



City and County of Swansea

Minutes of the **Statutory Licensing Sub Committee**

Multi-Location Meeting - Council Chamber, Guildhall / MS

Teams

Friday, 1 July 2022 at 10.00 am

Present: Councillor P M Matthews (Chair) Presided

Councillor(s)

V A Holland

Councillor(s)

L V Walton

Officer(s)

Charles Gabe

Aled Gruffydd

Yvonne Lewis

Samantha Woon

Licensing Officer

Associate Lawyer

Team Leader, Licensing

Democratic Services Officer

Also present

Mr B Parry

Mr E Alsab

Mr O Alsab

Applicant's Solicitor

Applicant

Applicant's Son

Mr B Davies

Mr A Yilma

Mr H R Esfahani

Representing 5 business owners

61 & 62 Wind Street

7 Wind Street

18 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.

19 Licensing Act 2003 - Section 17 - Application for a Premises Licence - Flame Kebab House, 11 Wind Street, Swansea. SA1 1DP.

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

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

The Licensing Officer reported on the application for a new premises licence in respect of Flame Kebab House, 11 Wind Street, Swansea, SA1 1DP.

He referred to the Licensing Objectives, policy considerations and the guidance from the Home Office. Specific reference was made to application for a premises licence at Appendix A and A1, the location plan of the premises at Appendix A1, details of other late night refreshment licences along Wind Street at Appendix B, the location of Flame Kebab House in relation to the business of those who are represented at Appendix C, conditions consistent with the operating schedule at Appendix D, the representations made by Other Persons at Appendix E and additional submitted by the Applicants representative at Appendix F.

He referred to the Cumulative Impact Special Saturation Policy (CIP) which was adopted by the Council on 30 July 2013. However, due to the Covid pandemic, the consultation and assessment as to whether the policy should continue was not conducted within the required time limits and therefore no regard can be given to Section 6, Cumulative Impact and Special Policy within the Swansea Statement of Policy for Licensing.

The absence of the CIP does not prevent any responsible authority or other person making evidence based relevant representations on a new application for the grant of an authorisation on the grounds that the premises will give rise to a negative cumulative impact on one or more of the licensing objectives.

A representation had been received from Mr B Davies representing Other Persons. A copy of their representations was attached at Appendix E. The representation related to the prevention of crime and disorder and public nuisance.

Mr B Davies (representing 5 Other Persons at: 1 Wind Street, 7 Wind Street, 61 Wind Street, 62 Wind Street and 55 Wind Street) further amplified the written representations objecting to the application and highlighted his concerns in relation to the undermining of the Statutory Licensing Objectives in relation to the prevention of crime and disorder and public nuisance.

He referred to the Council's adoption (on 30 July 2013) of the Cumulative Impact Special Saturation Policy for Wind Street and the surrounding area. The Special Policy was reviewed as part of the review of the Statement of Licensing Policy undertaken in 2018 and it was agreed it that the Policy needed to remain in place.

He stated that there is a presumption that any application for a premises licence, club premises certificate or a variation that is likely to add to the existing cumulative impact will be refused. His view was that Flame Kebab House did not meet any the exemptions set out within the Cumulative Impact and Special Policy and therefore the application should be refused.

The Lawyer advising the Committee stated that the report confirmed that the Policy had lapsed and his advice to the Committee was not to take this into account. He stated that there is a presumption to grant the licence unless the Licensing Objectives are not being met.

Mr Davies referred to paragraph 1.3 which stated that the Policy will remain in force until revised. Sections 5 and 5a stated that the Licensing Authority must publish a

statement of revisions. He asked Officers if they could confirm when revocation of Section 6 was agreed by the Committee/Council.

The Lawyer advising the Committee referred to section 5a (2017) which requests the Policy is to be reviewed every 3 years in order for the cumulative impact area to be re-established. He re-iterated that his advice was that if that consultation was not undertaken, then that Policy is revoked.

Mr Davies stated that the Authority had no power to revoke section 6 unless appropriate action had been taken in the Court.

The Lawyer advising the Committee advised that it was his view that an order for the Policy to continue required evidence based on consultation that is to be carried out within 3 years. Evidence was not there to continue that Policy. The onus was on the Local Authority to continue the status quo if that evidence is not there.

Mr Davies questioned what evidence the Authority had to indicate that there is no Policy as the Act did not state that. Furthermore, in order to amend the Policy, the Act is very clear and it cannot simply be revoked, the Licensing Statement does not state that.

The Lawyer advising the Committee referred to a difference of opinion regarding the status of the Policy which may need resolution by a higher Court.

Mr Davies stated that it was critical to ensure that there was a mix of premises in Wind Street. The proposed premises was closed for the vast majority of the day therefore, if the Authority did not enforce the Policy, Wind Street could become the infamous 'chip alley' in Cardiff. He questioned the assurances given by the Applicant and felt the premises would exacerbate existing issues in relation to crime and disorder and public nuisance. He stated his clients were established business partners in Wind Street and granting the application would undermine 3 of the 4 Licensing Objectives. He reiterated his view that revocation of the Policy was unlawful.

