



City and County of Swansea

**Minutes of the Statutory Licensing Sub Committee
2018/2019**

Council Chamber - Guildhall, Swansea

Friday, 17 May 2019 at 10.00 am

Present: Councillor P M Matthews (Chair) Presided

Councillor(s)
P Lloyd

Councillor(s)
C L Philpott

Officer(s)

Lynda Anthony
Aled Gruffydd
Yvonne Lewis
Lyndsay Thomas
Samantha Woon

Licensing, Food and Safety Manager
Lawyer
Team Leader, Licensing
Principal Lawyer
Democratic Services Officer

13 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.

14 Licensing Act 2003 - Section 17 - Application for a Premises Licence - Smugglers Beach Bar and Kitchen, Port Eynon, Swansea. SA3 1NN.

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 Senior Lawyer 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 premises licence in respect of Smugglers Beach Bar and Kitchen, Port Eynon, Swansea, SA3 1NN.

He referred to the Licensing Objectives, policy considerations and the guidance from the Home Office. Specific reference was made to current licence at Appendix A.

The Licensing Officer referred to an administrative error regarding the reference to Off Sales and missing conditions one of which referred to alcohol being consumed by patrons eating at tables the other regarding notices being prominently displayed in relation to smoking and exiting the premises quietly.

He detailed the activities requested in the current application, the background of the premises and the hours of operation of the other licensed premises within the village.

Members noted the location plan of the premises at Appendix B, a plan of the proposed premises at Appendix C and conditions consistent with the operating schedule at Appendix D.

Two representations had been received by Other Persons, both of whom have properties in the village of Port Eynon. These were detailed at Appendix E. The representations related to the prevention of crime and disorder, public nuisance and public safety.

The Lawyer advising the Committee received confirmation that Members had considered the representations on pages 18 and 19.

In response to a question from the Lawyer advising the Committee, the Licensing Officer advised that the car park is owned by Swansea Council. The car park has a barrier which is used from 23.00 hours during the Summer months. However, the barrier is not locked and cars can still access the car park. Planning colleagues have confirmed there are no time restrictions and no change of use is required in relation to the premises being amended from a restaurant to a bar.

Mr Parry, Solicitor representing the Applicant, provided a comprehensive overview of the background and context of the application. He stated that the Applicant was born and bred in Port Eynon, the premises having been built by her Father. The Applicant manages Captains Table Fish and Chip shop also situated within the village. The premises recently came back into the applicants control, having been previously in the control of other family members. The premises has been used in the past as a restaurant, the previous licence stating that alcohol is auxiliary to a main meal. £300,000 has been invested into the premises during its renovation.

The premises is located in a holiday area and most activity is during the holiday season. The premises was previously only open during Summer months. The Applicant wants to operate 52 weeks a year to inject something into the village. The holiday scene, the way the industry has developed, holiday lets and use of caravans have resulted in use throughout the year.

The applicant seeks to offer a range of food options and beverages. A function room has also been developed however the use of this remains to be seen and it is uncertain whether this will be a success.

Mr Parry referred to the additional information which contained information regarding employees, menu, plan 1 showing external areas, plan 2 showing location of function stage/DJ point when in use and photographs of existing external area and of the Applicants premises.

Members' noted that the plan relating to the external area/smoking area would be the subject of a further amendment by means of a minor variation to the existing licence, should the licence be granted.

He detailed the green plan which identified the proposed car park area. The area benefitted from ample parking. The external area also contains the smoking area.

The external area is required as the premises is situated in a holiday area. He advised that when determining the application, for many people this is their annual holiday and highlight of the year. He therefore suggested that the overall package is appropriate for people having their annual holiday.

He referred to the issue of live music which was raised in Mrs. Gill's representation and directed Members to the location of DJ point when in use (detailed in the photographs which was situated at the corner of the building). He drew Members' attention to the ample space within car park photograph, from the back looking out of the function room.

He stated that it was anticipated that patrons would exit the premises via the wooden doors which goes straight to the beach. Therefore, they it is unlikely that they will encounter anyone.

He detailed the hours the premises are open to the public, whilst accepting they were different to the Ship, he suggested that the hours were modest and appropriate.

