

# **CITY AND COUNTY OF SWANSEA**

## **MINUTES OF THE STATUTORY LICENSING SUB COMMITTEE**

**HELD AT COMMITTEE ROOM 2, CIVIC CENTRE, SWANSEA ON  
FRIDAY, 19 DECEMBER 2014 AT 10.00 AM**

**PRESENT:** Councillor P M Matthews (Chair) Presided

<b>Councillor(s)</b>	<b>Councillor(s)</b>
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A C S Colburn	D W Cole
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### **Officers:**

K Clague	-	Senior Lawyer
R Westlake	-	Senior Licensing Officer
C Gabe	-	Licensing Officer
S Woon	-	Democratic Services Officer

### **Representing Responsible Authorities:**

R Loosemore	-	Licensing Officer
L Anthony	-	Divisional Licensing, Food and Safety Officer
P C J Evans	-	South Wales Police
Mr John	-	Barrister, South Wales Police
Inspector D Thomas	-	South Wales Police
Sergeant R Davies	-	South Wales Police
Inspector J Davies	-	South Wales Police

### **Las Iguanas, Castle Quarter, 1-4 Castle Square, Swansea. SA3 4BJ:**

Mr Sharmel	-	Las Iguanas
Mr Henry	-	Las Iguanas
Mr Phipps	-	Solicitor

### 16 **APOLOGIES FOR ABSENCE.**

No apologies for absence were received.

### 17 **DISCLOSURES OF PERSONAL AND PREJUDICIAL INTEREST.**

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

18 **LICENSING ACT 2003 - SECTION 17 - APPLICATION FOR A PREMISES LICENCE - LAS IGUANAS, CASTLE QUARTER, 1-4 CASTLE SQUARE SWANSEA, SA3 4BJ.**

Following a request made by the Applicant and South Wales Police, the Chair adjourned the meeting until 10.15 a.m.

Following a further request made by the Applicant and South Wales Police, the Chair adjourned the meeting until 10.30 a.m.

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

The Licensing Officer, Charles Gabe, reported on the application for a new Premises Licence in respect of Las Iguanas, Castle Quarter, 1-4 Castle Square, Swansea. He referred to the licensing objectives, Policy considerations and the guidance from the Home Office. Specific reference was made to the application form at Appendix A, the location plan of the premises at Appendix B and the conditions consistent with the operating schedule that will be attached to the Licence at Appendix H. The additional condition related to a licence held by Las Iguanas in Wind Street (SJ056845) which was determined on 6 August, 2013. Although holding a current licence in part of the premises formerly known as Aspers, this licence has never been used.

It was noted that the premises is situated in the city centre within an area defined by the Council's Statement of Licensing Policy as a cumulative impact area and reference was made to paragraph 6 of the Special Policy on Cumulative Impact, adopted by the Council on 30 July 2013, at Appendix G. Reference was also made to the effect of special policies with an extract from Home Office Guidance at Appendix H.

A representation was received from South Wales Police on 24 November, 2014. The representation referred to the prevention of crime and disorder, public safety and the prevention of public nuisance. A copy of the representation was provided at Appendix E. Additional papers were also provided prior to the hearing and which had been circulated to all parties.

He further advised that a representation was received from the Licensing Authority on 25 November, 2014. The representation referred to the prevention of crime and disorder and the prevention of public nuisance. A copy of the representation was provided at Appendix F.

In response to a question by the Chair, the Licensing Officer confirmed that 65 premises are licenced to serve alcohol on and off the premises in Wind Street area.

R Loosemore, on behalf of the Licensing Authority, amplified her written representations and highlighted the concerns in relation to the potential undermining of the Licensing Objectives regarding the prevention of crime and disorder.

Mr John, Barrister, South Wales Police, conveyed apologies from Chief Superintendent P Davies who was unable to be in attendance.

He referred to Wind Street being in the Cumulative Impact Area (CIA) with 65 premises licensed to sell alcohol. Wind Street covers 600 yards, with 80% of premises being high volume, vertical drinking establishments.

He referred to the significant Police representations contained in letters from Chief Superintendent P Davies and the Statements from Inspector D Thomas and Police Sergeant R Davies in respect of promoting the licensing objectives.

He detailed the location of the premises which were cited in primarily residential development of 30 properties within the night time economy. He referred to the application and the hours sought.