Mr B Parry, Solicitor representing the Applicant, referred to the premises which was located in the centre of Wind Street and taken on a 10 year lease. He referred to the photographs of the premises and advised that the Applicant had invested £100,000 in the premises and paid an annual rent of £18,000.

He reported that the Applicant was not a 'fly by night' and had invested a lot in the business. He stated that the premises was a Middle Eastern BBQ and Grill.

He referred to the letter of representation on page 32. The premises had previously been known as Tinos which had closed organically in 2018. The intention was for the premises to trade between 4pm and 5am although whether it would trade until 5am remained to be seen. He referred to the historic issues associated with Wind Street in its former 'glory days'.

He referred to the lack of DPS within the application and stated that Mr E Alsab (Applicant) would take this role. He referred to the Applicant's experience of working in kebab shops in Swansea and the Netherlands.

He highlighted the lack of representations from the Responsible Authorities which was of critical importance as they were the 'experts'. The experts had been consulted and they were not concerned about crime and disorder. No representations had been received from Pollution Control. He reported that the lack of representations from the Responsible Authorities were of huge importance and would therefore weigh heavily with the decision of the Sub Committee.

In regard to the Policy, he advised that when in force there was a presumption against grant. On this basis, the application should be dealt with on its merits. Whilst there was some debate regarding the legal status of the Policy he was of the opinion that the Lawyer advising the Committee was correct.

Determination of the application was based on an evidence based approach and in the absence of representations from Responsible Authorities, there was no evidence any concerns. He stated that suggesting granting the licence would encourage more people to visit Wind Street was farcical as trade taking place in Wind Street would be exactly the same and there would be no negative cumulative impact. He suggested the reverse would occur, with less queuing because there is another outlet for them.

The application was regulated and well managed to address the Licensing Objectives. The premises had lots of room internally and external seating would be removed 11pm. He asserted that it was a good application which should be determined on its merits.

He stated that the representation was a trade objection which would result in less trade from other premises. He referred to page 32 of Mr Davies' letter, and the fact that the premises was operating legitimately with temporary event notices.

In response to a Member question, the lawyer advising the Committee stated that there was no requirement to advertise when the CIP was not in place.

Mr Davies stated that by section 6 of the Licensing Statement being disallowed, the Act states that the Local Authority must publish a revised Statement.

The Lawyer advising the Committee stated that was a breach and there was a requirement to republish the revision.

In response to a Member question, the Applicant's Solicitor confirmed that there had been no problems when the premises was trading under temporary event notices and intoxicated individuals entering the premises would be turned away.

Mr Davies stated that he strongly believed that the CIP is in place and there was clearly a risk to the Authority. Section 6 still applies, so this application should be refused.

The Lawyer advising the Committee stated that there was a 5 day window for the Committee to make a decision and therefore that will be taken into consideration.

In conclusion, the Applicant's Solicitor stated that the Committee would deal with the application on its own merits. Even if the CIP was in place, the Sub Committee must deal with the application on its merits. He referred to the Thwaites case.

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 Lawyer advising the Sub-Committee gave a comprehensive overview of the legal advice tendered.

The Chair indicated that the Sub-Committee had considered the application and representation 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 **Grant** the application subject to conditions consistent with the operating schedule and as modified as considered appropriate for the promotion of the licensing objectives as below.

1. CCTV will be provided in the form of a recordable system, capable of providing pictures of evidential quality in all lighting conditions, particularly facial recognition. Cameras shall encompass all ingress and egress to the premises, fire exits, all areas where the public have access and any external areas. Equipment must be maintained in good working order, the system must continually record whilst the premises is open for licensable activities and during all times when customers remain at the premises. Recordings must be correctly timed and date stamped and kept in date order, numbered sequentially and kept for a period of 31 days and handed to a Police Officer/Local Authority Officer on demand. The Premises Licence Holder must ensure that at all times a Designated Premises Supervisor (DPS) or appointed member of staff is capable and competent at downloading CCTV footage in a recordable format to a Police Officer/Local Authority Officer on demand. The Recording equipment shall be kept in a secure environment under the control of the DPS or other responsible named individual. An operational daily log must be maintained, endorsed by signature, indicating the system has been checked and is compliant. In the event of any CCTV system failings the actions taken are to be recorded, and the Premises Licence holder/DPS must report the failure to the Police/Local Authority.

