



City and County of Swansea

Minutes of the **Statutory Licensing Sub Committee**

Council Chamber - Guildhall, Swansea

Monday, 10 June 2019 at 10.00 am

Present: Councillor P M Matthews (Chair) Presided

Councillor(s)

P Downing

Councillor(s)

S J Gallagher

Councillor(s)

Officer(s)

Kate Jones

Yvonne Lewis

Rachel Loosemore

Lyndsay Thomas

Democratic Services Officer

Team Leader, Licensing

Licensing Officer

Principal Lawyer

Applicant (Jack Murphys Uplands Limited)

Craig Jones

Andrew Sivertsen

Christopher Young

Counsel for the Applicant, Iscoed Chambers

Solicitor for the Applicant, John Morse Solicitors

Relevant Authorities

Lynda Anthony

Jennifer Aazem

Jon Hancock

Liam Jones

Emma North

Jonathan Shaddick

Bethan Walker

Licensing and Food Safety Manager

Pollution Control Officer

Police Licensing Officer, South Wales Police

Area Team Leader, Planning

Senior Planner, Planning

South Wales Police

Licensing Officer

Other Persons

Councillor Nick Davies

Dr Sandy Johns

Councillor Irene Mann

Councillor Mary Sherwood

Apologies for Absence

Councillor(s): None

1 Disclosures of Personal and Prejudicial Interests.

In accordance with the Code of Conduct adopted by the City and County of Swansea, no interests were declared.

2 Licensing Act 2003 - Section 34 Application to Vary a Premises Licence - Jack Murphys, 49 Uplands Crescent, Swansea.

The Chair welcomed all attendees to the meeting and requested that the Principal Lawyer outline the procedure to be adopted by the Licensing Sub Committee in considering the application.

The Principal Lawyer provided a comprehensive overview of the procedure to be adopted by the Licensing Sub Committee when considering the application.

The Licensing Officer reported on the application to vary the premises licence in respect of Jack Murphys, 49 Uplands Crescent, Swansea. She referred to the Licensing Objectives, policy considerations and the guidance issued by the Home Secretary. Specific reference was made to the existing premises licence at Appendix A, the application to vary the premises licence at Appendix B, proposed plans at Appendices B1 and B2 and location plan at Appendix C.

The applicant's solicitor had provided further information / proposals by way of letter on 17 May 2019 at Appendix B3. A further letter was received from the applicant's solicitor dated 6 June 2019 providing marketing materials and security team information. This information had been circulated further to the written report provided.

A representation had been received from South Wales Police dated 3 May 2019. A copy of their representation was attached at Appendix D. The representation related to the prevention of crime and disorder, public safety, the prevention of public nuisance, and protection of children from harm.

A representation had been received from the Planning Department dated 13 May 2019. A copy of their representation was provided at Appendix E. The representation related to the permitted use of the premises under the existing planning permission as well as the potential requirement for further planning permissions, for example, for any fencing on the proposed smoking area at the rear of the first floor.

A representation had been received from Pollution Control dated 7 May 2019. A copy of their representation was provided at Appendix F. The representation related to the prevention of public nuisance.

A representation had been received from the Licensing Department dated 13 May 2019. A copy of their representation was provided at Appendix G. The representation related to the prevention of public nuisance and lack of information / operating schedule to determine the promotion of the licensing objectives.

Numerous representations had been received from Other Persons along with a petition. A copy of their representations and the petition was attached at Appendices H1, H2, H3, H4 and H5. The representations related to the prevention of crime and disorder, public safety, the prevention of public nuisance and protection of children from harm.

The Principal Lawyer invited the Applicant to clarify his application given the additional information and documents submitted further to the application.

Counsel for the Applicant outlined the letter from the applicant's solicitor dated 17 May 2019 confirming the this letter clarified the hours sought and focused on the Licensing Objectives.

The Principal Lawyer advising the Committee sought an adjournment to allow parties who had made representations to consider the additional information provided by the applicant on 6 June 2019 to consider which issues, if any, could be agreed in light of the new information, and which issues remained in dispute.

Adjourned at 10.35

Reconvened 11.50

Following discussions between the Applicant and parties who had made representations, a proposed operating schedule was provided to the Committee.

The Principal Lawyer re-iterated the procedure of the Sub Committee.

Jon Hancock, South Wales Police, outlined the written representations (detailed on pages 41-46) and highlighted concerns in relation to the undermining of the Licensing Objectives in relation to the prevention of crime and disorder, public safety, prevention of public nuisance and protection of children from harm.

