Subject: FW: Flame

Importance: High

Dear Mr Davies,

Thank you for sharing the concerns of the business owners about the application for a premises licence for Flame Kebab House, 11 Wind street Swansea. I have addressed each of the points you raise below.

In response to the points raised under “Background” I can confirm that prior to opening the premises, the applicant discussed their proposals with officers from the Licensing Team and subsequently operated under Temporary Event Notices (TENs), pending submission of their application for a premises licence and we are not aware of any instances where the premises has remained open in breach of the Licensing Act 2003. One complaint about the premises being open without authorisation was received but officers confirmed that TENs were in place.

In response to the points raised under “Track Record” you will see from the above comments that when the premises was open, Tens were in place.

In response to the points you raise under “Door Supervisors” I can confirm that when a TEN is submitted the legislation does not permit the Licensing Authority to attach conditions to a TEN, therefore when the premises was operating under TENs, the provision of door supervisors was not a requirement. The current Premises Licence Application does include provision for the employment of Door Supervisors, which will be attached as condition of licence if the licence is granted.

In response to the points you raise in relation to “CCTV”, again, conditions cannot be attached to a TEN. There is however a proposal that a requirement to operate CCTV which will be attached as condition on any premises licence issued.

In respect of the premises being located within the Cumulative Impact area. I can confirm that prior to submission, the applicant sought advice and guidance regarding the proposed operation of the premises, from both Council Licensing Officers and Police Licensing Officers to ensure, as far as possible, that the proposals submitted were considered sufficient to promote the Licensing Objectives and whilst there is a presumption to refuse an application for a licence in a Cumulative Impact Area, each application must still be judged on its individual merits and if the applicant has demonstrated that their proposals will not undermine the Licensing Objectives, representations will be not be submitted.

In respect of the points you raise regarding “Food Hygiene Rating” I can confirm that the applicant has followed Food and Safety requirements and has registered the business. The applicant has been issued with the sticker you refer to, to notify people that the premises is awaiting an inspection.

I hope that the above clarifies the points you have raised and clearly explains why your representations, as submitted, cannot be considered relevant in respect of this application. I have also attached a copy of the application for your information.

If you have any questions regarding this email please let me know, or if you do wish to submit representations, which detail how you consider the application will undermine one or more of the licensing objectives, please note the deadline for submission is 00:00 tonight. I have also attached a copy of the information to interested parties to assist you.

Kind regards,

Charles



Charles Gabe
Swyddog Trwyddedu
Licensing Officer
Adran Tai a Iechyd y Cyhoedd
Housing and Public Health
07980712697
charles.gabe@swansea.gov.uk
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*Croesewir gohebiaeth yn y Gymraeg a
byddwn yn ymdrin â gohebiaeth Gymraeg a
Saesneg i'r un safonau ac amserlenni.
We welcome correspondence in Welsh and
will deal with Welsh and English
correspondence to the same standards and
timescales.*

From: Barrie Davies <Barrie@asbriplanning.co.uk>

Sent: 06 June 2022 16:59

To: Charles Gabe <Charles.Gabe@swansea.gov.uk>

Subject: FLAME KEBAB HOUSE LTD, GROUND FLOOR, NO. 11 WIND STREET, SWANSEA - Licensing Objection

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Thank you Charles

I respond below as follows:

“In response to the points raised under “Background” I can confirm that prior to opening the premises, the applicant discussed their proposals with officers from the Licensing Team and subsequently operated under Temporary Event Notices (TENs), pending submission of their application for a premises licence and we are not aware of any instances where the premises has remained open in breach of the Licensing Act 2003. One complaint about the premises being open without authorisation was received but officers confirmed that TENs were in place.”

Noted.

“In response to the points raised under “Track Record” you will see from the above comments that when the premises was open, Tens were in place.”

Noted

“In response to the points you raise in relation to “CCTV”, again, conditions cannot be attached to a TEN. There is however a proposal that a requirement to operate CCTV which will be attached as condition on any premises licence issued.”

Noted

“In respect of the premises being located within the Cumulative Impact area. I can confirm that prior to submission, the applicant sought advice and guidance regarding the proposed operation of the premises, from both Council Licensing Officers and Police Licensing Officers to ensure, as far as possible, that the proposals submitted were considered sufficient to promote the Licensing Objectives and whilst there is a presumption to refuse an application for a licence in a Cumulative Impact Area, each application must still be judged on its individual merits and if the applicant has demonstrated that their proposals will not undermine the Licensing Objectives, representations will be not be submitted.”

Whilst it is accepted that each application must be considered on its own merits, the guidance, which has been approved and updated by the Authority is very clear that there is a *“there is a presumption that any application for a premises licence, club premises certificate or a variation that is likely to add to the existing cumulative impact will be refused.”* The proposed application does not meet any of the stated exceptions for premises which may not add to existing cumulative impact as set out in the Cumulative Impact Policy. It is unclear from the submitted application what are proposals or assurances that were given by the applicant to overcome this very strong policy position which presumes that new premises licences should be refused. Perhaps you could let us know in what way the applicant is able to circumvent the Cumulative Impact Policy and what promises or assurances have been made.

Notwithstanding, it is very difficult to see how a new late night kebab outlet would not exacerbate existing issues which gave rise to the need for the Cumulative Impact Policy in the first place.

On this basis, my clients maintain their objection to this application because the proposal will very clearly undermine 3 of the 4 licensing objectives which the Authority’s own Cumulative Impact Policy seeks to prevent, namely, the opening of a new premises licence for late-night refreshments will only encourage more late night activity in this area and will do nothing to 1) prevent crime and disorder; it will 2) undermine public safety and it will 3) exacerbate public nuisance.

I look forward to hearing from you.

Barrie

Barrie Davies – Director

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From: Charles Gabe <Charles.Gabe@swansea.gov.uk>

Sent: 07 June 2022 11:19

To: Barrie Davies <Barrie@asbriplanning.co.uk>

Subject: Flame

Dear Barrie,

We are currently considering your representation.

In order to assist us in determining this could you please confirm to Licensing the list of persons you represent and their locations? Also could you explain how the perceived undermining of the Licensing Objectives will adversely impact on those you represent?

My apologies as when I last emailed you I omitted to attach a copy of the application which I referred to in my reply, but which is now attached.

Kind regards,

Charles



Charles Gabe
Swyddog Trwyddedu
Licensing Officer
Adran Tai a Iechyd y Cyhoedd
Housing and Public Health
07980712697
charles.gabe@swansea.gov.uk
charles.gabe@abertawe.gov.uk

*Croesewir gohebiaeth yn y Gymraeg a
byddwn yn ymdrin â gohebiaeth Gymraeg a
Saesneg i'r un safonau ac amserlenni.
We welcome correspondence in Welsh and
will deal with Welsh and English
correspondence to the same standards and
timescales.*

From: Barrie Davies <Barrie@asbriplanning.co.uk>

Sent: 08 June 2022 12:26

To: Charles Gabe <Charles.Gabe@swansea.gov.uk>



Subject: FLAME KEBAB HOUSE LTD, GROUND FLOOR, NO. 11 WIND STREET, SWANSEA - Licensing Objection

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Hi Charles

Thanks for your email below. I list below my clients details;

Address	Owner
1 Wind Street	[Redacted]
7 Wind Street	[Redacted]
61 Wind Street	[Redacted]
62 Wind Street	[Redacted]
55 Wind Street	[Redacted]

Thanks you for providing a copy of the application which I have now reviewed.