2. SIA registered door staff shall be employed on occasions when a requirement is identified by the licence holders written risk assessment. Consideration will be given to events within the local area, public holidays and days considered to be major event days in the city centre.
3. Register of door supervisors will be maintained at all times
4. An incident book, bound in numerical order, shall be maintained at the premises showing details of the date and time of all assaults, injuries, accidents, interventions by staff or ejections, as well as details of the members of staff involved, the nature of the incident and the action/outcome. The book must be kept available for inspection by the Police and authorised officers of the Local Authority.
5. The number of persons permitted in the premises at any one time (including staff) shall not exceed 30 persons.
6. Door staff, managers and employees will be instructed to count the number of persons in the premises, especially during busy times.
7. The premise shall keep a first aid kit available and ready to use whenever an incident occurs that requires the application of a first aid kit.
8. The premise will have at least one employee trained in first aid on duty.
9. The premise does not make use of any loudspeakers.
10. Signs and notices to leave quietly shall be prominently displayed at the exists.
11. A direct telephone number for the manager at the premises shall be publicly available at all times the premises is open. This telephone number is to be made available to residents in the vicinity.
12. Removable seating areas shall be removed from the premise by 23:00 each day.
13. All external seating will be removed by 2300hrs.
14. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
15. No rubbish, including bottles, shall be moved, removed or placed in outside areas between 2230 hours and 0900 hours.
16. Customers will not be served with drinks which are in glass containers or leave the premises with glasses or glass bottles.

Reasons

The Sub-Committee considered its decision and reflected the balance required by its duty under s5 of the Licensing Act 2003 to promote the Licensing Objectives, and

with the guidance at paragraph 1.5 and the principles set out in the case of R (on the application of Hope & Glory Public House Ltd) v City of Westminster Magistrates Court and Others (2011) EWCA Civ 312).

The Sub-Committee determined in accordance with the legal advice given by the Legal Officer to the Sub-Committee that the Cumulative Impact Special Saturation Policy adopted on the 30 July 2013 and reviewed on the 26 July 2018 was not in force at the time the application was made, on the basis that the Licensing Authority had not complied with the requirements set out in section 5A of the Licensing Act 2003.

Section 5A of the Licensing Act 2003 sets out the mandatory requirements for a Licensing Authority to comply with before it can determine whether the Cumulative Impact Policy remains in force. The effect of the Cumulative Impact Policy on new applications is that those applications will need to show why the grant of a new premises licence or variation application will not add to the cumulative impact that the number, type or density of licensed premises is impacting adversely on the licensing objectives.

The Sub-Committee determined that in the absence of such compliance the Cumulative Impact Policy had not been renewed and therefore lapsed.

As such the Sub-Committee recognised that there is a presumption to grant the licence in the terms sought however the applicant must still satisfy the members of the Sub-Committee on how the application will promote the licensing objectives. The members were of the view that the applicant successfully demonstrated this for the following reasons:

- The Sub-Committee noted that there were no representations from responsible authorities in respect of this application and had regard to the case of *Thwaites v Wirral Borough Magistrates Court* [2008] EWHC 838, which stated that a committee "...must scrutinise their own anxieties about matters such as noise and other types of public nuisance particularly carefully if the responsible authorities raise no objections on these grounds...";
- The Sub-Committee had regard to the concerns of the objectors but noted that the applicant had operated under temporary event notices up until applying for a premises licence. There were no issues or complaints in respect of the premises during this period, and there was no evidence introduced by the objectors to support their concerns;
- The Sub-Committee were also encouraged that no alcohol was being sold at the premises and that any intoxicated customers would be refused service.

The Sub-Committee also determined that in the event that the legal advice given in respect of the Cumulative Impact Policy was incorrect and that it was still in force, they were satisfied that the granting of this licence would not contribute to the cumulative impact of the area for the following reasons:

- There is no barrier to a licence being granted with a Cumulative Impact Policy in force, the emphasis being on the applicant to show that the premises would not contribute to the cumulative impact of a concentrated number of licensed premises in the same area. The Sub-Committee had regard to the fact that this was an application for late night refreshment with no permission for the sale of alcohol being sought. Members also had regard to the fact that licences have been granted within the cumulative impact area on previous occasions, with those licences containing permission to sell alcohol;
- Again the Sub-Committee had regard to the fact that no representations were made by responsible authorities, notably the Police, who were not concerned with the impact of these premises on crime and disorder;
- The Sub-Committee recognised that these premises would not attract increased footfall to the area and would dilute the existing footfall congregating in other areas;
- The Applicant had opened under numerous temporary event notices without any complaints or issues, and that temporary event notices are less restrictive than a premises licence in respect of conditions imposed.

Finally the Sub-Committee noted the comment made by the representative for the objectors that the report presented by the licensing officer at today's hearing was written in support of the application. The Committee found that the report was written factually with no expression of opinion in respect of the application.

Right of Appeal:

Following receipt of this notice you have a right of appeal to the Magistrates Court.

An appeal must be made in writing to the Chief Executive of the Justices for the Magistrates Court within 21 days from the date of receipt of this notification.

The meeting ended at 11.40 am

Chair