



**Report of the Divisional Licensing Officer
Statutory Licensing Sub Committee
17 April 2019**

**Licensing Act 2003
Section 34 Application to Vary a Premises Licence**

- 1. Premises: Boo's Kitchen, 2 Woodville Road, Mumbles, Swansea.**
- 2. Applicant : Angharad Bethan Boo**
- 3. Application to Vary a Premises Licence**
 - 3.1 An application to vary a premises licence was received by this authority on the 20th February 2019.

The premises currently operates under a premises licence

Supply of Alcohol

Monday & Tuesday 1100-1800 Wednesday to Saturday 1100-2200
 - 3.2 A copy of the existing premises licence including the current conditions is attached at Appendix A.

The application proposes to extend the supply of alcohol
Monday to Sunday 1000-2300
- 4. Background**

The premises is a local independent café situated within a residential area. The premises licence was granted in 2012. The current premises licence holder has been trading since May 2018 and selling alcohol from July 2018.

Members should note that when the licence was granted in 2012, the following condition was attached to the licence

"Sunday - The premises is to remain closed to the public."

This condition is not an enforceable condition and therefore should be removed from the licence and disregarded by Members for consideration today.

A location plan of the premises is attached at Appendix B.

5. Promotion Of The Licensing Objectives

5.1 The Licensing Act 2003 contains four licensing objectives, namely:-

- (i) Prevention of Crime and Disorder
- (ii) Public Safety
- (iii) Prevention of Public Nuisance
- (iv) Protection of Children from Harm

Each of these objectives is of equal importance and the application must demonstrate how they are to be promoted.

6. RELEVANT REPRESENTATIONS

6.1 Responsible Authorities

- a) **South Wales Police**
No representations.
- b) **Trading Standards**
No representations.
- c) **Mid and West Wales Fire Authority**
No representations.
- d) **Health and Safety**
No representations.
- e) **Planning Authority**
No representations.
- f) **Pollution Division**
No representations.
- g) **Child Protection**
No representations.
- h) **Primary Care Trust/Local Health Board**
No representations.
- i) **Licensing Authority**
No representations.

j) Immigration
No representations.

j) Other Persons

Representations have been received from 2 residents.

These are attached at Appendix C.

7. Policy Considerations

7.1 In considering this application Members should have regard to the Council's current statement of Licensing Policy adopted in July 2018. Specifically in relation to this application;

(i) Deregulation – Foreword

(d) Certain activities are now no longer required to be licensed due to changes in legislation as a result of deregulation. Amendments made to the 2003 Act by the Live Music Act 2012 and the Licensing Act 2003 (Descriptions of Entertainment) (Amendment) Order 2013, Legislative Reform Order 2014 and the Deregulation Act 2015, means that a licence is not required for the following activities to the extent that they take place between 08:00- 23:00 on any day:

Live music, where the live music comprises;

- A performance of unamplified live music
- A performance of live amplified music in a workplace with an audience of no more than 500 people; or
- A performance of live or recorded music on licensed premises which takes place in the presence of an audience of no more than 500 people, subject to certain conditions being met.

Recorded music, where recorded music comprises;

- Any playing of recorded music on licensed premises which takes place in the presence of an audience of no more than 500;
- Any playing of recorded music in unlicensed premises, subject to certain conditions being met.
- Dance – no licence is required for performances on any day provided that the audience does not exceed 500.

Where de-regulated activities take place on licensed premises any licence conditions relating to 'live' music or entertainment will be suspended, but it is possible to impose new, or reinstate existing conditions following a review of a premises licence or club premises certificate.

(ii) Control – Section 4

Paragraph 4.4 The Licensing Authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public, living, working or engaged in normal activities in the area concerned. It will be expected that any representation made by “Other Persons” will indicate how the application will directly affect them in relation to one or more of the licensing objectives.

Paragraph 4.5 Licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from the licensed premises and beyond the direct control of the persons holding the relevant authorisation.

(iii) Licensing Hours – Section 7

Paragraph 7.1 When determining individual licence applications for premises the licensing hours will be decided having regard to the individual merits of each application. The presumption will be to grant the hours as requested unless there are objections to those hours raised by responsible authorities or other persons on the basis of the licensing objectives.

Paragraph 7.4 The Licensing Authority will closely examine the hours of business for premises which are situated in predominately residential areas and will impose strict conditions relating to noise control where representations are received and it is considered appropriate.

(iv) Integrating Strategies – Section 9

Paragraph 9.6 The Council, when acting as a Licensing Authority will have regard to the needs of the local tourist economy and employment situation for the area as appropriate.

(v) Duplication – Section 11

Paragraph 11.1 The Licensing Authority will avoid as far as possible any duplication with other regulatory regimes.

Paragraph 11.2 Where legislation is already in force which relates to the four licensing objectives, further controls which duplicate these legal requirements will not be enforced through licence conditions, e.g. Fire Safety and Health & Safety at Work legislation.

