



Report of the Divisional Licensing Officer

Statutory Licensing Sub Committee - 10 June 2019

Licensing Act 2003 Section 34 Application to Vary a Premises Licence

1. Premises: Jack Murphys, 49 Uplands Crescent, Swansea.
2. Applicant : Jack Murphys Uplands Limited
3. Application to Vary a Premises Licence
- 3.1 An application to vary a premises licence was received by this authority on the 15th April 2019.

The premises currently operates under a premises licence

Supply of Alcohol

Monday to Saturday 1000-2300 & Sunday 1000-2230

Opening Hours

Monday to Saturday 1000-2330 & Sunday 1200 - 2300

- 3.2 A copy of the existing premises licence is attached at **Appendix A**.

The application proposes to extend the Supply of Alcohol

Monday to Thursday 1000-0000

Friday to Sunday 1000-0200

To add the following licensable activities Films, Indoor Sporting Events, Live Music, Recorded Music, Performance of Dance, Anything similar to Music/Dance,

Monday to Thursday 1000-0000

Friday to Sunday 1000-0200

Late Night Refreshment

Monday to Thursday 2300-0000

Friday to Sunday 2300-0200

Opening Hours

Monday to Thursday 1000-0030

Friday to Sunday 1000-0230

- 3.3 A copy of the application is attached at **Appendix B** with the accompanying plan shown as **Appendix B1**. Details of the variation can be found on **page 2 of Appendix B**.
- 3.4 A subsequent plan was provided on 29th April 2019 detailing the external area on the 1st floor as shown as **Appendix B2**. The applicant's solicitor has also provided further information / proposals by way of letter on 17th May 2019. This is attached at **Appendix B3** to the report.
- 3.5 The proposals include changes to the proposed hours of operation and suggested conditions to be attached to the licence should this be granted.

4. Background

The premises is situated in the Uplands area of Swansea. There are a number of commercial premises including licensed premises in the area that are surrounded by residential properties. The premises licence was granted in 2005. The premises has operated as a noodle/sushi restaurant called Wasabi for a number of years until it closed last year. The premises has remained closed since then. The current premises licence holder transferred the licence into their name on 15th April 2019.

A location plan of the 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.

6. RELEVANT REPRESENTATIONS

6.1 Responsible Authorities

a) **South Wales Police**

A representation has been received from South Wales Police. This is attached at **Appendix D**.

b) **Trading Standards**

No representations.

c) **Mid and West Wales Fire Authority**

No representations.

d) **Health and Safety**

No representations.

e) **Planning Authority**

A representation has been received from Planning. This is attached at **Appendix E**.

f) **Pollution Division**

A representation has been received from Pollution. This is attached at **Appendix F**.

g) **Child Protection**

No representations.

h) **Primary Care Trust/Local Health Board**

No representations.

i) **Licensing Authority**

A representation has been received from Licensing. This is attached at **Appendix G**.

j) **Immigration**

No representations.

j) **Other Persons**

Representations have been received from

Councillor Irene Mann along with a petition with 96 signatures. These are attached at **Appendix H1** with a breakdown of locations at **Appendix H2**.

Councillor Mary Sherwood. This is attached at **Appendix H3**.

Councillor Nick Davies. This is attached at **Appendix H4**.

10 residents. These are attached at **Appendix H5**.

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) 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.

(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 predominately residential areas and will impose strict conditions relating to noise control where representations are received and it is considered appropriate.

(iii) 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.

(iv) 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.

(v) 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.

(vi) 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.

Paragraph 15.6 Other Persons may request a representative to make representations on their behalf including a legal representative, friend, Member of Parliament, Member of the National Assembly for Wales, local Ward Councillor, Parish or Community Councillor. Detailed guidance for Other Persons making a representation or an application for a review of a licence or certificate can be obtained from the Home Office website www.homeoffice.gov.uk

7.2 A copy of the 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 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) Crime and Disorder – Chapter 2
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 – Chapter 2
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.

- (iii) Protection of Children From Harm – Chapter 2
Paragraph 2.22 The protection of children from harm includes the protection of children from moral, psychological and physical harm. This includes not only protecting children from the harms associated directly with alcohol consumption but also wider harms such as exposure to strong language and sexual expletives (for example, in the context of exposure to certain films or adult entertainment). Licensing authorities must also consider the need to protect children from sexual exploitation when undertaking licensing functions.
- (iv) 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.
- (v) Conditions attached to premises licences and club premises certificates – Chapter 10
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.

- (vi) 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 14.19 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.

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 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) to modify the conditions of the licence
(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 licence in respect of any deregulated entertainment will be suspended.)
 - (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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