

CITY AND COUNTY OF SWANSEA

MINUTES OF THE STATUTORY LICENSING SUB COMMITTEE

**HELD AT COMMITTEE ROOM 2, CIVIC CENTRE, SWANSEA ON
FRIDAY, 27 NOVEMBER 2015 AT 10.00 AM**

PRESENT: Councillor P M Matthews (Chair) Presided

Councillor(s)	Councillor(s)
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A C S Colburn	H M Morris
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Officers:

L Anthony	-	Divisional Licensing Officer
A Gruffydd	-	Lawyer
R Westlake	-	Senior Licensing Officer
S Woon	-	Democratic Services Officer

Responsible Authorities:

N Bailey	-	South Wales Police
J Hancock	-	South Wales Police
K Jones	-	South Wales Police
D Butt	-	South Wales Police

Club Oxygen:

Mr Dadds	-	Dadds Solicitors
H Thomas	-	Designated Premises Supervisor

32 APOLOGIES FOR ABSENCE.

No apologies for absence were received.

33 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.

34 LICENSING ACT 2003 - SECTION 51 - APPLICATION FOR A REVIEW OF A PREMISES LICENCE - CLUB OXYGEN, 1 NORTHAMPTON LANE, SWANSEA.

The Lawyer advising the Sub Committee stated that the matter was due to be heard on 27 November, 2015. However, a request had been received from the Respondent's legal representations requesting an adjournment.

The reason for the request was that the requirements of the Hearing Regulations (Paragraph 6.4) had been breached in so far as the Respondent had not been given ten working days before the date of the Hearing.

The Notice of Hearing had been posted first class on 11 November, 2015. However, the Respondent had not received the Notice of Hearing until 16 November, 2015.

The Respondent's legal representatives had stated an interest in attending on Monday, 30 November, 2015 and the Lawyer advising the Committee was satisfied that the Sub Committee could consider an adjournment until 30 November, 2015.

RESOLVED that the meeting be **ADJOURNED** until 10.00 am on Monday, 30 November, 2015.

RE-CONVENED on Monday, 30 November, 2015.

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

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

Following a request from the Applicant and Respondent, the Sub Committee **RESOLVED** to adjourn the meeting until 10.30 am.

Following a further request from the Applicant and Respondent, the Sub Committee **RESOLVED** to adjourn the meeting until 11.00 am.

Mr Dadds, Respondent's Legal Representative, sought approval to record proceedings.

RESOLVED that the Sub Committee adjourn until 11.13 am.

The Lawyer advising the Sub Committee stated that the request to record proceedings would be at the Chair's discretion.

The Chair stated that she did not approve of the proceedings being recorded.

The Divisional Licensing Officer reported that an application for a review of a premises licence had been made under Section 51 of the Licensing Act 2003. The application had been received on 8 October, 2015.

She referred to the premises licence at Appendix A and the location plan of the premises at Appendix B.

She stated that Mr Bailey on behalf of the Chief Officer of Police, acting as Responsible Authority under the Act, considered that the following Licensing Objectives were not being promoted:

- The Prevention of Crime and Disorder;
- Public Safety; and
- The Protection of Children from Harm.

Comprehensive details of the grounds for the Review were contained in the application form attached at Appendix C

The procedure for the review, promotion of the Licensing Objectives, policy considerations, guidance from the Home Secretary and Determination of the Application were detailed.

Mr Bailey, South Wales Police, circulated colour copies of comparative graph data and presented CCTV footage to amplify the grounds for the review as follows:

1.	<p>Saturday, 18 July, 2015 at 03.42 hours – Fight outside Club Oxygen. To eject all parties from the premises into the street in such a narrow time frame results in an escalation of the violent incident.</p> <p>Mr Bailey stated that this was a contravention of the Licensing Objective of Public Safety and Crime and Disorder.</p> <p>In response to Member questions, Mr Bailey confirmed the following:</p> <ul style="list-style-type: none">• there were a total of 6 door staff on duty, 4 were outside (along with the DPS) during the incident and 2 additional members of staff remained inside;• gloves were frequently worn by door staff when searching individuals for illegal substances;• no glassware had been used within the premises, bottles are decanted into polycarbonate drinking vessels. <p>Mr Bailey referred to footage of individuals urinating in the smoking area.</p> <p>Mr Dadds accepted that individuals had been recorded and advised that this point was not contested and there was no need to view the footage.</p> <p>Mr Bailey referred to other breaches of the Licensing Conditions which were observed during the viewing of footage, namely individuals drinking a drink in contravention of Annex 2, Paragraphs 17 and 18 of the premises licence.</p> <p>Mr Dadds, Solicitor representing the Respondent, stated that the CCTV operative had voluntarily made a clear recording and the Club were going over and above their duties by providing such comprehensive footage.</p>
2.	<p>Saturday, 12 July, 2015 at 05.02 hours – incident resulted in several</p>

	<p>males being ejected and the argument continuing on the door involving people inside the club, in particular a stocky blond male, who is called to the doorway by a member of the door staff. The actions of the door staff in calling the male to the doorway when other agitated males with whom he so recently been involved in a confrontation with were outside the exit clearly inflamed the situation and escalated the disturbance. Furthermore, following the incident the male ordered a drink which is paid for by a member of the door staff.</p> <p>Mr Bailey stated that this was a contravention of the Licensing Objective of the Prevention of Crime and Disorder.</p> <p>Mr Dadds referred to the exceptional, professional behaviour of the door staff and impeccable, clear quality of the CCTV footage in capturing the incident. He confirmed that he was not disputing the incident. With regard to the male involved in the previous incident being bought a drink by a member of the door staff, he stated that this was good practice in so far as keeping him within the premises in an attempt to defuse the situation. He further stated that there was no evidence that the drink was of an alcoholic nature.</p> <p>Mr Bailey referred to 4 further breaches of the licensing conditions which were covered in the screenshots.</p>
3.	<p>Saturday, 12 July, 2015 05.41 hours – incident involving a highly intoxicated male falling down the stairs inside the premises. The footage showed his demeanour both before and after the fall and it was clear that he was heavily intoxicated. Door staff did administer first aid.</p> <p>Mr Bailey stated that this was a contravention of the Licensing Objective of the Public Safety.</p> <p>In response to a Member question, Mr Bailey confirmed that the incident had been recorded in the incident book.</p> <p>Mr Dadds challenged the conclusion that the male was intoxicated. He referred to the lack of evidence in respect of other tests that would be applied in determining whether the male was intoxicated or simply suffering a medical condition or under the influence of controlled substances. Furthermore, following the fall, the male could be displaying symptoms of concussion.</p>
4.	<p>Saturday, 12 July, 2015 at 05.37 hours – a highly intoxicated male slumped over the bar in the upstairs dancefloor bar. The male remained at the bar for a considerable length of time without staff intervening male/female identified by door staff as being extremely intoxicated to the point that he was unable to stand. The male remained at the bar for a considerable period of time without staff intervening in any way to either check his wellbeing or eject him from the Club.</p> <p>Mr Bailey stated that this was a contravention of the Licensing</p>

