



## Report of the Divisional Licensing Officer

Statutory Licensing Sub Committee - 6 June 2019

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

1. **Premises: 76 St Helen's Road, Swansea. SA1 4BG**
2. **Applicant : Mr Shui Fa Zhang**
3. **Application for a Premises Licence**
  - 3.1 An application was received by this authority on the 16<sup>th</sup> April 2019.
  - 3.2 This application proposes the following activities –
    - a) **Supply of Alcohol off the premises –  
Monday to Sunday 10:00hrs to 21:00hrs;**
    - b) The opening times for the premises are proposed as:  
**Monday to Sunday 10:00hrs to 21:00hrs;**
4. **Background**
  - 4.1 The premises is a Chinese Supermarket which currently sells food and now wishes to sell food which contains Alcohol and some Chinese Beers. It is sited towards the end of St Helen's Road, away from the city centre. St Helen's Road has predominately commercial properties with a large number of takeaway outlets, restaurants and smaller supermarkets. Within approximately 100 metres of this premises is the highly populated residential areas of Sandfields and St Helen's.
  - 4.2 The applicant describes the premises in the application form as –

*Chinese Supermarket which requires a licence for the sale of food goods containing alcohol and the sale of some Chinese beers.*
  - 4.3 In section M which describes the steps the applicant intends to take to promote the four licensing conditions the applicant states –

*No additional conditions are considered appropriate as this is an off licence application where the terminal hour is 21:00 hours*

4.4 There are three other premises along St Helen's Road which have premises licences for off sales of alcohol as follows –

- Tesco Express SJ41829
- Spar SJ23135
- Costcutter SJ23039

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

A plan of the proposed 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**  
Representations.
- b) **Trading Standards**  
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**

Representations.

**j) Immigration**

No representations.

**j) Other Persons**

No representations.

The representations referred to above cover all four licensing objectives and 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;

Control – Section 4

- (i) 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.

- (ii) 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.

(iii) 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.

(iv) Conditions

Paragraph 12.1 The Licensing Authority will only impose conditions on a premises licence or club premises certificate which are consistent with the operating schedule and are appropriate to promote the four licensing objectives. Standard conditions will not be used. The Licensing Authority has developed a pool of conditions, which are provided in the guidance for applicants. This guidance has been produced to assist applicants in completing their operating schedule. The pool of conditions will be used to translate any non-specific steps for the promotion of the licensing objectives, contained within the operating schedule. Applicants are encouraged to consider the use of this pool of conditions to address key issues

when completing their operating schedule. (See paragraph 18).

All conditions should be -

Clear

Enforceable

Evidenced

Proportionate

Relevant

Be expressed in plain language capable of being understood by those expected to comply with them

Paragraph 12.2 The Licensing Authority will only consider imposing additional conditions on a licence where relevant representations are received from responsible authorities

(v) The Licensing Objectives

Paragraph 18.2. An applicant for a premises licence or club premises certificate or for a variation of such a licence or certificate will be expected to conduct a thorough risk assessment with regard to the licensing objectives. The risk assessment will indicate the necessary steps to be set out in the operating schedule to promote the licensing objectives. The operating schedule will be translated into conditions

Paragraph 18.4 The Licensing Authority acknowledges that the steps an applicant may take to promote the licensing objectives will vary depending on the type of premises and the licensable activities taking place. Applicants are encouraged to consider the guidance notes referred to in paragraph 12.1 when completing their applications.

(vi) General Issues

Paragraph 19.1 The Council will work in conjunction with all licensees, prospective licensees and statutory agencies to promote the licensing objectives as required by the Act.  
19.2 Where any uncertainty exists regarding aspects of responsibilities or requirements the Council will work with the applicants and statutory agencies to address the issue.

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 all four licensing objectives.

8.2 Licensing objectives and aims

(a) Paragraph 1.4 Each objective is of equal importance.

There are no other statutory licensing objectives, so that the promotion of the four objectives is a paramount consideration at all times.

(b) General Principles

Paragraph 1.15 It is recommended that licence applicants contact responsible authorities when preparing their operating schedules.

Paragraphs 2.1 to 2.6 of the Guidance refer to Crime and Disorder

Paragraphs 2.7 to 2.9 refer to Public safety,

Paragraphs 2.15 to 2.21 refer to Public Nuisance and in particular –

(c) Public Safety

Paragraph 2.7 Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation.

(d) 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).

(e) Protection of Children from Harm

Paragraph 2.26 Licensing authorities and responsible authorities should expect applicants, when preparing an operating schedule or club operating schedule, to set out the steps to be taken to protect children from harm when on the premises.

Paragraph 10.46 The premises licence holder or club premises certificate holder must ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol. This must as a minimum require individuals who appear to the responsible person (see paragraph 10.39) to be under the age of 18 years of age to

produce on request, before being served alcohol, identification bearing their photograph, date of birth, and either a holographic mark or ultraviolet feature. The Home Office encourages licensed premises to accept cards bearing the Proof of Age Standards Scheme (PASS) hologram as their preferred proof of age, while acknowledging that many other forms of identification meet the requirements of the mandatory condition.

