

# CITY AND COUNTY OF SWANSEA

## MINUTES OF THE STATUTORY LICENSING SUB COMMITTEE

HELD AT COMMITTEE ROOM 3A, GUILDHALL, SWANSEA ON  
THURSDAY, 15 JANUARY 2015 AT 10.00 AM

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

<b>Councillor(s)</b>	<b>Councillor(s)</b>
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H M Morris	T H Rees
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### **Officers:**

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

### **Representing Responsible Authorities:**

P C J Evans	-	South Wales Police
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### **Vietnam, 36 Uplands Crescent, Uplands, Swansea:**

Mr Vo	-	Applicant
Ms M Barry	-	Vietnamese Interpreter

### 1 **APOLOGIES FOR ABSENCE.**

No apologies for absence were received.

### 2 **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.

### 3 **LICENSING ACT 2003 - SECTION 42 - APPLICATION TO TRANSFER A PREMISES LICENCE - VIETNAM, 36 UPLANDS CRESCENT, UPLANDS, SWANSEA.**

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 advised that an application to transfer a premises licence had been received on 2 December, 2014 in respect of Vietnam, 36 Uplands Crescent, Uplands, Swansea. She referred to the relevant statutory provisions, policy considerations and guidance issued by the Home Office.

She advised that objections had been received from South Wales Police in relation to the undermining of the key licensing objectives namely the prevention of crime and disorder.

In response to a question the Licensing Officer reported that the Designated Premises Supervisor (DPS) was Mr Dinh. However, it was reported that Mr Dinh had left the premises. Mr Vo has therefore been advised that he cannot sell alcohol until a new DPS has been appointed.

The Police Licensing Officer amplified her written representations in relation to the Police checks which had revealed that on 24 November 2011, Mr Vo had been found guilty and sentenced to 4 years imprisonment in relation to the production of a controlled drug (Class B Cannabis). Additionally, Mr Vo had been found guilty of dishonesty using electricity and sentenced to 6 months imprisonment to run concurrently with the above sentence. These convictions were still live.

She stated that the Licensing Authority states that the Police can make objections to the transfer in exceptional circumstances. South Wales Police made representations confident that these were exceptional circumstances.

The Police were concerned that should the application be agreed this would undermine the promotion of the key licensing objectives in relation to the prevention of crime and disorder.

The Police Licensing Officer suggested that the sentence passed demonstrated the seriousness of the offence which was relevant and would not become spent until November 2021.

She stated that a premises licence authorising the sale of alcohol was privileged responsibility and she urged Members to refuse the application as there would be only one outcome which would be to undermine the licensing objectives.

In response to a Member question, the Police Licensing Officer stated that due to the holiday period she had been unable to obtain further information regarding the conviction. However, under the sentence guidelines, it was clear that Mr. Vo took a significant role.

In response to a Member question and on the advice of the Lawyer advising the Committee, the Police Licensing Officer detailed spent convictions in respect of Mr Vo which were committed in 2005, Driving with Excess Alcohol and Driving whilst disqualified.

Mr Vo (via Mai Barry, Vietnamese Interpreter), stated that he did not know what he needed to apply for the licence. He stated that his conviction was in the past and had no bearing on the current application.

The Lawyer advising the Committee explained the legislation and highlighted what Members needed to take into account. She also detailed the opportunity presented

to Mr Vo to explain the circumstances around the convictions and if he disagreed with what the Police had submitted to put representations forward.

The Lawyer advising the Committee sought confirmation that Mr Vo understood the legislation and requirements of the Committee in determining the application.

Mr Vo (via Mai Barry Vietnamese Translator) confirmed that he understood the legislation and process to be followed by the Committee.

The Lawyer advising the Committee asked Mr Vo (via Mai Barry, Vietnamese Interpreter) whether he wished to say anything to the Committee with regard to why he was making the application and the circumstances of his convictions.

In response to Member questions, Mr Vo (via Mai Barry, Vietnamese Interpreter) stated that:

- he knew it was wrong to commit the crime and he paid and went to prison. He stated that he had lost a lot during the time he had committed the crime;
- he wanted a fresh start, to be good and did not want to commit another crime relating to Cannabis;
- he had the idea for the business and was not expecting to be involved, it was the first time he had done this;
- he had borrowed money to buy furniture from a friend not a relative.
- he wanted to make a living and was not aiming to be rich.
- He was asking for a last chance to have this licence to pay the rent and workers and sell alcohol.
- he knew he had committed a big crime and was looking for leniency.
- he had arrived in the UK in 1981;
- Despite his poor understanding of English he did not foresee any difficulties interacting with customers;
- He grew 120 Cannabis plants in his home (although the Police had charged him with growing 400 plants);
- Following his release from prison he arrived in Swansea just before Christmas 2014;
- Despite the Police charge, he was unaware that the electricity meter had been tampered with and it was the fault of the person living at the premises before him;
- He did not fully understand the Police charge regarding the theft of electricity and admitted he was guilty;
- He was working in a restaurant in London at the time of the offence. When he left prison he continued to do ironing and work in the restaurant in the evening;
- He was living on the money returned from the deposit he had previously paid for the rented flat;
- He was living alone above the restaurant when he was growing the Cannabis;
- He had been told he could earn a lot of money selling Cannabis but did not know who he was going to sell it to;
- He had arrived in the UK via Singapore having left Vietnam for asylum reasons;
- He accepted the spent convictions detailed by the Police and outlined the background details in respect of them.