	<p>Objective of the Public Safety.</p> <p>Mr Dadds stated that viewing the footage was a waste of time and asserted that South Wales Police had viewed all footage in order to look for breaches of the Premises Licence.</p> <p>The Lawyer advising the Committee advised that Members had previously viewed the footage, albeit without the commentary.</p> <p>In response to a Member question, Mr Bailey stated that no agreement had been reached with Mr Dadds during the adjournment.</p> <p>The Lawyer advising the Committee stated that Members may not wish to see repeated incidents of the same thing.</p> <p>In response to a Member question, Mr Dadds confirmed that there were issues he disagreed with.</p>
5.	<p>Sunday, 5 July, 2015 at 05.54 hours - an individual is identified by door staff as being extremely intoxicated to the point that he/she was unable to stand unaided.</p> <p>The individual was taken by door staff, with both arms being held around the door staff's shoulders to support their weight and with both of feet dragging along the floor, from the premises. Three members of staff carry the individual out of the front door of the club and across Northampton Lane to the wall of the NCP car park where they prop the individual against the wall with their back against the wall directly opposite the front door of the Club. The individuals head is clearly slumped forward against their chest, risking positional asphyxia, with their arms limp against their side. The individual appeared to be unconscious and very vulnerable due to the level of intoxication. Staff were then seen to walk back into the Club but the Club's CCTV camera moved around and kept the individual in view, demonstrating they were aware of the individuals condition. The individual can then been see to slump sideways with their arms still limp by their side until his/her head strikes the pavement. It is at this point that members of the public can be seen rushing to the individuals aid lifting him/her off the floor and trying to raise the individual to their feet. The individual is seen being put into a taxi by the same members of the public. At no point after the door staff remove him from the Club did any member of staff check the individuals welfare even after he/she had fallen sideways and struck their head on the pavement.</p> <p>Mr Bailey stated that this was a contravention of the Licensing Objective of the Public Safety. Additionally, Mr Bailey stated that the incident had not been recorded in the Incident Log which was contrary to Annex 2, Paragraph 14 of the Premises Licence.</p> <p>Mr Dadds stated that this was a serious incident and regardless of the individual's condition, more care should have been taken. He stated</p>

	<p>that he did not accept that the person was intoxicated as the individual may have taken an illegal substance or medication.</p> <p>Mr Dadds further stated that it was not acceptable that he was abandoned and left for friends. The use of CCTV evidenced that Oxygen do care as there was an operative recording the incident did kept the camera on the individual, which was over and above the requirement for a fixed camera.</p>
6.	<p>Sunday, 5 July, 2015 - Mr Bailey referred to other breaches of the Licensing Conditions which were observed during the viewing of footage, namely individuals drinking a drink in contravention of Annex 2, Paragraphs 17 and 18 of the premises licence.</p>
7.	<p>In relation to incidents detailed at point 7, 9, 11, 14 and 18 Mr Bailey stated that these demonstrated unacceptable levels of intoxication.</p> <p>In all the cases listed above, individuals were arrested and deemed unfit and unable to be dealt with for a considerable length of time until they were deemed 'fit to be dealt with'.</p> <p>Mr Bailey referred to point 13 – Saturday, 4 April, 2015 at 05.07 hours – alleged assault. The individual had admitted due to his level of intoxication he had no recollection of the incident.</p> <p>Mr Bailey referred to point 14 – Sunday, 29 March, 2015 at 05.04 hours – the individual paid to enter the club at 05.00 hours and was then ejected some 10-15 minutes later for being too drunk. Police were called when the individual became abusive and aggressive towards door staff. Whilst in custody he was deemed unfit to be dealt with due to the level of intoxication.</p> <p>Mr Bailey stated that this was a contravention of the Licensing Objective of the Public Safety and the Prevention of Crime and Disorder. Additionally, Mr Bailey stated that the incident had not been recorded in the Incident Log which was contrary to Annex 2, Paragraph 14 of the Premises Licence.</p> <p>Mr Bailey referred to point 18 – Sunday, 8 December 2014 at 23.15 hours when a male was arrested for a public order offence outside the Club. On that occasion the Club was open for a private function and was not open to the public.</p> <p>The original report from the Club staff was of a male causing problems outside the Club. Officers attended and spoke with a very drunk male who was aggressive. Door staff informed Officers that he had been ejected for causing problems inside the Club.</p> <p>Mr Bailey stated that this was a contravention of the Licensing Objective of the Public Safety and Prevention of Crime and Disorder in his becoming disorderly and his subsequent arrest.</p>