It remains unclear to myself and my clients as to how the granting of a new premises license in this location will not undermine at least 3 of the 4 licensing objectives.

The Cumulative Impact Policy (CIP) was introduced in the Wind Street area because there was there was clear evidence that the number of licensed premises in an area has had a negative cumulative effect upon crime and disorder, public nuisance and public safety. The CIP was introduced on 30th July 2013 and has been reviewed in both January 2017 and again in July 2018 and on both review occasions, the Authority agreed that the CIP needed to remain in place because the evidence still showed that cumulative impact of the number of licensed premises in the Wind Street area was continuing to have a negative impact on upon crime and disorder, public nuisance and public safety.

I reiterate once again, the CIP is crystal clear that “there is a presumption that any application for a premises licence, club premises certificate or a variation that is likely to add to the existing cumulative impact **will be refused.**” This application does not meet any of the stated exemptions.

The submitted application does nothing to demonstrate that it will not lead to increased levels of activity in the Wind Street area between 23:00-05:00. The presence of new licensed premises will, quite clearly, result in additional activity, it will quite clearly provide another outlet that persons can attend for late-night refreshments and thus, it will quite clearly lead to increased incidence of the common problems associated with such premises including, crime, disorder and public nuisance attributable to customers of such premises which can include but is not limited to litter, noise, intoxicated people lingering for food contributing to crime and disorder, continued accumulations of people at certain times leading to conflict in queues for taxis and the numbers of people leaving all types of premises at certain times.

It has not been demonstrated that the new premises will not lead to an additional cumulative impact when quite clearly, if you were to grant a licence for a new facility, it will encourage more people to attend, to linger and it will take longer for them to disperse.

My clients are established business owners in Wind Street that are clearly concerned that the presence of an additional late-night refreshment premises will have a cumulative impact which in turn will have a negative impact on upon crime and disorder, public nuisance and public safety, thereby threatening their staff and customers. My clients maintain their objection to this application because the proposal will very clearly undermine 3 of the 4 licensing objectives which the Authority's own Cumulative Impact Policy seeks to prevent, namely, the opening of a new premises licence for late-night refreshments will only encourage more late night activity in this area and will do nothing to 1) prevent crime and disorder; it will 2) undermine public safety and it will 3) exacerbate public nuisance.

If the Authority proceeds to grant this new premises licence, it will be in ignorance of the Authority's own approved and adopted Policy and it would represent a failure of its duty to protect the public against crime and disorder, public nuisance and safety.

We therefore consider that this application should not be determined under delegated powers and it must be heard before the Licensing Committee.

Barrie

Barrie Davies – Director

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All England Official Transcripts (1997-2008)

Daniel Thwaites plc v Wirral Borough Magistrates' Court

Licensing - Licence - Application for licence - Guidance issued by Secretary of State as to discharge of functions under legislation - Licensing authority granting licence - Local objectors appealing to magistrates' court - Magistrates' court imposing restrictions - Whether restrictions necessary to promote licensing objective - Whether magistrates' court having proper regard to guidance - Whether decision of magistrates' court lawful - Licensing Act 2003, s 4

[2008] EWHC 838 (Admin), CO/5533/2006, (Transcript: Wordwave International Ltd (A Merrill Communications Company))

QUEEN'S BENCH DIVISION (ADMINISTRATIVE COURT)

BLACK J

10 MARCH, 6 MAY 2008

6 MAY 2008

This is a signed judgment handed down by the judge, with a direction that no further record or transcript need be made pursuant to Practice Direction 6.1 to Pt 39 of the Civil Procedure Rules (formerly RSC Ord 59, r (1)(f), Ord 68, r 1). See Practice Note dated 9 July 1990, [1990] 2 All ER 1024.

D MW Pickup for the Claimant

The Defendant did not appear and was not represented

D Flood for the First Interested Party

M Copeland for the Second Interested Party

Naphens plc; Kirwans; Wirral MBC

BLACK J:

[1] This is an application by Daniel Thwaites plc ("the Claimant") for judicial review of a licensing decision made by the Wirral Magistrates' Court ("the Magistrates' Court") on 5 April 2006 and that court's decision on 21 April 2006 concerning the costs of the proceedings. The Claimant seeks an order quashing both decisions. Permission to apply for judicial review was granted by Pitchford J on 2 November 2006.

THE FACTUAL BACKGROUND

[2] The Claimant owns the Saughall Hotel in Saughall Massie, Wirral which it operates as licensed premises ("the premises"). It originally held a licence under the Licensing Act 1964. In June 2005, it commenced an application to the Licensing Sub-Committee of the Metropolitan Borough of Wirral ("the licensing authority")

for the existing licence to be converted to a premises licence under the Licensing Act 2003 and for the licence to be varied simultaneously.

[3] In essence, the Claimant was seeking to conduct business at the premises for longer hours than were permitted under the original licence. The police did not support the extension of the hours to the extent that the Claimant initially proposed. The Claimant agreed to restrict the hours to those that were acceptable to the police. Accordingly, the licensing authority was asked to grant a licence that would permit music and dancing to 11pm and alcohol sales until midnight on all nights except Friday and Saturday and, on Friday and Saturday nights, music and dancing to midnight and alcohol sales until 1pm, with the doors closing one hour after the last alcohol sale every night.

[4] The police withdrew their representations against the modified proposals and did not appear before the licensing authority when the matter was heard on 23 August 2005. No representations were made by the Wirral Environmental Health Services either. However, there was opposition to the proposals at the hearing from the Saughall Massie Conservation Society ("the First Interested Party") and other Saughall Massie residents.

[5] The Claimant told the licensing authority at the hearing that the hours of operation at the premises would not vary significantly from the existing hours of operation and that the application for extended hours was to allow flexibility to open later "on special occasions" This was a matter of which the licensing authority took note as is recorded in the minutes of their determination.

[6] The licence was granted in the modified terms requested together with an additional hour for licensable activities and an extra 30 minutes for the hours the premises were to be open to the public over Christmas and at the major bank holidays. Special arrangements were also permitted for New Year's Eve. The licensing authority removed certain conditions that had been imposed on the old licence (requiring all alcohol to be consumed within 20 minutes of the last alcohol sale and banning children under 14 from the bar) and imposed other conditions which were obviously aimed at controlling noise, namely that the area outside must be cleared by 11pm, that the premises must promote the use of taxi firms which use a call-back system, that all doors and windows must be kept closed when regulated entertainment was provided and that prominent notices should be placed on the premises requiring customers to leave quietly.

[7] The Saughall Massie Conservation Society and "others" appealed against the licensing decision to the Magistrates' Court on the ground that the licensing authority's decision "was not made with a view to promotion of and in accordance with the licensing objectives pursuant to s 4, Pt 2 of the Licensing Act 2003".

[8] The appeal occupied the Magistrates' Court from 3 - 5 April 2006. The Respondents to the appeal were the licensing authority and the Claimant which both defended the licensing authority's decision. Witnesses were called including Saughall Massie residents, Police Sergeant Yehya who dealt with the stance of the Merseyside police, and Mr Miller, the manager of the premises.

