

**SA BRAIN**

**RESPONSE TO SWANSEA LICENSING POLICY ('THE POLICY')**

This response is made on behalf of **SA BRAIN** ('Brains').

Brains is Wales' most famous drink. It is the toast of a nation. Still owned by the descendants of the founders that took over a fledgling brewery in a small stone building behind a Cardiff pub in 1882, you can now find the Brains name above the door of over 250 pubs, bars and hotels across Wales and the West of England.

Brewed at The Cardiff Brewery, Brains' award-winning beers are now widely available across Wales and can increasingly be found throughout the rest of Britain in Sainsbury's, Waitrose and Morrison's, as well as in pubs all over the country as guest ales.

The pub estate has expanded rapidly over the past 10 years and nearly every pub now offers a good range of quality food. And if you are looking for somewhere to stay, entertain or celebrate, many Brains pubs now offer bedrooms and function rooms.

Brains has always had close links with Welsh sport. For six years the family name was emblazoned across the national rugby team's chests, during which Wales famously won two Grand Slams in the RBS 6 Nations. Today Brains is the official ale of the WRU. As well as sponsoring the Welsh Rugby Union, Brains is also the official beer of the Football Association of Wales and Glamorgan Cricket.

The company is proud of its independence and the way that it has evolved over its colourful history.

The Brains estate comprises both managed and tenanted premises, split almost 50/50.

The managed estate is made up of premises where the licences are held by Brains and the premises are directly managed by Brains employees. Brains hold the premises licences for the tenanted estate which gives the company a level of control over the licences without directly running the premises. As such, the leased estate is as directly affected by any changes to the Policy as the managed estate, despite Brains not actually running the premises on a day-to-day level.

We fully support the view that all premises should be well run and promote the four licensing objectives. We do not however, support the view that those premises or indeed any premises should be subject to a potential further administrative burden from ad-hoc local requirements contained in licensing policies. For a company with premises spread over a significant number of local authorities, these locally imposed burdens on licence holders and operators, create additional work and can undermine the objectives by creating burdens on managers and staff where not strictly necessary.

We believe that the Licensing Act 2003 and associated relevant legislation contain sufficient safeguards and means of dealing with premises that cause or contribute to crime and disorder.

**Executive Summary**

The justification for maintaining the CIP has not been disclosed and as such we cannot comment on whether retaining the CIP in its present geographical scope is justified.

Notwithstanding this, we welcome the amendments to the Cumulative Impact Policy ('CIP') where it clarifies what is expected of applicants, or reflects the changes in Guidance. We are concerned that the range of 'categories' set out for premises that will be considered 'exempt' from the CIP are on occasion very loosely worded, open to interpretation and therefore open to legal challenge. This is particularly important given that CIP policies are likely to become creatures of statute, rather than remain as creations of Guidance and Policy only. In those circumstances, there could be unintended consequences with the drafting as suggested.

## **Commentary on the proposed amendments to the CIP (within the wider context of the Policy)**

### **1 Scope of CIP within the Policy**

The information provided does not permit a consideration of the factors that has lead to the decision to retain a CIP within the Policy. Factors such as crime and disorder, ongoing public nuisance and changes to the number of premises with licences in the CIP area should all be taken into account in determining whether the CIP is a necessary restriction on applications (and potential investment) in Swansea. We would like to have seen a fully reasoned justification for the continuation of the Policy within the papers provided in order to comment on whether the need for the CIP could be justified in the first place.

### **2 Changes to reflect current Guidance and changes in legislation**

We understand and agree with the changes in the Policy where they are being introduced to reflect changes in legislation or Guidance. Clearly this can only assist all parties referring to the Policy in terms of ensuring consistency of approach and implementation.

### **3 Changes to reflect current view of CIP**

As a general comment, we welcome anything that recognises that CIPs can be overly prescriptive and, if improperly used, stifle investment and improvements in Swansea City Centre. We also recognise, however, that control mechanisms such as CIPs provide useful tools to the licensing authority, as well as guidance to potential applicants, as to what will be deemed acceptable or welcomed into Swansea.

However, the categories set out in Paragraph 6.22 do give rise to concerns. For completeness, we do not have any specific comments in relation to the following categories identified:

- *Theatres, where the main purpose of the premises is the performance of plays;*
- *Cinemas, where the main purpose of the premises is the exhibition of films;*
- *Premises where the main purpose is the provision of substantial table meals;*

The categories which give rise to specific concerns are:

- *Non-alcohol led premises; and*
- *Premises where the sale/ supply of alcohol is by waiter/waitress service only*

It is not necessarily that we would disagree that *certain* premises that would fall within the above definitions *should* be exempted from the CIP; the concern is whether *all* applications that fall within the categories should be exempted. We note that there is a suggested cut off time of 1am for such premises to be considered as exempt from the CIP, however, there is still potential for applicants to look to define themselves as exempt, where the licensing committee may not have intended.

### **Non-alcohol led premises**

This is a very broad definition that would allow premises to define themselves as falling outside the CIP for various reasons, such as:

- Hours a premises effectively operates as a food-led venue are longer than 'bar' hours
- The premises provides dancing facilities first and foremost (night club)
- The premises is a high capacity live music venue that has occasional 'club' nights

### **Premises where the sale/ supply of alcohol is by waiter/waitress service only**

Modern drink-led premises may have waiter and waitress service for all their customers. On this premise alone, it would appear they would be exempt from the CIP.

We must stress that we are not saying such venues should not be granted licences, but at the very least it permits an argument to say that the committee cannot take into account cumulative impact when determining the matter.

This is important in the context of appealing decisions in particular. A disgruntled applicant appealing the refusal of a licence where he has argued that their application was exempt from consideration of the CIP, but where the licensing committee have disagreed, will be able to ask, in effect, for a preliminary ruling on the point. Should the council be found to have relied on their own CIP in error, this is likely to have cost consequences. This is particularly important given the statement in 6.23 that applications that fall within the exemptions will generally be granted subject to consideration of any relevant representations.

### **Likely changes to legislation**

It is expected that the Guidance giving effect to CIP's is likely to be codified and cumulative impact to be given a statutory footing. If this is the case, then policies will need to be interpreted in light of this change. It is likely therefore that the rules on CIPs will become more tightly controlled. We respectfully suggest therefore that any changes proposed here are considered in light of the need to ensure that there is clarity in what will and will not be considered caught by the Policy. In particular the inclusion of an exemption for 'non-alcohol led premises' may give rise to additional problems in light of any legislative changes, as well as the practical problems raised above.

### **Expansion of the geographical area covered by the CIP**

For the purposes of clarity, we do not support any expansion of the geographical area of the CIP. Should this be considered following the consultation, we would ask to be given an opportunity to respond to any proposed expansion prior to implementation.

**For and on behalf of SA BRAIN**