In response to a question by the Police Licensing Officer, Mr Vo (via Mai Barry, Vietnamese Interpreter) stated that he was renting the Vietnam Restaurant in Uplands from the previous owner, Mr Dinh. The premises had a 1 year lease, following the expiration of this lease it would be available for another 5 years.

The Police Licensing Officer advised that Mr Vo could trade at the premises until 11 pm but would be unable to sell alcohol.

In conclusion Mr Vo (via Mai Barry, Vietnamese Interpreter) stated that he was very frustrated with his standard of English and was hoping to be given another chance as if he did not have the licence he would suffer significant loss as he had borrowed money to furnish the premises.

He confirmed his understanding regarding his ability to trade until 11 pm without the ability to sell alcohol. However, he felt this was pointless as customers would want to buy alcohol.

The Police Licensing Officer stated that other restaurants had a 'bring your own alcohol' policy and had been successful.

The Lawyer advising the Committee referred to the Police representation regarding the undermining of the licensing objective relating to the prevention of crime and disorder. She sought clarification from the Police as to on what basis it was being submitted the circumstance of Mr Vo's conviction and the undermining of the crime prevention objective were tied together.

The Police Licensing Officer stated that the Police concerns focussed around drug offences and the ability to commit these offences at any property. Additionally, Mr Vo's offence had not been spent.

Mr Vo (via Mai Barry, Vietnamese Interpreter) stated that he did not know that his previous offences would cause so many problems and he would not have gone into the business.

In response to a question from Mr Vo (via Mai Barry, Vietnamese Interpreter), the Licensing Officer confirmed that Mr Vo could ask a relative or acquaintance to apply for the licence.

Mr Vo (via Mai Barry, Vietnamese Interpreter) stated that he did not have someone in mind and confirmed his understanding that should the Committee not grant the licence he would be unable to sell alcohol.

The Police Licensing Officer stated that there would possibly be further Police objections should Mr Vo identify a family member or acquaintance to apply for a licence as Mr Vo remained the driving force of the business.

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 Committee stated that this is an application by Mr Vo for the transfer of the premises licence in respect of the premises known as Vietnam, 36 Uplands Crescent, Swansea.

She stated that the Sub Committee had heard from the applicant, Mr Vo, assisted throughout by a translator, Ms Barry, to whom they were grateful. The Sub Committee had also heard submissions from Jayne Evans on behalf of the Chief Officer of South Wales Police, who served notice under section 42(6) of the Licensing Act 2003 that he was satisfied that the exceptional circumstances of the case are such that the granting of the application would undermine the crime prevention objective. Specifically, the police rely upon the two relevant convictions of Mr Vo for:

- a. Production of a controlled drug (Class B Cannabis) for which he was sentenced to 4 years imprisonment; and
- b. Dishonestly using electricity for which he was sentenced to 6 months imprisonment to run concurrently.

Both convictions are dated 24 November 2011.

The decision of the Members was to **REFUSE** the application for the following reasons:

1. Having regard to the police notice and submissions, and the evidence of the applicant, the Members consider rejection of the application appropriate for the promotion of the crime prevention objective.
2. The Members accept and place great weight on the objection made by the police, who they reminded themselves are the lead on matters of crime and disorder. In particular, the Members took account of the nature of the conviction, being a serious drug conviction, and the fact the conviction is still very recent. As submitted by the police, it is a relevant conviction and Mr Vo has not spent a relevant period of rehabilitation; in fact, had the full 4 year sentence been served he would still be in prison.
3. Although there were no further details of the convictions available from the police, having had regard to the sentencing guidelines for the offence of the production of a controlled drug, the Members accepted the police evidence that given the sentence of 4 years that was imposed, Mr Vo's culpability and the scale of production must have been significant, despite what Mr Vo had stated.
4. The Members had regard to the Home Office Guidance, and in particular paragraphs 8.94 and 8.95 which provide that objections to this type of application

should only be made in truly exceptional circumstances. They were satisfied in this instance that such exceptional circumstances exist and that there is evidence that if the application was to be granted, the licensing objective of the prevention of crime and disorder would be undermined, given Mr Vo's recent conviction for a serious drug offence.

Whilst the Members heard that Mr Vo has other previous convictions, namely driving convictions in July 2005 and January 2007, which Mr Vo accepted, they did not consider these to be relevant to the application and did not take them into account in arriving at their decision. Similarly, there was some discussion regarding the position in respect of the lease of the premises and the intended identity of the Designated Premises Supervisor. Again, although the Members express some concern over these issues they did not take account of the same in their decision.

The meeting ended at 11.38 am

**CHAIR**