	<p>Mr Dadds challenged the allegation of intoxication and stated that individuals may say they were drunk as a defence for their behaviour, which may not be the truth.</p> <p>Mr Bailey concluded by stating that individuals involved in points 7, 8, 13, 14 and 18 were all arrested and custody records existed.</p>
8.	<p>Saturday, 20 June, 2015 at 05.00 hours - Police officers responded to a report of a fight involving 5 to 6 men outside the Club. Although the Officers found the scene to be quiet on their arrival, 2 men were pointed out to them as being involved in the fight and whilst being questioned they became abusive and aggressive and were arrested for being drunk and disorderly.</p> <p>Mr Bailey stated that subsequent enquiries had revealed that a far more serious incident had taken place than had been reported. On Sunday, 21 June, 2015 a report was taken from a parent disclosing that her son had been assaulted outside Oxygen the previous day and the delay in reporting was that her son had suffered broken bones in his fingers, his jaw had been broken in two places with bruising and grazing to his head and face during the assault. A further call was received the same day disclosing another victim was arrested during the same incident.</p> <p>The incident involved customers from the Club who had all been ejected together and were then involved in a fight outside the Club in sight of, it would appear, the door staff. The incident escalated into a horrific example of a vicious alcohol related attack causing serious injury.</p> <p>Mr Bailey stated that this was a contravention of the Licensing Objective of the Public Safety and Prevention of Crime and Disorder.</p> <p>Mr Dadds stated that he believed that the footage should be exempt under Access to Information Legislation as the matter had been referred to the Crown Court.</p> <p>Mr Dadds further stated that the matter was a serious assault. However, a risk assessment would have been made by the door staff as to whether to intervene or hold back. The premises called the police and acted with good conduct. There was no evidence that this incident was alcohol related.</p> <p>The Chair referred to the use of 'high visibility' jackets by door men and Mr Dadds stated that it would be useful if all door staff were identifiable my this means.</p> <p>Point 9 already covered</p>
10.	<p>Sunday, 10 May, 2015 at 04.33 hours – CCTV showed a black male in the smoking area walking from group to group. The DPS approached him and whilst talking to him a customer standing next to the DPS punched the black male to the face over the DPS shoulder. Following</p>

	<p>this punch being thrown the black male was ejected and the perpetrator was allowed to remain in the Club.</p> <p>The fact that this incident involved a fight inside the smoking area resulting in an assault in sight of staff and the victim, who had received a blow to the head, was ejected without any apparent thought or care to his well being, whilst allowing the assailant, having already assaulted one person, to remain in the premises.</p> <p>Mr Bailey stated that this was a contravention of the Licensing Objective of the Public Safety and Prevention of Crime and Disorder.</p> <p>Point 11 already covered.</p>
12.	<p>Saturday, 9 May, 2015 at 02.39 hours – report received that a 25 year old female had been involved in a fight resulting in her receiving injuries and that the assailant had left the area. Officers attended and discovered from the Club staff that the incident had started as an argument in the ground floor area of the Club which developed into an assault that took place in the outside smoking area of the Club and was witnessed by an off duty member of staff.</p> <p>He identified the fact to the on duty door staff and identified the culprit whilst he sorted out medical treatment for the victim. The door staff then ejected the culprit from the Club and contacted the Police. By the time the Police had arrived the culprit had left the area and despite searches that night was not arrested until 10 days later.</p> <p>Staff at the Club had clear details that an assault had taken place, having had both the incident and assailant pointed out to them by an off duty colleague. Prior to the matter being reported to the Police, the assailant was ejected from the Club with the loss of any potential forensic evidence. Despite them knowing that this person was responsible for an assault resulting in injuries to the victim no action was taken to detail the person responsible resulting in a 10 day delay in the arrest of the offender and the matter being properly investigated thereby frustrating the enquiry.</p> <p>Mr Bailey stated that this was a contravention of the Licensing Objective of the Prevention of Crime and Disorder.</p> <p>Mr Dadds stated that as a result of the CCTV a conviction was secured.</p> <p>Points 13, 14 and 15 already covered</p>
16.	<p>Saturday, 27 December, 2014 at 00.42 hours – staff at the Club detained a person inside the Club believed to be responsible for the theft of a phone in the premises who was subsequently arrested by Police.</p> <p>On arrival at the custody suite, the individual was searched and a quantity of white powder was found in his possession which was</p>