Paragraph 11.3 In particular, Planning and Licensing regimes will be properly separated to avoid duplication and inefficiency.

Licensing applications will not be a re-run of a planning application and the licensing decisions will not cut across decisions taken by a planning committee or permissions granted on appeal. There is no legal basis for the Licensing Authority to refuse an application because it does not have planning permission. The Licensing Authority will advise all new applicants to liaise with planning services to ensure they apply for any necessary permissions.

(vi) Conditions – Section 12

Paragraph 12.3 The Licensing Authority will attach conditions to licences or certificates that are tailored to the individual size, style, characteristics and activities taking place at the premises or event concerned.

(vii) Applications for Licences, Certificates, Authorisations and Reviews – Section 15

Paragraph 15.1 The Licensing Authority will consider each application received on its merits in the context of the four licensing objectives.

Paragraph 15.4 The Licensing Authority also accepts that Other Persons or responsible authorities, as defined in the Act, have the right to make representations in respect of an application, or to seek a review of a licence or certificate within the provisions of the Act. Such representations will be considered on their merits and how they relate to the likely effect of the grant of the licence or certificate on the promotion of at least one or more of the licensing objectives. Also, how the representations are relevant to the promotion of one or more of the licensing objectives in the case of a review of a licence or certificate. When a petition is submitted as a representation it will only be considered if it relates to one or more of the four licensing objectives and it is demonstrated that the details of the representation have been made clear to each signatory i.e. that the heading is included on each page of the petition. A relevant representation may be positive or supportive in nature as opposed to being negative but it must still demonstrate that the licensing objectives are being promoted.

7.2 A copy of the Policy has previously been circulated to Members.

An update to date copy of the Policy may be found via the following link:

<https://www.swansea.gov.uk/article/4280/Statement-of-licensing-policy>

8. Guidance Issued By The Home Secretary

8.1 Members should also have regard to the relevant parts of the current guidance issued by the Home Secretary in April 2018, in particular;

- (i) Introduction – Chapter 1
- (ii) Licensing Objectives – Chapter 2
- (iii) Applications For Premises Licences – Chapter 8
- (iv) Determining Applications – Chapter 9
- (v) Conditions attached to Premises Licences – Chapter 10
- (vi) Promotion of Equality – Chapter 14 paragraphs 14.66 -14.67

Specifically in relation to this application;

- (i) Public Nuisance – Chapter 2
Paragraph 2.19 Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, the most sensitive period for people being disturbed by unreasonably loud music is at night and into the early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. This is why there is still a need for a licence for performances of live music between 11 pm and 8 am. In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave.

Paragraph 2.21 Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night.

- (ii) Considering cases where licensing and planning applications are made simultaneously – Chapter 9
Paragraph 9.45 Where businesses have indicated, when applying for a licence under the 2003 Act, that they have also applied for planning permission or that they intend to do so, licensing committees and officers should consider discussion with their planning counterparts prior to determination with the aim of agreeing mutually acceptable operating hours and scheme designs.

- (iii) Planning and building control – Chapter 14
Paragraph 14.64 The statement of licensing policy should indicate that planning permission, building control approval and licensing regimes will be properly separated to avoid duplication and inefficiency. The planning and licensing regimes involve consideration of different (albeit related) matters. Licensing committees are not bound by decisions made by a planning committee, and vice versa. However, as set out in chapter 9, licensing committees and officers should consider discussions with their planning counterparts prior to determination with the aim of agreeing mutually acceptable operating hours and scheme designs

Paragraph 14.65 There are circumstances when, as a condition of planning permission, a terminal hour has been set for the use of premises for commercial purposes. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time. Premises operating in breach of their planning permission would be liable to prosecution under planning law. Proper integration should be assured by licensing committees, where appropriate, providing regular reports to the planning committee.

- 8.2 A copy of the Home Secretary's Guidance has previously been circulated to Members.

An update to date copy of the Guidance may be found via the following link:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705588/Revised_guidance_issued_under_section_182_of_the_Licensing_Act_2003_April_2018_.pdf

9. Determination Of The Application

- 9.1 The decision must be based on the individual merits of the application and the representations received, with a view to promoting the licensing objectives outlined in paragraph 5 above.
- 9.2 In addition in arriving at the decision Members should have regard to the relevant provisions of the Council's Statement of Licensing Policy and the Secretary of State's Guidance as previously provided. Reasons must be provided for any departures from the Policy or Guidance.

9.3 In reaching the decision the Committee must, having regard to the representations, take such steps mentioned below (if any) as it considers appropriate for the promotion of the licensing objectives:-

(a) to modify the conditions of the licence to include ,but not necessarily limited to , the removal of the condition:

“Sunday - The premises is to remain closed to the public.”

(b) to reject the whole or part of the application;

The Licensing Sub Committee's instructions are requested.

Background Papers:	Licence Application
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