He highlighted that the proposed premises is situated next door to Walkabout which is notorious for anti-social behaviour and is a 'hot spot' area in relation to violent crime.

He referred to the analysis of figures provided by South Wales Police to demonstrate where difficulties lie and highlighted South Wales Police attempts to improve crime. He stated that there has been an increase in anti social behaviour and violent crime as a result of alcohol intake. 44% of violent crime in West Glamorgan is committed in Wind Street on Wednesday between 01.00 and 04.00 hours and Friday 01.00 to 05.00 hours and Saturday 22.00 and 04.00 hours. He stated that granting a further licence will impact on these figures.

He highlighted the area being saturated with licensed premises which was a big burden on Police resources as officers are drawn on three particular evenings from other areas within West Glamorgan. Policing costs were previously £577k for this area alone this has now increased to £588k in the last year.

The proposed premises is located on a corner which is a bottleneck for vehicles dropping off and picking up individuals.

He stated that South Wales Police urged the Sub Committee to approach this decision with care, as residential and commercial properties were not a good mix. Reference was made to the Section 17 of the Crime and Disorder Act.

South Wales Police were not suggesting that the operator's business was run badly and would be supportive if the application was primarily a restaurant with legitimate restaurant hours, no external drinking, security and counting of clientele.

South Wales Police therefore suggested the following hours:

Sunday to Thursday – 11.30 – 00.00  
Saturday to Sunday – 00.00 – 00.30

South Wales Police stated that they would make a concession if the above conditions were attached,

The Chair sought confirmation of South Wales Police suggested conditions:

1. Waitress service, no standing at the bar.
2. Other than off sales in sealed containers, no glassware or bottles to be taken outside the building by patrons.
3. No outside drinking only, by customers ~~standing~~ in external ~~standing~~ area covered by pavement licence.
4. Supply of alcohol by waiter/waitress service only in the external area.
5. System for counting persons in and out to ensure that the customer levels do not exceed limits identified in the risk assessment.
6. Premises to keep up to date records in relation to staff training for age related sales.

Mr Phipps, Legal Representative for Las Iguanas, stated that the representations were purely about the Policy and not about the operation of the company of Las Iguanas.

Las Iguanas applied for and obtained a premises licence further down the road which has not proceeded and they will not be developing. On 6 August, 2013, South Wales Police representations were agreed and withdrawn in relation to this application after the Council's Cumulative Impact Policy was agreed. Las Iguanas have proposed a condition that the license granted on 6 August, 2013 will be surrendered. He stated that granting the licence will not change the cumulative impact on the total 65 licenced premises already in the area.

He stated that he was not asking for a departure from the Policy indeed the application aimed to support the Policy. He requested that the Council depart from the presumption to refuse. He stated that the Policy was important and appropriate. The applicant had undertaken due diligence, covert and overt, and were not missing the point that the Police comments had been made with integrity and are important.

He reported that he had looked carefully at Policy and proposed that it was appropriate that the application be agreed. He stated his view that South Wales Police had approached the Policy incorrectly. He referred to page 36 of the agenda papers which detailed the Chief Superintendent's view. He further referred to the second bundle of evidence submitted by South Wales Police which stated that any granting would be detrimental increasing the large numbers visiting the area which would impact on anti-social behaviour. He stated that the approach was absolutist, whilst the Policy was not absolutist.

He highlighted that the presumption against agreeing the license essentially needed to be a determination of whether premises would adversely impact and undermine the licensing objectives.

The Policy did not say you will presume to refuse applications, it says you will look at application and make decision as to whether these premises will offend the Policy or not.

He referred to page 183 of South Wales Police supporting documentation from which provided statistical evidence.

He referred to page 142 of the Council Summons, Appendix 10.b, which R Loosemore, Licensing Officer, had quoted in her representations. He detailed the types of issues evidenced during the peak times of Sundays 01.00 until 04.00 hours; Thursdays 02.00 until 04.00 hours. However, the application proposed licensable activities until 01.00 am.

He stated that the Policy should never be absolute. He referred to a case in Leeds where the pub licence was granted by Magistrates. He stated that the Policy was not intended as an 'iron curtain' and looking at applications on individual merit was critical.