	<p>subsequently tested and found to be cocaine.</p> <p>Mr Bailey stated that he believed the fact that the individual, when arrested, was carrying drugs inside the Club showed that they were comfortable in doing so. This indicated that they were unconcerned about the drugs being found on entry to the Club or that they purchased them in the Club.</p> <p>Mr Bailey stated that this was a contravention of the Licensing Objective of the Prevention of Crime and Disorder.</p>
17.	<p>Saturday, 20 December, 2015 at 06.07 hours – Police responded to the report of a fight on the Kingsway, Swansea which resulted in a male person being arrested for causing damage to a bus shelter.</p> <p>The resulting inquiry revealed that the arrested person, who was 17 years of age, had been in Club Oxygen for several hours prior to the incident and that it had started as an argument inside the Club.</p> <p>Mr Bailey stated that this was a contravention of the Licensing Objective of the Protection of Children from Harm.</p> <p>In response to a question from Mr Dadds, Mr Bailey stated that no fake ID had been uncovered during the individuals arrest.</p> <p>Points 18 and 19 were read from the report which Mr Dadds would comment on later.</p>

Mr Bailey referred to the recent death of Jonathan Thomas and the need to ensure that any behaviour that may lead to such tragedies are minimised.

In response to an objection from Mr Dadds, the Lawyer advising the Committee stated that relevant representations should only be linked to Club Oxygen.

In conclusion Mr Bailey stated that in light of the aforementioned incidents and the evidence that has been produced, it was clear that there were an unacceptably high number of incidents involving alcohol related violence and disorder at the premises, which had existed for a number of years despite ongoing dialogue throughout.

He stated that were clear failures to promote the Licensing Objectives or Prevention of Crime and Disorder, Public Safety and Protection of Children from Harm and that the current standards of behaviour exhibited at the premises had been prevalent for a considerable period of time and therefore sought revocation of the Premises Licence.

Mr Bailey stated that should application for revocation be refused, the Sub Committee may consider a reduction in licensing hours to 04.00 hours and retraining of staff in levels of intoxication.

RESOLVED that the Sub Committee adjourn until 2.30 pm.

Mr Dadds stated that the DPS is aware of the incident of the young person dying. However, the incident was not linked to the premises. Nevertheless, the DPS was sensitive to the incident.

He stated that the DPS has a good relationship with the Police and this was something that she wanted to continue.

He referred to the Premises Licence and stated that any matter that occurred before 10 November, 2014 and the grant of the current Licence is was not relevant.

He stated that Temporary Event Notices (TEN's) had granted throughout the year without objections for 06.00 hours (apart from New Years' Eve) and Police had confidence in August 2015 that the Licensing Objectives could be promoted.

No residents raised any objections to the operation of the premises. Similarly, no representations had been received from Pollution Control or Licensing. He stated that the Guidance was clear in so far as any review must be based on facts and evidence.

He referred to the premises as a late night venue, which attracted a lot of young people in the City that want to go out and enjoy themselves. The Club is operational 52 weeks of the year attracting 50,000 visitors. Mr Dadds showed pictures of staff members and customers in the Club.

He referred to the incidents and stated that the DPS was a strong woman and licensee. He stated that, occasionally, women are better placed to defuse situations. The DPS was experienced having managed premises for 25 years and was very skilled at knowing when she should intervene in situations.

He detailed the months of the year and number of incidents, with the highest matters arising after 05.00 hours. He stated that he wished to persuade the Sub Committee to do no more than to close at 05.00 hours.

He referred to the operation of the premises, with double the capacity on a Saturday night with an additional 2 door staff. He stated that drinks promotions run throughout the night on a Friday night, however, promotions cease at 01.00 on a Saturday night.

He confirmed that the Club would cease drinks promotions at 01.00 on both Friday and Saturday nights and would increase door staff on Friday to 6. He stated that there would be a change in music type for the last hour and 15 minutes before close and there would be a slower tempo and lights slightly on. The price of alcohol would be raised by 10-20p as a decrease in hours would have a knock on effect on ensuring the business was profitable.

He referred to the flow chart – prevention process (which had been previously circulated) and the work of the DPS in ensuring every step had been adhered to. He stated that the Police had not suggested an action plan and the DPS had been proactive in ensuring the prevention process had been followed over the last eight weeks.

