



**Report of the Divisional Licensing Officer
To the Statutory Licensing Sub Committee
17th May 2019**

**Licensing Act 2003
Section 17 Application for a Premises Licence**

- 1. Premises: Smugglers Beach Bar and Kitchen, Port Eynon, Swansea. SA3 1NN**
- 2. Applicant : Donna Marie Paterson**
- 3. Application for a Premises Licence**
 - 3.1 An application was received by this authority on the 27th March 2019.

The premises has a licence which will be surrendered if the current application is successful.

The current licence is attached at **Appendix A**
 - 3.2 This application proposes the following activities –
 - a) **Indoor Sporting Events –
Sunday to Thursday 10:00hrs to 23:30hrs;
Friday and Saturday 10:00hrs to 00:00hrs**
 - b) **Live Music –
Monday to Sunday 12:00hrs to 23:00hrs**
 - c) **Recorded Music –
Sunday to Thursday 10:00hrs to 00:00hrs;
Friday and Saturday 10:00hrs to 01:00hrs**
 - d) **Late Night Refreshment –
Sunday to Thursday 23:00hrs to 00:00hrs;
Friday and Saturday 23:00hrs to 01:00hrs**
 - e) **Supply of Alcohol –
Sunday to Thursday 10:00hrs to 00:00hrs;
Friday and Saturday 10:00hrs to 01:00hrs**

The opening times for the premises are proposed as:

Sunday to Thursday 10:00hrs to 00:30hrs;

Friday and Saturday 10:00hrs to 01:30hrs

4. Background

- 4.1 The premises has been a licensed restaurant for many years situated in the village of Port Eynon which is close to the nearby villages of Horton and Overton. It is one of the last properties you pass prior to arriving at the beach. The village is rural with mainly residential properties. It is a holiday destination and experiences a large influx of holidaymakers in the summer season with several large caravan sites nearby.
- 4.2 The applicant describes the premises in the application form as – Smugglers is located on the Beach front down Port Eynon with a beer garden located by the entrance of the building where we have marked as an external area for the consumption of alcohol. Through the entrance of the building we have our tea rooms where afternoon teas and coffees will be consumed. Our bar for the supply of alcohol is located at the back of the venue where the restaurant tables are planned out. We also have another entrance located by the toilets at the end of the back room opposite the bar.
- 4.3 The premises also has an external car park which when set out for external consumption will still accommodate approximately 10 vehicles.
- 4.4 There are several commercial properties nearby which include fish and chip shops and gift shops.
- 4.5 There is one other licensed premises in the village namely The Ship, which is approximately 100 metres from Smugglers Beach Bar and Kitchen. The hours authorising licensable activities are as follows -

Performance of Live Music

Monday to Sunday - 1000 hours to 2300 hours

Playback of Recorded Music

Monday to Sunday - 1000 hours to 2300 hours

Supply of Alcohol

Sunday to Thursday - 1000 hours to 2330 hours

Friday & Saturday - 1000 hours to 0030 hours

Easter Weekend, Mayday Bank Holiday, Spring Bank Holiday, August Bank Holiday, Boxing Day, New Year's Eve:

Friday to Monday - 1000 hours to 0100 hours

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

A plan of the proposed premises is attached at **Appendix C**.

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.

5.2 Conditions consistent with the operating schedule that will be attached to the licence if granted are at **Appendix D**.

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 both of whom have properties in the village of Port Eynon.

These are attached at **Appendix E**.

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 predominantly residential areas and will impose strict conditions relating to noise control where representations are received and it is considered necessary.

Paragraph 7.5 The Licensing Authority will allow shops, stores and supermarkets to sell alcohol, for consumption off the premises, at any time when the retail outlet in question is open for business. Limitations will only be imposed restricting the times alcohol can be sold from such premises if representations are received and there is evidence that the extended hours cause the premises to be a focus of disorder and disturbance.

(iv) 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 full copy of the Authority's Policy has previously been circulated to Members.

An up 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 Licenses – Chapter 8
- (iv) Determining Applications – Chapter 9
- (v) Conditions attached to Premises Licenses – Chapter 10
- (vi) Promotion of Equality – Chapter 14 paragraphs 14.66 -14.67

Representations received include concerns regarding Crime and Disorder and Public Nuisance specifically in relation to the different hours of one licensed premises compared with the other in the village and the possibility of migration from one to the other after one closes.

- 8.2 Paragraphs 2.1 to 2.6 of the Guidance refer to Crime and Disorder and paragraphs 2.15 to 2.21 refer to Public Nuisance and in particular -

- (i) Crime and disorder
Paragraph 2.1 Licensing authorities should look to the police as the main source of advice on crime and disorder. They should also seek to involve the local Community Safety Partnership (CSP).

(ii) Public Nuisance

Paragraph 2.15 The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.

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.

- 8.3 Paragraph 14.19 There can be confusion about the difference between the “need” for premises and the “cumulative impact” of premises on the licensing objectives, for example, on crime and disorder. “Need” concerns the commercial demand for another pub or restaurant or hotel and is a matter for the planning authority and for the market. This is not a matter for a licensing authority in discharging its licensing functions or for its statement of licensing policy.

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

An up 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. Grant the licence subject to:
 - i) conditions that reflect the operating schedule, modified to such extent as the authority considers appropriate for promotion of the licensing objectives. Certain regulated entertainment under the Licensing Act 2003 (as amended) has been deregulated. Where entertainment is deregulated, but licensable activities continue to take place on any premises, any licence conditions imposed on a grant of a licence in respect of any deregulated entertainment will be suspended.
 - ii) any mandatory conditions relevant to the licence
 - b. Exclude any of the licensable activities to which the application relates.
 - c. Refuse to specify a person in the licence as the premises supervisor.
 - d. Reject the application

The Licensing Sub Committee's instructions are requested.

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| Background Papers: | Licence Application |
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