[9] The justices granted the appeal. Their Reasons run to three pages of typescript, one page of which is entirely taken up with setting out the new hours of operation they imposed. These permitted entertainment until 11pm and alcohol sales until 11.30pm on all nights except Friday and Saturday when entertainment would be permitted until 11.30pm and alcohol sales until midnight. The premises could remain open to the public until midnight on all nights except Friday and Saturday when they could close at 1am. Similar provisions were imposed to those imposed by the licensing authority in relation to later opening at Christmas and major bank holidays and the provisions relating to New Year's Eve and the conditions of the licence remained unaltered.

[10] The new licence had come into effect on 24 November 2005 so the new arrangements had been running for several months by the time of the hearing before the Magistrates' Court. There had been no formal or recorded complaints against the premises under the old or the new regime as the justices acknowledged in their Reasons. The residents who gave evidence were fearful of problems if the extended hours were allowed in the summer. The Chairman of the Conservation Society, who gave oral evidence, spoke of people urinating in the gardens and a problem with litter. It appears from the statement filed by the Chairman of the Bench for these judicial review proceedings that evidence was also given of interference with machinery on nearby Diamond Farm. The justices' Reasons make no reference at all to these matters. As to the statements of the "Witnesses of the Appellant", they say simply that they have read and considered them but attached little or no weight to them.

[11] The justices and their legal advisor have filed a considerable amount of material in response to the judicial review proceedings, in all 31 closely typed pages. These comprise their Response to the Claim, statements from Alistair Beere (who was the chairman of the bench), Mary Woodhouse (another of the bench) and Stephen Pickstock (the legal advisor), and what is said in the index to be a document by Mr Beere from which he prepared his statement. There was limited argument before me as to the status of these documents and the weight that I should give to them. It was not submitted that I should decline to have *any* regard to them although I think it is fair to say that it was common ground between the parties, rightly in my view, that I should concentrate principally on the Reasons. It is established by authorities such as *R v Westminster City Council ex parte Ermakov* [1996] 2 All ER 302, 95 LGR 119, [1996] 2 FCR 208 that the court can admit evidence to elucidate or, exceptionally, correct or add to the reasons given by the decision maker at the time of the decision but that it should be very cautious about doing so. The function of such evidence should generally be elucidation not fundamental alteration, confirmation not contradiction. In the circumstances, I have read carefully what the magistrates have provided but approached its role in the judicial review proceedings cautiously.

THE BROAD NATURE OF THE CLAIM IN RELATION TO THE LICENSING DECISION

[12] The Claimant argues that the Magistrates' Court decision is unlawful for a number of reasons. It is argued that the decision was not in line with the philosophy of the Licensing Act 2003 ("the Act") and imposed restrictions on the Claimant's operation which were not necessary to promote the licensing objectives set out in that Act, that it was based on speculation rather than evidence, that it took into account irrelevant considerations and failed to take into account proper considerations, and that it was a decision to which no properly directed Magistrates' Court could have come on the evidence. In so far as the court imposed conditions as to the time at which the premises must close, it is submitted that this was not a matter which can be regulated under the Act. It is further argued that the magistrates failed to give adequate reasons for their decision.

THE LEGAL BACKGROUND

[13] The Licensing Act 2003 was intended to provide a "more efficient" "more responsive" and "flexible" system of licensing which did not interfere unnecessarily. It aimed to give business greater freedom and flexibility to meet the expectations of customers and to provide greater choice for consumers whilst protecting local residents from disturbance and anti-social behaviour.

[14] Note 12 of the explanatory notes to the Act gives an indication of the approach to be taken under the Act. It reads:

"12 In contrast to the existing law, the Act does not prescribe the days or the opening hours when alcohol may be sold by retail for consumption on or off premises. Nor does it specify when other licensable activities may be carried on.

Instead, the Applicant for a premises licence or a club premises certificate will be able to choose the days and the hours during which they wish to be authorised to carry on licensable activities at the premises for which a licence is sought. The licence will be granted on those terms unless, following the making of representations to the licensing authority, the authority considers it necessary to reject the application or vary those terms for the purpose of promoting the licensing objectives."

[15] Section 1 of the Act provides:

"S1(1) For the purposes of this Act the following are licensable activities -

- (a) the sale by retail of alcohol,
- (b) [clubs]
- (c) the provision of regulated entertainment, and
- (d) the provision of late night refreshment."

[16] To carry on a licensable activity, a premises licence granted under Pt 3 of the Act is generally required, s 2. Application for a premises licence must be made to the relevant licensing authority, s 17(1).

[17] By virtue of s 4, the licensing authority must carry out all its functions under the Act (including its functions in relation to determining an application for a premises licence or an application for a variation of a premises licence) with a view to promoting the "licensing objectives". These are set out in s 4 as follows:

"S4(2) The licensing objectives are -

- (a) the prevention of crime and disorder;
- (b) public safety;
- (c) the prevention of public nuisance; and
- (d) the protection of children from harm."

[18] In carrying out its licensing functions, by virtue of s 4(3) the licensing authority must also have regard to its licensing statement published under s 5 and any guidance issued by the Secretary of State under s 182.

[19] Section 182 obliges the Secretary of State to issue guidance to licensing authorities on the discharge of their functions under the Act. Guidance was issued in July 2004 ("the Guidance"). It was updated in June 2007 but it is the original guidance that is relevant in this case. In any event, none of the changes made are material to the issues I have to determine.

[20] The Foreword says that the Guidance:

"is intended to aid licensing authorities in carrying out their functions under the 2003 Act and to ensure the spread of best practice and greater consistency of approach. This does not mean we are intent on eroding local discretion. On

the contrary, the legislation is fundamentally based on local decision-making informed by local knowledge and local people. Our intention is to encourage and improve good operating practice, promote partnership and to drive out unjustified inconsistencies and poor practice."

[21] As the Guidance says in para 1.7, it does not replace the statutory provisions of the Act or add to its scope. Paragraph 2.3 says:

"Among other things, section 4 of the 2003 Act provides that in carrying out its functions a licensing authority must have regard to guidance issued by the Secretary of State under section 182. The requirement is therefore binding on all licensing authorities to that extent. However, it is recognised that the Guidance cannot anticipate every possible scenario or set of circumstances that may arise and so long as the Guidance has been properly and carefully understood and considered, licensing authorities may depart from it if they have reason to do so. When doing so, licensing authorities will need to give full reasons for their actions. Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken."

[22] An application to the licensing authority for a premises licence must be accompanied by an operating schedule in the prescribed form including a statement of the matters set out in s 17(4) which are as follows:

- "(a) the relevant licensable activities,
- (b) the times during which it is proposed that the relevant licensable activities are to take place,
- (c) any other times during which it is proposed that the premises are to be open to the public,
- (d) where the Applicant wishes the licence to have effect for a limited period, that period,
- (e) where the relevant licensable activities include the supply of alcohol, prescribed information in respect of the individual whom the Applicant wishes to have specified in the premises licence as the premises supervisor,
- (f) where the relevant licensable activities include the supply of alcohol, whether the supplies are proposed to be for consumption on the premises or off the premises, or both,
- (g) the steps which it is proposed to take to promote the licensing objectives,
- (h) such other matters as may be prescribed."