He referred to the serious matter which had triggered a crime watch programme. However, there had been no indication that there would be a review prior to this.

He stated that a revocation would not be appropriate and referred to the route map – prevention process which coupled with step approach would rectify any problems.

He stated that drunkenness have been dealt with by employing extra door staff and re-training staff. He also referred to the reduction of drink promotions and an increase in prices.

With regard to the consumption of drinks outside the premises, he stated that this could be better managed. One staff member had been monitoring the area since September 2015.

He referred to the goodwill of the DPS in providing the whole evenings disk which could result other licensees being reluctant to assist by providing too much footage that may be used against the premises.

He stated that the drug testing allowed for good information being obtained to manage drugs in the night time economy. However, he stated that some of the information contained in page 51 was, in his opinion, misleading and he had requested that the Police remove or provide more information. Following the results of the drug test in January, 2015, no action plan or warning had been received from the Police.

He referred to the person carried from the premises by staff and left unattended. He stated that door staff had been advised that was unacceptable and if the DPS had been aware that would not have happened. He stated that the DPS prided herself with helping people (buying taxis etc).

He stated that the Premises were promoting the Licensing Objectives to a high level with good quality CCTV and patrons being dealt with robustly.

In response to Member's questions, Mr Dadds confirmed that:

- High visibility jackets are now worn by all staff;
- All incidents are recorded in the Incident Book. On the occasions that this was not the case, this was not intentional. The DPS was responsible for ensuring all incidents are recorded;
- No glass vessels or bottles are used in the Club;
- The stocky man with white hair mentioned previously is not known to the Club.

The Lawyer advising the Committee invited all parties to conclude their representations.

Mr Bailey stated he had nothing further to add.

Mr Dadds stated that the guidance was about identifying the cause and doing what is proportionate and taking a gradual approach. The DPS was aware that this was a

first review and wants to continue to work the Police and has made concessions regarding the hours of operation and other issues.

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 **DISMISS THE APPLICATION FOR REVOCATION** subject to conditions consistent with the operating schedule as modified as considered appropriate for the promotion of the licensing objectives as below.

Live Music, Recorded Music, Performance of Dance, anything of a similar description to Live Music, Recorded Music or dancing and the Supply of Alcohol:

Sunday to Thursday – 11.00 until 04.00
Friday & Saturday – 11.00 until 04.00

Late Night Refreshment:

Sunday to Thursday – 23.00 until 04.00
Friday & Saturday – 23.00 until 04.00

With the premises open to the Public:

Sunday to Thursday – 11.00 until 04.30
Friday & Saturday – 11.00 until 04.30.

Additional Conditions:

- 1) Door Staff to be increased to 6 on a Friday and Saturday evening.
- 2) 1 designated member of staff to monitor the smoking area.
- 3) Drinks promotions to cease at 01.00 hours on Friday and Saturday.
- 4) The DPS to be solely responsible for the maintenance of the Incident Book.
- 5) to operate a Challenge 21 scheme

Amended Conditions:

Conditions 12 and 18 to reflect no glassware but Plastic vessels.

Reason for Decision

The Committee considered the evidence since the licence came into existence, which was presented by the Police, as well as the concessions made by the Premises Licence Holder.

The Committee noted that many of the incidents referred to were at/or earlier than 5am, therefore closing times of 4.30am and 5am for Fridays and Saturdays, respectively, is unlikely to alter the current position. Ceasing licensable activities at 4am and closing at 4.30am is a proportionate response to reducing the number of incidents and promoting the licensing objectives.

The Committee noted that the incident regarding the admission of the 17 year old can be resolved by introducing a challenge 21 scheme.

The Committee agreed to alter conditions 12 and 18 on the premises licence in accordance with the practice of the premises, which does not use glassware at any time. Condition 12 will therefore be amended to state that plastic vessels are to be used at all times. Condition 18 will state that drinking vessels are not to be taken outside.

The meeting ended at 4.06 pm

CHAIR