



City and County of Swansea

Minutes of the **Statutory Licensing Sub Committee**

Council Chamber - Guildhall, Swansea

Monday, 25 March 2019 at 10.00 am

Present: Councillor P M Matthews (Chair) Presided

Councillors

P Downing

Councillors

H M Morris

Officer(s)

Kate Jones

Yvonne Lewis

Rachel Loosemore

Lyndsay Thomas

Democratic Services Officer

Team Leader, Licensing

Licensing Officer

Principal Lawyer

Also Present

Emily Walters

Xiang Liu

Jon Hancock

Immigration Enforcement Officer, Home Office

Premises Licence Holder

South Wales Police

Apologies for Absence

Councillor(s): None

7 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.

8 Licensing Act 2003 - Section 51 Application for a Review of a Premises Licence - Yangtze River Chinese Takeaway, 106 High Street, Swansea.

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

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

The Licensing Officer reported on the Licensing Act 2003 Section 51 application for a review of a premises licence. She referred to the prevention of crime and disorder, procedure, promotion of the Licensing Objectives, policy considerations and the guidance from the Home Secretary. Specific reference was made to a location plan Appendix A and the application for the review of a premises licence at Appendix B.

The Team Leader, Licensing outlined the current conditions on the existing premises licence as well as possible amended conditions for condition by the Committee. She also provided a current update on the existing premises licence.

The Immigration Enforcement Officer, representing the applicant, further amplified the written application and highlighted her concerns in relation to the licensing objective of prevention of crime and disorder as well as the importance given to the prevention of illegal working.

The Premises Licence Holder addressed the Committee and spoke against the application. She stated the case for maintaining the premises licence.

Questions were asked of the Immigration Enforcement Officer and the Premises Licence Holder who responded accordingly. The Premises Licence Holder confirmed that the Closed-Circuit Television (CCTV) required for the premises licence had been broken for some months.

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 gave a comprehensive overview of the legal advice tendered.

The Chair indicated that the Sub-Committee had considered the application and 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 Sub-Committee **Resolved** to **Revoke** the premises licence for the reasons outlined below.

Reasons for Decision

Members noted that the Statutory Guidance lists immigration control under the Licensing Objective for the prevention of crime and disorder and the importance given to preventing the illegal working in the Statutory Guidance.

The Committee found that the Home Office's application met the grounds required for a review in the absence of a civil penalty being issued to the premises licence holder, Xiang Liu, in light of the High Court decision in the case of East Lindsey DC v Abu Hanif (t/a Zara's restaurant and Takeaway). The court found that the crime prevention objective did not require a crime to have been reported, prosecuted or established in court. The crime prevention objective is not retrospective instead, it is concerned with the avoidance of harm in the future.

The Committee considered the option of modifying the conditions on the licence but did not consider this would promote the crime prevention licensing objective in light of the admissions made by the Premises Licence Holder, that she had been operating after 23.00 hours even though her CCTV was not working and which she knew was a condition of her premises licence.

In addition the Committee felt having regard to the Premises Licence Holder's comment that her busiest time was before 23.00 hours, between 21.00 and 22.00 hours, and she often closed by 23.00 hours, it would make little difference if the Premises Licence was revoked, or that she would comply with any modified conditions imposed in any event.

The Committee accepted the Home Office evidence that at the time of the visit, 2 male persons wearing jeans and a T- shirt who did not have the right to work or help under their current immigration bail conditions were seen in the premises kitchen where food preparation was in progress. They noted the officer said she did not see the 2 males undertaking any tasks. The Committee also noted and accepted the Officers comments regarding lack of paperwork - pay slips - for the business.

The Committee was concerned that 2 persons who were not properly dressed were in the kitchen where food preparation was taking place without the Premises Licence Holder's knowledge or consent. Whilst this raised concerns over food hygiene, the Committee accepted the legal advice that in line with the Statutory Guidance (paragraphs 1.16 and 2.7) this was not within their licencing function and had to be dealt with under other legislation.

The Premises Licence Holder did not satisfy the Committee she understood as Premises Licence Holder she had to promote the crime prevention licensing objective or would do so in the future due to her remarks about not keeping the conditions of the Premises Licence "in her mind" and not being able to control who "pops in" to the premises.

The Premises Licence Holder admitted she had not considered the conditions on her licence to be important until told otherwise by the Licensing Officer.

The Premises Licence Holder failed to address, to the Committee's satisfaction, the issues / concerns raised by the Home Office and that going forward those issues would not be repeated.

The overwhelming view of the committee was that the licensing objective of prevention of crime and disorder would be undermined if the Premises Licence remained in place.

The meeting ended at 11.50 am

Chair