He detailed the application which was for a Latin American restaurant and bar not just a restaurant. He referred to South Wales Police proposed condition that premises should act predominately as a restaurant. He stated that the premises will have a bar, laid out with tables and an outside area with waiter/waitress service and alcohol could not be offered as an auxiliary to table dining. The operation of the bar does not cause problems. There are 38 premises throughout England, Wales and Scotland operating without any difficulties at all. The majority of these premises operate in cumulative impact areas. He cited an example of a new licence for a former ladies clothes shop in cumulative impact area. He detailed the dialogue and discussion with Police following which the whole of the basement area was granted. He stated that Las Iguanas aims to drive policing forward to change the demographics of type of premises in Wind Street. He referred to areas such as Exeter, Bromley, Clifton where this had been the case.

He highlighted the brochures, which contained examples of what other establishments provide and the mood board which detailed types of food and cocktails. He stated that the majority of business was food related and quoted 70% of the turnover was food, the remainder was alcohol sales with food.

He detailed the Las Iguanas commitment to integrity in relation to the drinks served. Las Iguanas own a sugar cane plantation in Brazil and the white spirit derived is used as the basis for the cocktails. The Off Sales element of the application allow individuals to have the opportunity to buy a bottle of the award winning white spirit.

He provided a brief background of Las Iguanas which was established in 1991 in Bristol. It was a small premises which has now expanded significantly to 38 premises. The photos, menus, drinks list, type and style of décor are all consistent with the 38 premises located throughout the UK and there was nothing about Swansea that has not been witnessed elsewhere.

He highlighted the significant spending on development (upfront and over a longer period) and the dialogue and discussions with the residents above and to the side.

The conditions to the outside dining area are the same as the area within e.g. supervised. He stated that glass was important as patrons were offered imported Latin American Beer. However, he reiterated that the outside area was not a beer

garden, patrons would be dining, drinking and smoking. He highlighted the importance of managing customers and ensuring they are well behaved. He detailed the volume of staff, extent of customer supervision, extensive CCTV and the manner in which patrons are greeted and served. He highlighted the role of the business supervisor and the operations managers who are responsible for visiting their allocated premises on a regular basis both daytime and evenings. Las Iguanas is committed to staff training and regularly use mystery shoppers to ensure standards. Las Iguanas was recently credited by the Sunday Times as best business in Britain to work for. Customers conduct and customers experience is taken seriously and this is why the business succeeds.

In response to a question posed by Mr Phipps, Mr Shamel, Chief Operations Manager, detailed the regulatory history of Las Iguanas. He highlighted 4 issues in 12 years and detailed the action taken.

He referred to the licence conditions. It was noted that plastic glasses are used on major event days and door staff employed when regulated entertainment takes place. These conditions were consistent in respect of the application in 2013 and were agreed post dialogue and discussion.

He confirmed he was confident that the operating schedule goes toward satisfying the Council that the applicant is legitimate. He referred to the 42 proposed conditions. He referred to recently granted licences in respect of Café Nissi, Karma Café and Full Moon all of whom had merely 10, 11, 12 and 16 conditions. He stated that the proposed operating schedule has more conditions than the three recently approved licences together. He referred to 4 standard conditions which were included in all 4 licence grants. They were in relation to the availability of first aid available; over proof alcohol; bottling out and notices provided about age Policy.

Mr Sharmel, further provided a brief background into his involvement with Las Iguanas. He stated he had been working for Las Iguanas for 11 years but had operated bars throughout his 25 years in the businesses.

He stated that Las Iguanas sought to invest and improve the area. He was well aware of the reports for Wind Street and had undertaken research into the area. He stated that Las Iguanas offered a higher quality premises which in turn, attracts other higher quality premises to establish themselves in the area. He referred to the intended investment of £1.5m and 25 years lease (£3m of rent) and the creation of 50 jobs which was no small investment into the City.

He detailed the age profile of customers which was between 24 – 35 years, average age is 34 who visit throughout the day. The request for a later licence was in order to accommodate theatre goers who would be arriving at 11.00 pm. People have a drink, a meal another drink and go straight home. He referred to the location of the previous licence at the lower end of Wind Street.

He referred to the commitment to staff training and the company being publicised in the Sunday Times top 100 businesses to work for. Las Iguanas has achieved the UK IIP gold accreditation for staff training. Licensing is part of the training

programme which is held every 6 months. This includes GCSE refresher for under 18. Las Iguanas also operate challenge 21.

He highlighted the role of the Operations Managers who manage the sites they have responsibility for. Operations Managers manoeuvre around their specified area once every 10 days, day and night. This is one of reasons they don't have issues with bad behaviour.