In response to questions, Jon Hancock, South Wales Police confirmed that as further information had now been received, South Wales Police would work towards agreeing conditions ahead of refusal.

Liam Jones, Area Team Leader, Planning, further amplified representations (detailed on page 47) on the use of the premises and potential planning permission required for the proposed fencing on the smoking area at the rear of the first floor.

The Pollution Control Officer confirmed that the representations (detailed on page 48) had been addressed by further information provided by the Applicant.

Bethan Walker, Licensing Officer, outlined the representations (detailed on pages 49-52). Refusal had been recommended due to insufficient information provided in respect of the Licensing Objectives. Should the amended operating schedule / licensing conditions proposed be agreed by the Applicant it was possible that an appropriate schedule of conditions could be agreed.

Councillor Irene Mann, further amplified written representations (detailed on page 53) objecting to the application and highlighted her concerns on saturation in the area, Jack Murphy's brand and drink promotions and differentiation from the Wind Street branch. She also highlighted concerns on the undermining of the Licensing Objectives in relation to the prevention of public nuisance, public safety, prevention of public nuisance and protection of children from harm. She referred to the petition as set out on pages 59-114 of the report.

Councillor Mary Sherwood, further amplified written representations (detailed on pages 116-121) objecting to the application and highlighted her concerns on the undermining of the Licensing Objectives in relation to the prevention of public nuisance, public safety, prevention of public nuisance and protection of children from harm. Reference was made to the Well-being of Future Generations (Wales) Act 2015.

Councillor Nick Davies, further amplified written representations (detailed on pages 122-124) objecting to the application and highlighted his concerns on the undermining of the Licensing Objectives in relation to the prevention of public nuisance, public safety and the prevention of public nuisance.

The Principal Lawyer referred to further representations made by Other Persons as detailed on pages 125-136 and confirmed that Members had considered the content.

Counsel for the Applicant confirmed that the proposed operating schedule could largely be agreed and provided clarity on proposed conditions 21, 23, 24, 25 & 26.

The Applicant provided further information in respect of the Closed Circuit Television (CCTV), Jack Murphy's business model and fencing on the smoking area. He also confirmed that he would remove the request for live music from the licence application.

In response to Member questions the Applicant, assisted by Counsel confirmed the following: -

- The capacity for each area of the building will be fully risk assessed
- There was an external steel staircase at the rear building which would be used as an emergency exit
- No table or chairs would be cleared away for the evening
- Jack Murphys was registered with the Information Commissioner's Office
- Estimated capacity was in the region of 250, with 50-70 of that being on the outdoor terrace, 50 of that being indoor upstairs with the remainder of the capacity being downstairs
- The outdoor terrace would be used for smoking, drinking and eating
- The business model of Jack Murphy Uplands would not be the same as the Jack Murphy Wind Street and would not offer the same drink promotions
- There was a different security firm being used to that used in Wind Street
- Unmanned exits such as fire exits would be alarmed
- There would be table service on the first floor
- The premises may operate with dimmed lighting and slightly louder music in the evening. There would also be entertainment in the evenings
- Trained staff would facilitate moving patrons from the terrace after the terrace area had closed to indoors
- CCTV requirements in terms of signage etc. would be met
- The main areas for speakers would be at the front of the building. A double doorway and double glazing was being installed at the front of the building
- Speakers did not have a limiter on volume, but would not be operated at unreasonable levels

- A view from the security cameras on the terrace would be shown at the front door in order for door staff to monitor the area
- Door staff would be in operation on Wednesdays, Fridays, Saturdays and Bank Holiday Sundays
- It could be agreed that no rubbish, including bottles, be moved, removed or placed in outside areas after 21.00 hours
- There was no intention to have a dance floor.

The following was confirmed on open questions: -

- There would be no televisions on the outdoor terrace and security would manage excess noise on the terrace
- There would be lighting and electric heaters on the terrace
- Each Jack Murphy branch was different and had different operations
- Food would be served until closing
- The Applicant was aware of planning conditions and requirements
- A condition for substantial food could be agreed
- The capacity would be professionally risk assessed
- The Applicant was anticipating a food covering of 40% to 60% drink
- The outdoor terrace would be used for smoking, drinking and eating. It was anticipated that this would be operated similar to other outdoor restaurants with smoking tables and non-smoking tables
- Staff would ensure that drinks were not taken onto the Highway
- The proposed operating schedule could be agreed

Closing Statements were provided from Counsel for the Applicant.