[23] Section 18 deals with the determination of an application for a premises licence. Section 35 deals in very similar terms with the determination of an application to vary a premises licence. It will be sufficient only to set out here the provisions of s 18.

[24] Section 18(2) provides that, subject to sub-s (3), the authority must grant the licence in accordance with the application subject only to:

- "(a) such conditions as are consistent with the operating schedule accompanying the application, and
- (b) any conditions which must under section 19, 20 or 21 be included in the licence."

[25] Section 19 deals with premises licences which authorise the supply of alcohol. Such licences must include certain conditions ensuring that every supply of alcohol is made or authorised by a person who holds a personal licence and that no supply of alcohol is made when there is no properly licensed designated premises supervisor. Sections 20 and 21 are not relevant to this claim.

[26] Section 18(3) provides that where relevant representations are made, the authority has certain specified obligations. In so far as is relevant to this appeal "relevant representations" are defined in s 18(6) as follows:

"(6) For the purposes of this section, 'relevant representations' means representations which -

(a) are about the likely effect of the grant of the premises licence on the promotion of the licensing objectives,

(b) meet the requirements of sub-section (7),

(c) . . ."

[27] Sub-section (7) provides:

"(7) The requirements of this subsection are -

(a) that the representations were made by an interested party or responsible authority within the period prescribed under section 17(5)(c),

(b) that they have not been withdrawn, and

(c) in the case of representations made by an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious."

[28] Where relevant representations are made, the authority must hold a hearing to consider them unless the authority, the Applicant and each person who has made representations agrees that a hearing is unnecessary. By virtue of s 18(3)(b), the authority must also "(b) having regard to the representations, take such of the steps mentioned in sub-section (4) (if any) as it considers necessary for the promotion of the licensing objectives."

[29] Section 18(4) provides:

"(4) The steps are -

(a) to grant the licence subject to -

(i) the conditions mentioned in sub-section (2)(a) modified to such extent as the authority considers necessary for the promotion of the licensing objectives, and

(ii) any condition which must under section 19, 20 or 21 be included in the licence;

(b) to exclude from the scope of the licence any of the licensable activities to which the application relates;

(c) to refuse to specify a person in the licence as the premises supervisor;

(d) to reject the application."

[30] Conditions are modified for the purposes of sub-s (4)(a)(i) if any of them is altered or omitted or any new condition is added.

[31] During the currency of a premises licence, by virtue of s 51, an interested party (broadly speaking, a local resident or business) or a responsible authority (police, fire, environmental health etc) may apply to the relevant licensing authority for a review of the licence on a ground which is relevant to one or more of the licensing objectives. By virtue of s 52, a hearing must be held to consider the application and any relevant representations and the authority must take such steps from a specified list as it considers necessary for the promotion of the licensing objective. The steps range from modifying the conditions of the licence to suspending it or revoking it completely.

[32] The Act makes provision in Pt 5 for "permitted temporary activity" which, loosely speaking, is a form of ad hoc licensing to cover licensable activities which are not covered by a more general licence. The system involves proper notification of an event to the licensing authority and the police. Provided the applicable number of temporary event notices has not been exceeded and the police do not intervene, the event is automatically permitted. Temporary event notices can only be given in respect of any particular premises 12 times in a calendar year and the period for which each event lasts must not exceed 96 hours.

[33] Section 181 provides for appeals to be made against decisions of the licensing authority to a Magistrates' Court which is, of course, how the decisions in relation to which judicial review is sought in this case came to be made.

THE DETAIL OF THE CLAIM

[34] The Claimant submits that in making its decision to allow the appeal in relation to the premises licence, the Magistrates' Court failed in a number of respects to take account of the changes that the new licensing regime has made and failed to adopt the approach required by the Act. It is further submitted that the magistrates failed properly to consider and take into account the Guidance.

[35] There is no doubt that the Guidance is relevant in the magistrates' decision making. As I have set out above, s 4(3) requires the licensing authority to "have regard" to the Guidance. By extension, so must a Magistrates' Court dealing with an appeal from a decision of the licensing authority. The Guidance says:

"10.8 In hearing an appeal against any decision made by a licensing authority, the Magistrates' Court concerned will have regard to that licensing authority's statement of licensing policy and this Guidance. However, the court would be entitled to depart from either the statement of licensing policy or this Guidance if it considered it is justified to do so because of the individual circumstances of any case."

[36] Mr Pickup submits that although the Guidance is not binding and local variation is expressly permitted, it should not be departed from unless there is good reason to do so.

[37] Mr Flood for the First Interested Party submits that the Guidance simply serves to provide information for the magistrates and provided that they have had regard to it, that is sufficient. He also points out that, in

some respects (as is clear from the wording of the Guidance), the Guidance is a statement of Government belief rather than proved fact. Inviting attention to the judgment of Beatson J in *J D Weatherspoon plc v Guildford Borough Council* [2006] EWHC 815 (Admin), [2007] 1 All ER 400, [2006] LGR 767, he identifies that different policy elements in the Guidance may pull in different directions in a particular case, flexibility and customer choice potentially conflicting with the need to prevent crime and disorder. He submits that provided that the magistrates consult the Guidance, they do not need to use it as "a decision making matrix that the deciding Court has to sequentially address in making its decision in the manner it would if considering a section of a statute".

[38] There is no doubt that regard must be had to the Guidance by the magistrates but that its force is less than that of a statute. That is common ground between the parties. The Guidance contains advice of varying degrees of specificity. At one end of the spectrum, it reinforces the general philosophy and approach of the Act. However, it also provides firm advice on particular issues, an example being what could almost be described as a prohibition on local authorities seeking to engineer staggered closing times by setting quotas for particular closing times. I accept that any individual licensing decision may give rise to a need to balance conflicting factors which are included in the Guidance and that in resolving this conflict, a licensing authority or Magistrates' Court may justifiably give less weight to some parts of the Guidance and more to others. As the Guidance itself says, it may also depart from the Guidance if particular features of the individual case require that. What a licensing authority or Magistrates' Court is not entitled to do is simply to *ignore* the Guidance or fail to give it any weight, whether because it does not agree with the Government's policy or its methods of regulating licensable activities or for any other reason. Furthermore, when a Magistrates' Court is entitled to depart from the Guidance and justifiably does so, it must, in my view, give proper reasons for so doing. As para 2.3 of the Guidance says in relation to the need for licensing authorities to give reasons:

"When [departing from the Guidance], licensing authorities will need to give full reasons for their actions. Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken."

This is a theme to which the Guidance returns repeatedly and is a principle which must be applicable to a Magistrates' Court hearing an appeal as it is to a licensing authority dealing with an application in the first instance. I agree with Mr Flood for the First Interested Party that the magistrates did not need to work slavishly through the Guidance in articulating their decision but they did need to give full reasons for their decision overall and full reasons for departing from the Guidance if they considered it proper so to do.

[39] In this case, Mr Pickup submits that proper attention to the Guidance would have helped the magistrates to come to a correct and reasonable decision and that they have failed to adhere to it without proper reason and failed to carry out their licensing function in accordance with the Act.