He referred to a breach of licensing 9 years ago in a premises in Leicester. The staff member had received training and refresher training and served an under age person. He detailed the support provided to the staff member and the changes that had been made to ensure staff complied with their legal obligations.

Mr Phipps referred to a case in Leeds where Leeds Council had refused to grant a licence in respect of an application submitted by Brewdog. The Judge, in determining the case, stated that looking at the applicant is critical to determining whether the application of Policy is too rigid. The Policy cannot keep an iron curtain preventing an intelligent, well-run company to operate. The enterprise was selling expensive drinks and a simple increase of footfall was not deemed as a valid reason to refuse entry into Leeds.

He highlighted the term that had been used in South Wales Police representations "This will no doubt increase large numbers and no doubt increase negative impact."

He stated that he could not agree to no glass as the external and internal areas would be managed and supervised in the same manner. Those drinking outside have to be seated. They are supervised by waiter/waitress service at all times. There is no counting system as the premises is not a night club. Regulated entertainment would be twice a year with only background music at all other times.

He sought to remove the anxiety that the applicant wished to open a 'big boozier'. He offered a condition where 90% of premises has to be laid for tables and chairs which may address that concern. The lease is for 25 years and there is no evidence about any adverse press in relation to Las Iguanas.

The Chair referred to the licence granted on 6 August, 2013 which had been granted prior to the adoption of the cumulative impact Policy.

In response to a Member question, the Solicitor representing the Applicant advised that the venue was 'high end' a notch above the restaurants currently on Wind Street.

The Chair referred to the Applicant's Solicitors reference to the 4 other licences which had recently been granted and stated that out of the 4, only one had been determined by the Sub Committee.

Mr Sharmel detailed his aversion to the use of plastic glasses as Ladies prefer to drink out of glass and there had not been any incidences in relation to the use of glass. However, Las Iguanas does conform on major event days.

In response to a question from the Lawyer advising the Committee, the Applicant's solicitor confirmed the timings at J and I within Appendix A of the application 01.00 hours on Friday and Saturday with 30 minutes drinking up time.

The Applicant's Solicitor spoke regarding the lack of door staff. Mr Sharmel referred to the meet and greet and staffing procedures which alleviated the requirement for door staff, except on regulated entertainment days.

Mr John, Barrister, South Wales Police, referred to the proposed premises at Salubrious place and the conditions attached to the 4 licenced premises referred to by the Applicant's solicitor. He referred to the statement of Inspector Thomas and highlighted that the area is of prime concern in respect of alcohol related violent crime. He referred to the Brewdog judgement and the distinctions between, made in relation to the restaurants currently on Wind Street. He reiterated his concern should the requirement for plastic glasses not be enforced which would set a worrying precedent and change the landscape of Wind Street into a wholly unsatisfactory place.

He questioned whether the premises was primarily a restaurant that would attract Theatre goers and would improve the area. He referred to South Wales Police objection to the hours applied and stated that Full Moon premises was an existing licensed premises.

The meeting adjourned at 12.10 p.m.

The meeting reconvened at 12.15 p.m.

Mr John, Barrister for South Wales Police stated that they were not unwilling and welcomed the purple flag. However, a lot has been given by South Wales Police and the prospect of unlimited drinking of distilled sugar in alcohol in glassware in the third most violent street in the UK was very worrying. He referred to the Full Moon licence which was made as a result of a balanced, pragmatic approach.

Jayne Evans, South Wales Police, provided additional information in relation to the grant of the Full Moon licence.

The Solicitor representing the Applicant stated that in relation to the rationale of the Full Moon licence, South Wales Police appear to be suggesting that the licensing objectives, cumulative impact Policy and cumulative impact were no consideration with the Policy being used as an 'iron curtain' looking after premises already in the zone.

He referred to the application being similar to the Brewdog case in so far as Las Iguanas own a sugar plantation in Brazil. He stated that there may have been a suggestion by South Wales Police that Cardiff Bay more glamorous than Wind Street. In response he stated that the granting of the licence would add to making Wind Street as glamorous.



He stated that the request for a counting condition was based on no evidence and asked whether there was an accusation of numbers being exceeded in any one of the 38 premises.

In summary, he stated that the application provided good opportunities. He referred to similarities between Brewdog (a pub and brewer) and Las Iguanas which sells drinks originating from sugar cane.