Paragraph 10.49 It is acceptable, and indeed encouraged, for premises to have an age verification policy which requires individuals who appear to the responsible person to be under an age greater than 18 to produce such identification on request. For example, if premises have a policy that requires any individual that appears to be under the age of 21 to produce identification that meets the criteria listed above, this is perfectly acceptable under the mandatory code.

(f) 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.

(g) Steps to Promote the Licensing Objectives

Paragraph 8.41 In completing an operating schedule, applicants are expected to have regard to the statement of licensing policy for their area. They must also be aware of the expectations of the licensing authority and the responsible authorities as to the steps that are appropriate for the promotion of the licensing objectives, and to demonstrate knowledge of their local area when describing the steps they propose to take to promote the licensing objectives. Licensing authorities and responsible authorities are expected to publish information about what is meant by the promotion of the licensing objectives and to ensure that applicants can readily access advice about these matters. However, applicants are also expected to undertake their own enquiries about the area in which the premises are situated to inform the content of the application.

Paragraph 8.42 Applicants are, in particular, expected to obtain sufficient information to enable them to demonstrate, when setting out the steps they propose to take to promote the licensing objectives, that they understand:

- the layout of the local area and physical environment including crime and disorder hotspots, proximity to residential premises and proximity to areas where children may congregate;
- any risk posed to the local area by the applicants' proposed licensable activities; and
- any local initiatives (for example, local crime reduction initiatives or voluntary schemes including local taxi-marshalling schemes, street pastors and other schemes) which may help to mitigate potential risks.

Paragraph 8.44 It is expected that enquiries about the locality will assist applicants when determining the steps that are appropriate for the promotion of the licensing objectives. For example, premises with close proximity to residential premises should consider what effect this will have on their smoking, noise management and dispersal policies to ensure the promotion of the public nuisance objective. Applicants must consider all factors which may



be relevant to the promotion of the licensing objectives, and where there are no known concerns, acknowledge this in their application.

Paragraph 8.46 While applicants are not required to seek the views of responsible authorities before formally submitting their application, they may find them to be a useful source of expert advice on local issues that should be taken into consideration when making an application. Licensing authorities may wish to encourage co-operation between applicants, responsible authorities and, where relevant, local residents and businesses before applications are submitted in order to minimise the scope for disputes to arise.

Paragraph 8.47 Applicants are expected to provide licensing authorities with sufficient information in this section to determine the extent to which their proposed steps are appropriate to promote the licensing objectives in the local area. Applications must not be based on providing a set of standard conditions to promote the licensing objectives and applicants are expected to make it clear why the steps they are proposing are appropriate for the premises.

Paragraph 8.48 All parties are expected to work together in partnership to ensure that the licensing objectives are promoted collectively. Where there are no disputes, the steps that applicants propose to take to promote the licensing objectives, as set out in the operating schedule, will very often translate directly into conditions that will be attached to premises licences with the minimum of fuss.

Paragraph 8.49 For some premises, it is possible that no measures will be appropriate to promote one or more of the licensing objectives, for example, because they are adequately covered by other existing legislation. It is however important that all operating schedules should be precise and clear about the measures that are proposed to promote each of the licensing objectives.

(h) Hearings

Paragraph 9.32 Responsible authorities should try to conclude any discussions with the applicant in good time before the hearing. The 2005 Hearings Regulations permit licensing authorities to extend a time limit provided for by those Regulations for a specified period where it considers this to be necessary in the public interest. For example, if the application is amended at the last moment, the licensing committee should consider giving other persons

time to address the revised application before the hearing commences. Where the authority has extended a time limit it must forthwith give a notice to the parties involved stating the period of the extension and the reasons for it.

- (i) Conditions attached to premises licences and club premises certificates - Proposed conditions  
Paragraph 10.4 The conditions that are appropriate for the promotion of the licensing objectives should emerge initially from the risk assessment carried out by a prospective licence or certificate holder, which they should carry out before making their application for a premises licence or club premises certificate. This would be translated into the steps recorded in the operating schedule or club operating schedule, which must also set out the proposed hours during which licensable activities will be conducted and any other hours during which the premises will be open to the public.

10.8 The licensing authority may not impose any conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives. In order to promote the crime prevention licensing objective conditions may be included that are aimed at preventing illegal working in licensed premises. This provision also applies to minor variations.

10.9 It is possible that in some cases no additional conditions will be appropriate to promote the licensing objectives.

#### Proportionality

10.10 The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided. For example, conditions should not be used to implement a general policy in a given area such as the use of CCTV, polycarbonate drinking vessels or identity scanners where they would not be appropriate to the specific premises. Conditions that are considered appropriate for the prevention of illegal working in premises licensed to sell alcohol or late night refreshment might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring

that a copy of any document checked as part of a right to work check is retained at the licensed premises. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions. These could be a deterrent to holding events that are valuable to the community or for the funding of good and important causes. Licensing authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives.

- 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](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.**

Background Papers:	Licence Application
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