[40] The foundation of the Claimant's argument is that the Act expects licensable activities to be restricted only where that is *necessary* to promote the four licensing objectives set out in s 4(2). There can be no debate about that. It is clearly established by the Act and confirmed in the Guidance. For example, in the Act, s 18(3)(b), dealing with the determination of an application for a premises licence, provides that where relevant representations are made the licensing authority must "take such of the steps mentioned in sub-s (4) (if any) as it considers necessary for the promotion of the licensing objectives" (the steps in sub-s (4) include the grant of the licence subject to conditions). Section 34(3)(b), dealing with the determination of an application to vary a premises licence, is in similar terms. The Guidance repeatedly refers, in a number of different contexts, to the principle that regulatory action should only be taken where it is *necessary* to promote the licensing objectives. In particular, it clearly indicates that conditions should not be attached to premises licences unless they are necessary to promote the licensing objectives, see for example para 7.5 and also para 7.17 which includes this passage:

"Licensing authorities should therefore ensure that any conditions they impose are only those which are necessary for the promotion of the licensing objectives, which means that they must not go further than what is needed for that

purpose."

[41] The Guidance also refers a number of times to the need for regulation to be "proportionate". This is not a term contained in the Act but if a regulatory provision is to satisfy the hurdle of being "necessary", it must in my view be confined to that which is "proportionate" and one can understand why the Guidance spells this out.

[42] Mr Pickup submits, and I accept, that the Act anticipates that a "light touch bureaucracy" (a phrase used in para 5.99 of the Guidance) will be applied to the grant and variation of premises licences. He submits that this means that unless there is evidence that extended hours will adversely affect one of the licensing objectives, the hours should be granted. A prime example of this arises when an application for a premises licence is made and there are no relevant representations made about it. In those circumstances, s 18(2) obliges the licensing authority to grant the licence and it can only impose conditions which are consistent with the operating schedule submitted by the Applicant. Mr Pickup says that such a light touch is made possible, as the Guidance itself says, by providing a review mechanism under the Act by which to deal with concerns relating to the licensing objectives which arise following the grant of a licence in respect of individual premises. He invites attention also to the existence of other provisions outside the ambit of the Act which provide remedies for noise, for example the issue of a noise abatement notice or the closure of noisy premises under the Anti-Social Behaviour Act 2003. The Guidance makes clear that the existence of other legislative provisions is relevant and may, in some cases, obviate the need for any further conditions to be imposed on a licence. Paragraph 7.18 from the section of the Guidance dealing with attaching conditions to licences is an illustration of this approach:

"7.18 It is perfectly possible that in certain cases, because the test is one of necessity, where there are other legislative provisions which are relevant and must be observed by the Applicant, no additional conditions at all are needed to promote the licensing objectives."

[43] The Guidance includes a section dealing with hours of trading which the Claimant submits further exemplifies the philosophy of the Act. It begins with para 6.1 which reads "This Chapter provides guidance on good practice in respect of any condition imposed on a premises licence or club premises certificate in respect of hours of trading or supply."

[44] It continues:

"6.5 The Government strongly believes that fixed and artificially early closing times promote, in the case of the sale or supply of alcohol for consumption on the premises, rapid binge drinking close to closing times; and are a key cause of disorder and disturbance when large numbers of customers are required to leave premises simultaneously. This creates excessive pressures at places where fast food is sold or public or private transport is provided. This in turn produces friction and gives rise to disorder and peaks of noise and other nuisance behaviour. It is therefore important that licensing authorities recognise these problems when addressing issues such as the hours at which premises should be used to carry on the provision of licensable activities to the public.

6.6 The aim through the promotion of the licensing objectives should be to reduce the potential for concentrations and achieve a slower dispersal of people from licensed premises through longer opening times. Arbitrary restrictions that would undermine the principle of flexibility should therefore be avoided. We will monitor the impact of the 2003 Act on crime and disorder and the other licensing objectives. If necessary in the light of these findings, we will introduce further legislation with the consent of Parliament to strengthen or alter any provisions."

[45] The Claimant submits that in imposing shorter hours than it requested for the supply of alcohol and for entertainment, the magistrates went beyond that which was necessary for these premises and failed to take into account that, as the Guidance explains, longer opening times would in fact reduce the potential for problems arising from licensed premises whereas curtailing operations could run counter to the licensing

objectives.

[46] The magistrates' Reasons record their acceptance that there had been no reported complaint in regard to public nuisance and that the extended hours had operated without any incidents. The magistrates also record in the Reasons, as I have already said, that they had attached little or no weight to the statements from witnesses of the Appellant. Nothing is said about difficulties mentioned in evidence by the witnesses. As it was clearly incumbent on the magistrates at least to advert in broad terms to those matters that they took into account, it is fair to conclude in the circumstances that they proceeded upon the basis that there was no reliable evidence of actual problems linked to the premises either under the old licence or under the new revised licence. This was in line with the oral evidence of Police Sergeant Yehya (as recorded in the rather truncated notes of the legal advisor):

"1. reported incident for the site. No other incidents or complaints have been received. There are none in my file. There are no incidents we can directly link to the Saughall Hotel since previously open. There have been incidents locally but not linked to these premises."

[47] To judge by the Reasons therefore, what led the magistrates to impose restricted hours of operation was their forecast as to what would occur in the future in association with the premises, notwithstanding the absence of reliable evidence of past problems. The First Interested Party observes that the manager of the premises had given evidence that he intended in the summer to "make hay while the sun shines" and submits, correctly in my view, that the magistrates were entitled to take this apparent change of emphasis into account. However, Mr Flood further submits that the evidence of what had happened in the winter months was therefore of "little evidential value" in determining what was likely to happen in the future and I cannot wholly agree with him about this. Undoubtedly the fact that the Claimant intended in future to make more use of the extended hours reduced the value of the premises' past record as a predictor of the future but it could not, in my view, be completely discarded by the magistrates. They still had to take into account that there had been extended hours for some months without apparent problems.

[48] It is plain that the magistrates' particular concern was "migration" rather than problems generated by those coming directly to the premises for their evening out. Under the heading "The Four Licensing Objectives", they say that they accept that there have been no formal or recorded complaints against the premises "but feel that because of the concept of migration that public nuisance and crime and disorder would be an inevitable consequence of leaving the hours as granted by the Local Authority". Under the heading "Migration/Zoning" they begin:

"The Saughall Hotel due to its location and the fact that a number of license premises in the surrounding area have reduced hours to that of the Saughall Hotel we believe that as a consequence of this would be that customers would migrate from these premises to the Saughall Hotel. [sic]"

and end:

"We appreciate that the extended hours have been in operation for several months without any incidents but have taken into consideration this was during the Winter months and inevitable numbers will increase in the Summer causing nuisance/criminality."

[49] They reiterate their concern under the heading "Nuisance (Existing/Anticipated)" saying that they "feel that public nuisance will be inevitable".

[50] The Claimant complains that the magistrates' treatment of the issue of "migration" was fundamentally flawed on a number of grounds.

[51] Firstly, it submits that there was no evidence on which the magistrates could find that customers *would* come to the premises when other premises in the vicinity closed or cause trouble and their concerns were no more than inappropriate speculation. The Claimant's position was that there was no evidence of migration to their premises. There were no recorded complaints of any kind about the premises let alone specifically about migration. Ms Lesley Spencer who lives opposite the premises and is the Secretary of the Saughall Massie Conservation Society gave evidence of her fear that customers would migrate but said that she did not think there had been any migration.