It was **Resolved** that the press and public be excluded from the hearing in accordance with paragraph 14 of the Licensing Act (Hearings) Regulations 2005, to enable the Sub-Committee to take legal advice.

(CLOSED SESSION)

Members discussed the issues relating to the application.

(OPEN SESSION)

The Principal Lawyer advising the Licensing Sub-Committee gave a comprehensive overview of the legal advice tendered which included: -

- The Licensing Sub-Committee could grant the modified application without the need for a new application in line with the decision of Taylor v Manchester City Council [2013]2 All ER 490
- It was possible to grant a variation subject to different conditions in respect of different parts of the premises and different Licensable Activities .
- Need was not something the Licensing Sub-Committee could take account of
- It was noted that there was mention of saturation of licensed premises in the locality but in the absence of evidence complying with paragraph 6.4 of the

policy and chapter 14 of the Statutory Guidance no further consideration could be given to it

- Their decision had to be in accordance with s4 of the policy and the Statutory Guidance to promote the Licensing Objectives but at the same time the Licensing Sub-Committee also had to consider the other aims as set out in paragraphs in 1.5 and 1.19 of the Statutory Guidance.

The Chair indicated that the Licensing Sub-Committee had considered the application, representations made and the needs and interests of all parties in terms of the Council's Statements of Licensing Policy, Statutory Guidance and the requirements of the Licensing Act 2003.

The Licensing Sub-Committee **Resolved** to **Grant** the application as modified below:-

Modifications

That part of the application seeking live music after 23.00 be withdrawn - offered by Applicant.

Add the conditions offered in letter of 17/5/2019 (pages 36-39) as amended by the proposed operating schedule provided in the Licensing Sub-Committee as agreed by the Applicant and modified by committee as follows. A copy of the Proposed Operating Schedule as amended below is shown in **Appendix A** to these Minutes:-

Proposed Operating Schedule

Condition 15 – There is to be no use of the external area after 23.00 hours.

Condition 16 – 23.00 hours be changed to 21.00 hours as agreed at the Licensing Sub-Committee

After condition 25 Add “...No noise producing equipment to be in the external area at any time, including, but not limited to speakers and televisions. All doors and windows will be kept closed at all times except for ingress and egress... as agreed at the Licensing Sub-Committee”

Reason

The Licensing Sub-Committee had regard to the representations made by the Other Persons and found that there was a residential area to the rear of the premises which could suffer public nuisance by the use of the external area for the proposed activities after 23.00 and undermine the promotion of the Licensing Objectives for the prevention of public nuisance.

The Licensing Sub-Committee considered the reduction in time on a Friday and Saturday would be appropriate to address this likely effect.

After condition 24 add a condition – At all times the premises are open for the sale of alcohol the seating arrangements at the premises shall accommodate

not less than 60% of the permitted number of persons determined for fire safety arrangements (to be advised to the Licensing Authority when known) for substantial food to be consumed on the premises.

Reason

The Sub-Committee considered it appropriate to add this condition to complement Condition 24 in the proposed operating schedule to avoid any concern over the nature of the premises changing during the evening and the experience offered not being delivered as promised at the Licensing Sub-Committee. It was considered appropriate to avoid it being a High Volume Vertical Drinking Establishment which were the concerns of the Responsible Authorities and Other Persons. Also it would allow the venue to accommodate any walk-in custom as well as bookings and ensure the promised dining experience will be undertaken when the venue is operating.

The Licensing Sub-Committee noted that in light of the amended conditions the Responsible Authorities were satisfied, with the conditions now agreed, that granting the license, as modified, would not undermine the Licensing Objectives.

The Licensing Sub-Committee noted the representations made by Other Persons who did not attend but in light of the lack of amplification or clarification attached less weight to those representations. As to those representations made at the Licensing Sub-Committee, due regard was had to those which were about the likely effect of the grant of the application and the promotion of the Licensing Objectives as set out in the Licensing Act 2003, the policy and the Statutory Guidance. The Licensing Sub-Committee felt that the modifications as agreed and proposed above would achieve a balance.

The meeting ended at 2.35 pm

Chair

Appendix 1

Proposed Operating Schedule as amended – Jack Murphy’s

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 to the premises, fire exits all areas where the public have access and any external drinking 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 the customers remain at the premises. Recordings must be correctly timed and date stamped, recordings must be kept in date order, number 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 either disc or VHS to a Police Officer / Local Authority Officer on demand. The Recording equipment and tapes/discs shall be kept in a secure environment under the control of the DPS or other responsible named individual. An operational daily log report must be maintained, endorsed by signature, indicating the system has been checked and is compliant. In the event of any failings the actions taken are to be recorded. In the event of technical failure of the CCTV equipment, the Premises Licence Holder/DPS must report the failure to the Police/Local Authority.