He stated that the premises will positively impact on the location and promotion of the licencing objectives by attracting a better clientele. He highlighted the one residual issue that may have some potential merit, which allows the Council to have an eye on the future by introducing a condition which obliges to 90% table and chairs. The introduction of this additional condition removes any anxieties in respect of a hypothetical pub. In conclusion he stated that he was not asking for a departure from the policy merely asking for a departure from the presumption to refuse. Exceptional circumstances are the offer to surrender of other licence and to have dialogue.

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 Lawyer advising the Sub-Committee gave a comprehensive overview of the legal advice tendered.

The Chair indicated that the Sub-Committee had considered the application and representation 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 Sub-Committee **RESOLVED** to **GRANT** the application subject to conditions consistent with the operating schedule and as modified as considered appropriate for the promotion of the licensing objectives as below.

1. This application is before the Members for consideration because relevant representations have been received in respect of the application for a premises licence in relation to premises located in an area to which the Council's special policy on cumulative impact applies. It is accepted by all parties that the special policy applies in this instance.
2. In reaching their decision the Members have had due regard to the licensing objectives, its special policy with regard to cumulative impact, the statutory guidance and to the decision in the case of Brewdog, which was referred to by both the Applicant and the Police. The Members also had regard to the relevant

representations made by the police, expanded upon by Mr John on behalf of the police, and made by Rachel Loosemore on behalf of the Licensing Authority as Responsible Authority, together with the representations made by Mr Phipps on behalf of the Applicant and by Mr Sharmel.

3. The Members were satisfied that in light of the matters put forward, the Applicant has rebutted the presumption against granting a premises licence. The Members are satisfied that the grant of a licence would not, in the individual circumstances of this application, add to the existing negative cumulative impact on the licensing objectives in the area. In arriving at their decision, they had particular regard to the Applicant's evidence and submissions as to:

(a) The nature of the premises, namely that it is predominately a restaurant with a bar provision, and the fact that whilst the premises does include a bar area, this area is also laid to tables;

(b) The location of the premises, being located on Castle Square and as such further up from the Wind Street area of the cumulative impact zone;

(c) The nature of the operator. In particular, the Members were impressed by the evidence of Mr Sharmel regarding the number of premises Las Iguanas has throughout the Country, the evidence regarding the training provision to staff, including training on licensing matters, the proven track record as a responsible operator, and the evidence of little history of licensing-related issues.

(d) Whilst the Members heard and considered the evidence from the Police that the flash points in the area on Fridays and Saturdays are between the hours of 1am and 4am, it was noted that on these days persons would be exiting the premises at the latest by 1.30am. They did not feel in the circumstances referred to above, namely the nature of the clientele and the nature of the premises, that there was any real evidence that the premises would add negatively to the cumulative impact in the area. Reference was made to the Brewdog decision and the judgement of District Judge Anderson. Whilst noting that the decision is not binding and that each case must be decided on its own facts and circumstances, they did not find that there was evidence to suggest that even if there was an increase in footfall this would of itself increase negatively on the cumulative impact.

4. The Members did feel that there was some force in the concerns that, if a premises licence was granted, there is the possibility in the future of other premises, more of the nature of the high volume vertical drinking establishments that the special policy in particular sought to address, may take over the licence. In light of the basis on which this application is granted, namely that they are satisfied in the circumstances of this application that the presumption against grant has been rebutted, they did feel that this was a relevant concern and as such appropriate to add a condition in the terms proposed by Mr Phipps with some modification as follows:

"The seating arrangements at the premises shall amount to 90% of the permitted number of persons determined for fire safety arrangements".

5. The other concern of the Members was the use of glass receptacles in the external seating area. The Members in particular had concerns regarding the location of the premises within the cumulative impact area and the presence of external seating on Castle Street at the junction with Wind Street. Whilst problems may not necessarily be caused by the clientele of the premises there was concern as to those passing by and as such the Members considered that the use of glass in the external area would possibly undermine the licensing objectives of prevention of crime and disorder and public nuisance. As such the following additional condition was considered appropriate:

“There shall be no outside drinking at the premises other than by customers seated within the external drinking area as identified on the deposited plans which if required is covered by a pavement café licence. All such areas to utilise non glass receptacles only.”

The meeting ended at 1.35 p.m.

**CHAIR**