[52] Apart from their own local knowledge, the only material on which the magistrates could possibly have formed their views about migration was what Police Sergeant Yehya said in evidence. According to the legal advisor's notes, whilst being cross-examined by Mr Kirwan, the sergeant gave evidence about the other licensed premises operating in the vicinity (which I have seen marked on a local map and which were within walking distance of the premises) and their closing hours and said that there were three assaults each week at one of the premises. The legal advisor records that he also said:

"We have staggered closing. This could cause problems it has the potential to cause difficulties in the area. I have a list of considerations but none would rank as high as crime, not even noise. No complaints have been made to me even regarding noise. One concern was dispersal. We gave people one hour to disperse and therefore reduced from 2.00am to 1.00am. 1.00am closing at 2. 280 people leaving premises. Other premises subject to high levels of crime *migration not an issue.*" [my italics]

[53] I appreciate that this evidence acknowledged that staggered closing *could* cause problems but, had migration been a significant issue as opposed to a mere possibility, one can, I think, assume that the police would have made representations on that score, particularly given that they had plainly considered the impact of trading hours specifically and *had* initially objected to the even longer hours originally proposed by the Claimant. It is noteworthy that even when they were in opposition to the plans, it was never on the basis of migration of disruptive characters from other licensed premises and always simply on the basis of late noise from ordinary customers of the premises dispersing. The absence of police objections before either the licensing authority or the Magistrates' Court seems to have surprised the magistrates who said so in their Reasons, commenting "We were surprised that the Police originally objected to the application but withdrew that objection after a slight variation of the terms." In so saying, they convey, in my view, not only their surprise about the Police approach but also their disagreement with it.

[54] It was not open to the magistrates, in my view, to elevate what Sergeant Yehya said in the witness box to evidence that a problem with migration could reasonably be expected, nor do they say anything in their reasons which suggests that they did rely on his evidence in this way. The only concerns about migration were therefore the magistrates' own with perhaps some fears expressed by local residents though not on the basis of firm historical examples of migration to the premises.

[55] It is clear from the Guidance that drawing on local knowledge, at least the local knowledge of local licensing authorities, is an important feature of the Act's approach. There can be little doubt that local magistrates are also entitled to take into account their own knowledge but, in my judgment, they must measure their own views against the evidence presented to them. In some cases, the evidence will require them to adjust their own impression. This is particularly likely to be so where it is given by a responsible authority such as the police. They must also scrutinise their own anxieties about matters such as noise and other types of public nuisance particularly carefully if the responsible authorities raise no objections on these grounds. These magistrates did recognise the absence of police objections which caused them surprise and they chose to differ from the police in reliance on their own views. The Claimant submits that in so doing they departed into the realms of impermissible speculation not only in concluding that there would be migration but also in concluding that in this case it would generate nuisance and disorder. The First Interested Party is correct in submitting that the Guidance accepts a link between migration and a potential breach of the licensing objectives but it is also clear from the Guidance that each case must be decided on its individual facts so the magistrates could not simply assume that if people came from other premises, there would be

trouble.

[56] The Claimant complains that the magistrates' treatment of the migration issue also flies in the face of the Guidance because firstly it was an improper attempt to implement zoning and secondly it ignored the general principle of longer opening hours.

[57] Zoning is the setting of fixed trading hours within a designated area so that all the pubs in a given area have similar trading hours. The problem created by it, as demonstrated by experience in Scotland, is that people move across zoning boundaries in search of pubs opening later and that causes disorder and disturbance. The Guidance says, at para 6.8:

"The licensing authority should consider restricting the hours of trading only where this is necessary because of the potential impact on the promotion of the licensing objectives from fixed and artificially-early closing times."

It stresses that above all, licensing authorities should not fix predetermined closing times for particular areas.

[58] I am not convinced that the magistrates' limiting of the Claimant's operational hours can properly be described as implementing zoning which, in my view, is a term that is more appropriate to describe a general policy imposed by a licensing authority for a defined area than an individual decision of this type, albeit made with reference to the opening hours of other premises in the vicinity and having the effect of imposing the same hours as those premises.

[59] What has more weight, however, is the Claimant's submission that the magistrates failed to give proper weight to the general principle of later opening hours and to the intention that the approach to licensing under the Act would be to grant the hours sought for the premises unless it was necessary to modify them in pursuit of the licensing objectives. The Reasons include a heading "Flexibility" under which the magistrates say simply "We have considered the concept of Flexibility." In so saying, they may be referring to the sort of flexibility to which reference is made, for example, in para 6.6 of the Guidance (see above) but their shorthand does not enable one to know to what conclusions their consideration of the concept led them in this case nor whether they had reliably in mind that the starting point should be that limitations should not be imposed upon the licence sought unless necessary to promote the licensing objectives rather than that the licensing authority or the court should form its own view of what was necessary for the premises and only grant that.

[60] The Claimant was seeking to have the freedom to open later on certain occasions when the trade justified it or, as the magistrates put it, "the application for extended hours was to allow *flexibility* to open later on certain occasions". As the First Interested Party would submit, the magistrates may have inferred from Mr Miller's comment about making hay that the premises would *often* be open late rather than this happening only infrequently in accordance with the picture presented to the licensing authority. If this was their inference, however, it is odd that they considered that the Claimant could deal with the position by applying for a temporary certificate because this would have allowed the premises to open later on only a limited number of occasions. They make no express finding in their Reasons as to the frequency on which they considered the Claimant intended to keep the premises open late. This was material not only to the degree of disturbance that might be caused generally by late opening but also specifically to the issue of whether there would be migration. It would seem unlikely that customers from nearby pubs would bother to walk or even drive to the Saughall Hotel in search of another drink at the end of their evenings unless the Saughall Hotel was open late sufficiently frequently to lead them to a reasonable expectation that their journey would be worthwhile.

[61] The magistrates' comment about the temporary certificate also seems to me to be an example of a

failure by them to adopt the lighter approach that the Act dictated and to allow flexibility to those operating licensed premises unless the licensing objectives required otherwise. Temporary certificates would be a cumbersome and restricted means of achieving flexibility, not responsive to the day to day fluctuations in business, only available a limited number of times, and not in line with the philosophy of the Act.

[62] There is no consideration in the magistrates' decision of whether the imposition of conditions to control noise or other nuisance (which were going to be imposed) would be sufficient to promote the licensing objectives without reducing the operating hours of the premises. Given that the Act dictates that only such steps as are necessary should be taken with regard to the variation of the terms of operation sought, such consideration was required.