2. On Wednesdays, Fridays and Saturdays, and Sundays that precede a bank holiday, at least 2 SIA licensed door supervisors shall be on duty from 2100 hrs when the premises is open for business. At all other times 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 public holidays and days considered to be major event days in the area. If a written risk assessment identifies that door staff are required the following number will be adhered to:-

Members of Public Present	No of Door Supervisors
1 - 100	2
100 - 250	3
250 - 500	4
500 - 750	5
750 - 1,000	6
1,000 - 1,250	9
1.250 - 1,500	10
1,500 – 2,000	12

In excess of 2,000 – at least 12 and such other stewards as may be required either by the Chief Fire Officer or the Council.

3. A detailed bound numerical register of door supervisors to be maintained at all times at the premises. Such register to include the name, registration number, contact details of the member of door staff along with the date, time on duty and time off duty. Full details of the agency supplying the staff to be endorsed and the register to be available for inspection on request by an authorised officer.
4. An incident recoding book, bound in numerical order, shall be maintained at the premises showing the details of the date and time of all assaults, injuries, accidents 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 Licensing Authority.
5. Other than for off sales in sealed containers no drinks are permitted to leave the licensed area as shown on the deposited plans.
6. Signs to be prominently displayed at the entrance to the premises, within the toilet facilities and at key strategic points within public access areas. Signs to state that drug use is unacceptable, and that the venue operated a random drug search policy as a condition for entry reserving the right to search customers under this provision.
7. A written drug safe policy shall be in place and agreed with South Wales Police prior to the premises opening and trading.
8. Premises to actively participate in regular initiatives to target drug misuse at the venue to include full co-operation with South Wales Police led drug itemiser and drug search operations.
9. Premises to actively participate in any exclusion order scheme in operation in the area.
10. The consumption of soft and alcoholic drinks purchased at the premises, by customers of the premises, is prohibited on the highway in the immediate vicinity of the premises.
11. The premises shall have an adequate system of counting persons in and out of the premises to ensure that the customer levels in all areas do not exceed the limit endorsed in the venue risk assessment.
12. Venue management and SIA door staff will be first aid trained.
13. Notices shall predominantly displayed at all exists requesting patrons to respect the needs of local residents and leave the area quietly.

14. Notices shall be predominantly displayed in all areas used for smoking requesting patrons to respect the needs of the local residents and use the area quietly
15. There is to be no use of the external area after 23.00 hours.
16. No rubbish, including bottles, shall be moved, removed or placed in outside areas between 21.00 hours and 08.00 hours.
17. A challenge 25 proof of age scheme shall be operated at eh premises where the only acceptable form of identification shall bear their photograph, date of birth and a holographic mark.
18. A log shall be kept detailing all refused sales of alcohol. The log should include the date and time of the refused sale and the name of the member of staff who refused the sale and the reason for the refusal. The log shall be available for inspection at the premises by the police or an authorised officer of the Council at all times whilst the premises are open.
19. The premises to keep up to date records of staff training and refresher training in respect of age-related sales including proxy sales to persons who are drunk and identifying and preventing drug misuse in written or electronic format available for inspection on request by an authorised officer.
20. Children under the age of 18 must be accompanied by an adult and are not allowed on the premises after 22.00 hours
21. There shall be a personal licence holder on duty on the premises on Wednesdays, Fridays and Saturdays, and on Sundays that precede a Bank Holiday after 20.00 hours when the premises are authorised to sell alcohol.
22. There shall be no admittance or re-admittance to the premises one hour prior to the last permitted sale of alcohol.
23. Regular toilet checks to be conducted for the purpose of drug prevention and the timings of such visits shall be recorded.
24. Substantial food and non-intoxicating beverages shall be available in all parts of the premises where alcohol is sold or supplied for consumption on the premises.
25. At all times the premises are open for the sale of alcohol the seating arrangements at the premises shall accommodate not less than 60% of the permitted number of persons determined for fire safety arrangements (to be advised to the Licensing Authority when known) for substantial food to be consumed on the premises.

26. No music or entertainment will take place in the external area at any time. No noise producing equipment to be in the external area at any time, including, but not limited to speakers and televisions.
27. All doors and windows will be kept closed at all times except for ingress and egress.
28. External areas to be regularly supervised by staff from the premises when in use and all glassware removed expeditiously.

The meeting ended at 2.35 pm

Chair