MY OVERALL CONCLUSIONS

[63] It would be wrong, in my judgment, to say that the magistrates failed to take account of the licensing objectives. At the outset of their Reasons, they correctly identify those which are relevant. Similarly, as the First Interested Party submits, whilst they did not *articulate* that the curtailment of the hours sought was "necessary" to promote those objectives, it is implied in their decision that they did take this view and it can also be inferred from their comment that because of the concept of migration, public nuisance and crime and disorder would be "an inevitable consequence" of leaving the hours as granted by the Local Authority. However, in my view their approach to what was "necessary" was coloured by a failure to take proper account of the changed approach to licensing introduced by the Act. Had they had proper regard to the Act and the Guidance, they would have approached the matter with a greater reluctance to impose regulation and would have looked for real evidence that it was required in the circumstances of the case. Their conclusion that it was so required on the basis of a risk of migration from other premises in the vicinity was not one to which a properly directed bench could have come. The fact that the police did not oppose the hours sought on this basis should have weighed very heavily with them whereas, in fact, they appear to have dismissed the police view because it did not agree with their own. They should also have considered specifically the question of precisely how frequently the premises would be likely to be open late and made findings about it. They would then have been able to compare this to the winter opening pattern in relation to which they accepted there had been no complaints and draw proper conclusions as to the extent to which the summer months would be likely to differ from the winter picture. Having formed a clear view of how frequently late opening could be anticipated, they would also have been able to draw more reliable conclusions about the willingness of customers from further afield to migrate to Saughall Massie. They proceeded without proper evidence and gave their own views excessive weight and their resulting decision limited the hours of operation of the premises without it having been established that it was necessary to do so to promote the licensing objectives. In all the circumstances, their decision was unlawful and it must be quashed.

[64] I have said little so far about what appears in the magistrates' response for the judicial review proceedings. The various documents comprising the response did nothing to allay my concerns about the magistrates' decision. Indeed quite a lot of what was said reinforced my view that the magistrates had largely ignored the evidence and imposed their own views. They refer in their response to incidents about which the residents had given evidence and to the residents not having complained formally for various reasons, for example because it was Christmas or because there was thought to be no point. If the magistrates considered these matters to be relevant, it was incumbent on them to say so clearly in their reasons whereas they there recorded their acceptance that there had been no formal or recorded complaints, that the extended hours had been in operation for several months without incidents and that they had attached little or no weight to the statements of the witnesses of the Appellant. They also refer extensively in their response to their thoughts on migration, including that people may come from further afield than the pubs in the vicinity in cars. Particularly concerning is that they refer repeatedly to a perceived issue over police resources which is not something that, as far as I can see, had been raised by Sergeant Yehya or explored with him in evidence. Mr Beere says in his statement for example, ". . . there is also the question of Police resources and

their ability to effectively police this area especially at weekends with already stretched resources being deployed in Hoylake."

[65] Reference is made in the response documents to the court feeling that the Brewery's proposed opening hours contradicted the acceptable activities of a family pub and that the Saughall Hotel is "a village pub and not a night spot in the centre of town". For the court to take matters such as this into account seems to me to be an interference with the commercial freedom of the premises of a type that was not permissible under the Act unless it was necessary to promote the licensing objectives. I appreciate that the magistrates' response seems to suggest that they feared that a different type of customer was being courted or would invite themselves once it got too late for families but this does not seem to have been founded on anything that was given in evidence so was really not much more than speculation.

[66] Mr Beere's statement ends with a reference to the Brewery wanting to make hay while the sun shines, of which he says, "I believe that this statement was indicative of the Brewery's attitude to local residents and to the general management of the premises." Given that problems with or in the vicinity of the premises had been almost non-existent and that the magistrates had not seen fit to make reference in their Reasons to any difficulties caused by the Hotel, it is hard to see how this belief could be justified but it does perhaps exemplify the approach of the magistrates.

[67] I have considered quite separately the argument as to whether the hours of opening can be regulated as part of the licensing of premises as opposed to the hours during which licensable activities take place. It was suggested during argument that there was no power to regulate the time by which people must leave the premises. I cannot agree with this. Clearly keeping premises open (as opposed to providing entertainment or supplying alcohol there) is not a licensable activity as such. However, the operating schedule which must be supplied with an application for a premises licence must include a statement of the matters set out in s 17(4) and these include not only the times when it is proposed that the licensable activities are to take place but also "any other times during which it is proposed that the premises are to be open to the public". On a new grant of a premises licence, where there are no representations the licensing authority has to grant the application subject only to such conditions as are consistent with the operating schedule. I see no reason why, if it is necessary to promote the licensing objectives, these conditions should not include a provision requiring the premises to be shut by the time that is specified in the operating schedule. If representations are made and the licensing authority ultimately grants the application, it can depart from the terms set out in the operating schedule when imposing conditions in so far as this is necessary for the promotion of the licensing objectives. It must follow that it can impose an earlier time for the premises to be locked up than the Applicant wished and specified in its operating schedule. It is important to keep in mind in this regard that the role of the licensing authority and, if there is an appeal, the court, has two dimensions: the fundamental task is to license activities which require a licence and the associated task is to consider what, if any, conditions are imposed on the Applicant to ensure the promotion of the licensing objectives. A requirement that the premises close at a particular time seems to me to be a condition just like any other, such as keeping doors and windows closed to prevent noise. I see no reason why a condition of closing up the premises at a particular time should not therefore be imposed where controlling the hours of the licensable activities on the premises (and such other conditions as may be imposed) is not sufficient to promote the licensing objectives.

THE COSTS ARGUMENT

[68] In the light of my conclusion that the magistrates' decision is unlawful and therefore must be quashed, it is not appropriate for me to consider the arguments in relation to their costs order further. The Appellants had given an undertaking to the Licensing Authority that they would not seek costs against the Licensing Authority and they sought the entirety of their costs of the appeal from the Claimant. The magistrates granted that order and the Claimant submits that that was not an order that was open to them. Whatever the merits of that argument, the magistrates' order in relation to costs cannot now stand. The basic foundation for the

order for costs was that the appeal had succeeded and the Claimant had lost. That position has now been overturned and the costs order must go along with the magistrates' main decision. The magistrates would have had no reason to grant costs against the Claimant if the appeal had been dismissed.

Appeal dismissed.

Pavement Café – Memorandum of Agreement

LICENCE FOR THE PROVISION OF PAVEMENT CAFÉ ON THE HIGHWAY

FLAME

Licence No. 049 - 22

IN ACCORDANCE with the Highways Act 1980 Section 115 E (1) (a) (b) **SWANSEA COUNCIL** (“the Council”) grants permission to **FLAME – 11 - 12 WIND STREET, SWANSEA** to place up to **12** chairs/seats with **3** tables and umbrellas on the highway subject to the following conditions.

1. Tables, chairs and umbrellas shall be of such design as shall be approved by the Council, detailed within the guidance notes, and the Applicant/Licensee shall not cause any tables, chairs or umbrellas to be placed on the highway prior to the date hereof.
2. Any items placed on the highway under licence shall be the sole responsibility of the Licensee and the Licensee shall make no claim or charge against the Council in the event of the chairs, tables or umbrellas being lost stolen or damaged in any way from whatever cause.
3. The Licensee shall indemnify the Council against all actions proceedings, claims, demands and liability howsoever arising and which may at any time be taken made or incurred in consequence of the use of the chairs, tables and umbrellas and for this purpose must take out at the licensee’s expense a policy of insurance approved by the Council in the sum of at least **£5 million** in respect of any one claim and must produce to the Council on request the current request for premium payments and confirmation of the annual renewal of the policy.

4. The area so permitted must be used solely for the purpose of consuming refreshments.
5. No charge will be made by the Applicant/Licensee for the use of the chairs, tables and umbrellas.
6. The Licensee shall ensure that the tables and chairs are kept clean and tidy at all times and that all litter, waste etc. deposited on the highway is removed at regular intervals during the day, such removal to be at the Applicants/Licensee's own expense. Refuse and litter from the licensee's operations must not be disposed of in the permanent litter bins provided by the Council in the vicinity.
7. The Applicant/Licensee must ensure at all times that waste bins are kept in the area designated by this agreement.
8. The Licensee shall remove the tables, chairs barriers etc from the highway outside trading hours daily and in any event no earlier than **07:30** hours and no later than **23.00** hours and immediately if required to do so as to permit works in or the use of the highway by:
 - (a) The Council, the Police, Fire and Ambulance Services and any statutory undertaker, or telecommunications code operator or;
 - (b) Builder's vehicles, hearses, furniture removal vans, delivery vans and Cleansing Operatives -
9. The Applicant/Licensee shall in addition to the provisions of clause 8 hereof remove the tables, chairs and umbrellas when required so to do by Swansea Council without notice by an authorised officer of the Council acting reasonably and shall not reinstate the tables, chairs and umbrellas until authorised so to do.

10. The Applicant/Licensee shall not permit tables, chairs and umbrellas to extend so as to obstruct or block the highway. A desirable walkway of 1.8 meters should be available for passing pedestrians, and an absolute minimum of 1.5 meters if the desirable width is not achievable.
11. The Applicants/Licensee shall provide adequate washing and toilet facilities for all persons availing themselves of the facility occasioned by the said siting of tables and chairs and umbrellas.
12. The Applicant/Licensee shall at all times ensure that the facilities offered are operated in such a way so as not to cause any nuisance or annoyance to the owners, occupiers, or neighbours of adjoining premises and to all persons using the highway.
13. Any new application is subject to a 28 day consultation period. The Applicant/Licensee may deposit tables and chairs on the highway, immediately following approval from the Highways Department, but consent may be withdrawn if valid objections and/or complaints are received within the notice period.
14. If consent is withdrawn during the Memorandum of Agreement period, you must remove all street furniture deposited on the highway immediately, or within a reasonable timeframe communicated by an authorised officer of Swansea Council.
15. The Licensee shall ensure that all alcoholic and soft beverages are served only in plastic glasses save that tea, coffee and all other hot beverages may be served in normal mugs or cups unless a written risk assessment has been undertaken and submitted to the authority for approval.
16. The tables, chairs and umbrellas are to be positioned so as not to obstruct textured or tactile surfaces which are provided for the benefit of those persons suffering from a visual disability or sight impairment

17. The Applicant/Licensee shall sign a copy of any agreement or licence to show that they have read and understood the terms and conditions they must abide by.
18. No alcohol shall be sold in the area covered by this Licence unless an appropriate term allowing such sale exists in the Premises Licence for the premises as issued by the Licensing Authority.
19. The Licensee shall be responsible for all rates, taxes and other outgoings, which may be charged.
20. The fee for this agreement has been waived. The application and agreement is **Free of charge until 31st March 2023.**
21. This permission shall run until **31st March 2023.**
22. If it appears to the Council that the Applicant/Licensee has committed a breach of the terms of the Licence/Agreement conditions and in the sole opinion of the Council is incapable of being remedied, the Council may withdraw consent for the outdoor space immediately.
23. Where it appears to the Council that the Applicant/Licensee has committed a breach of the terms of Licence / Agreement which is capable of remedy then the provisions of Section 115 K of the Highways Act 1980 shall apply. The text of Section 115 K is set out in the schedule hereto.
24. This Licence/Agreement does not constitute consent for any advertising on or outside the enclosure as this requires separate approval. Should you wish to advertise, please contact the Highways Department to discuss your requirements

25. Site specific and Covid-19 specific requirements listed in Clause 26 must be implemented and observed. Failure to do so may result in this Agreement/Licence being revoked.
26. The Applicant/Licensee will ensure any and all relevant and current Public Health Wales, The Health Protection (Coronavirus Restrictions) Wales Regulations 2020, and UK hospitality guidance, together with the conditions contained within this Agreement are observed and implemented at all times. This includes any requirements set by law, regulation or guidance introduced for the duration of this Agreement/Licence. Risk assessments should be undertaken and submitted to the relevant departments where required.
27. All efforts to reduce noise pollution should be made. External speakers will not be permitted for the duration of this Agreement/Licence. A written risk assessment must be made to ensure noise levels are kept to a minimum.
28. For Licences / Agreements on Wind Street separate / additional conditions may apply.
29. Customers must be seated at all times, until otherwise agreed by Swansea Council.
30. All Pavement Café agreements on the carriageway are subject to a review every 3 months.
31. Swansea Council reserves the right to withdraw any and all Licences / Agreements if the Pavement café agreement results in any anti social behaviour.

SEE ATTACHED SCHEDULE

Highways Act 1980 Section 115 K

1. If it appears to a Council that a person to whom they have granted a permission under Section 115 E above has committed any breach of the terms of that permission they may serve a notice on him requiring him to take such steps to remedy the breach as are specified in the notice within such time as is so specified.

2. If a person on whom a notice is served under sub-section (1) above fails to comply with the Notice then the Council may take the steps themselves.

3. Where a Council having incurred expenses in the exercise of the power conferred on them by sub-section (2) above those expenses, together with interest at such reasonable rate as the Council may determine from the date of service of a notice of demand for the expenses may be recovered by the Council from the person on whom the notice under sub-section (1) above was served.

Signed on behalf of: **FLAME – 11 - 12 WIND STREET, SWANSEA.**



Date: **02/06/2022**

Signed on behalf of the **SWANSEA COUNCIL:**

Signatory: Donna Price.....

Date: ...01st June 2022.....

SCHEDULE

This document must be displayed in a window or other prominent position.

This licence No. **049 - 22** is held by:

FLAME

For the period **1ST APRIL 2022 TO 31ST MARCH 2023**

In respect of FLAME – 11 - 12 WIND STREET, SWANSEA.

And allows the placing of up to **12** chairs/seats and **3** on the highway as detailed on the plan submitted with the application

No.**049 - 22**.....

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Donna Price

Licensing & Enforcement Officer/Streetworks Management Officer

Highways and Transportation.

Swansea Council

Players Industrial Estate

Clydach

Swansea

SA6 5BJ

Approved byDP..... on01st June 2022.....

NOTICE PURSUANT TO SECTION 115G HIGHWAYS ACT 1980 PART VIIA

Notice is hereby given that the owner/manager of:

[FLAME – 11 - 12 WIND STREET, SWANSEA]

Has applied and intends to create a temporary outdoor seating area on the public highway for the purposes of consuming food, beverages and refreshments.

Any permissions, agreements or licences sanctioned under this notice will expire 31st March 2023.

Representations may be made to Swansea Council within 28 days of the date of this notice.

The premises/venue identified above have permission to place tables, chairs, barriers and any other street furniture agreed by Swansea Council during this 28 day period, unless valid objections are received.

Any queries, objections or correspondence should be forwarded to:

D. Price

Highways & Transportation Department

Players Industrial Estate, Clydach,
Swansea, SA6 5BJ

Highways@Swansea.gov.uk

www.swansea.gov.uk