Mr Parry detailed the application and referred to the Licensing Officer's description of the premises. He referred to indoor sporting events and confirmed that this simply allowed for a dart board/pool table and the anticipation was that these activities would not attract crowds of people.

Members' noted that the intention in regard to live music in the external areas would be to amend the condition to cease at 1900 hours. Similarly, live music inside the premises, will cease 2300 hours.

He referred to the issue of late night refreshment raised in one representation. The plan was to offer coffee/bar snacks for campers there being a minority of people who will want to take things away with them.

He stated that as far as the Operating Schedule is concerned, the conditions proposed in order to promote the licensing objectives of the prevention of crime and disorder are as comprehensive as you would expect if this premises was in the City Centre. Public Safety, public nuisance and the protection of children from harm, are comprehensively addressed, however there are anomalies in the external area.

He stated that it was not inconceivable that there would be migration from the Ship to the proposed premises in order to take advantage of last hour and hour. In the event of any nuisance to residents, the Applicant would be agreeable to amending the hours to that of the Ship, should there be a future issue. However, there was no evidence to suggest that this may be a problem.

The very generous car park and Council car park opposite the premises may alleviate any concerns regarding nuisance from the public when they depart the premises.

He referred to the creation of jobs within the community, and whilst not a licensing objective was something that would benefit the village.

In response to Member questions, Mr Parry stated that:

- Doors and windows will be closed if music is being played, However, this will cease at 1900 hours.
- The issue of amplified music will be clarified in the variation application. There will be no permanent external speakers broadcasting music outside and similarly none inside. Any concerns regarding noise will be dealt with via good management and being a good neighbour. Furthermore, in the absence of any representations from the Council Pollution Control Section there is no evidence to support that this would be an issue.
- The external area licensed area has not been detailed on the plan and therefore the Committee is unable to grant permission. This will be subject of a variation application should the licence be granted.
- Two representations have been received from village with 517 adult residents. Everyone in Port Eynon is aware of the application and knows the applicant, there is not a situation of feeling against the application. The interpretation is therefore, that they support this application as it stands.
- The Applicant agrees to the revised time of 2100 hours for the disposal of refuse.
- The external area will be landscaped in due course.

In conclusion, Mr Parry referred to the 'Thwaites' case and commended the application to Members.

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. 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.
3. Other than for off sales in sealed containers no drinks are permitted to leave the licensed and consumption area as shown on the deposited plans
4. No consumption of alcohol or other refreshments to be permitted after 22.00 hours in the external drinking area.
5. There shall be "CCTV in operation" signs prominently displayed in the premises
6. No permanent loudspeakers shall be located in the entrance lobby or outside the premises building.
7. No live music to be played in the car park or external area or smoking area after 19.00hours
8. All windows and external doors shall be kept closed after 21:30hrs, or at any time when regulated entertainment takes place, except for the immediate access and egress of persons.
9. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and leave the area quietly.
10. Notices shall be prominently displayed at any area used for smoking requesting patrons to respect the needs of local residents and use the area quietly.

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. The car park and external area and smoking area to be regularly supervised by staff from premises when in use.
13. No rubbish, including bottles, shall be moved, removed or placed in outside areas between 21.00 hours and 0800 hours.
14. Throughout the venue an additional soundproofing suspended ceiling made from two layers of high density acoustic board and additional specialist soundproofing quilting will be installed and maintained.
15. A Challenge 25 proof of age scheme shall be operated at the premises where the only acceptable forms of identification shall bear their photograph, date of birth and a holographic mark.
16. A log shall be kept detailing all refused sales of alcohol. The log will include the date and time and reason for the refused sale and a means of identifying the member of staff who refused the sale. The log shall be available for inspection at the premises by the police or an authorised officer of the Council at all times whilst the premises are open.
17. Notices shall be clearly displayed in the premises to emphasise to customers the prohibition on providing sales of alcohol to persons under the age of eighteen years.
18. Premises to keep up to date records of staff training and refresher training in respect of age related sales including proxy sales, sales to persons who are drunk and identifying and preventing drug misuse, in written or electronic format, available for inspection on request by an authorised officer.
19. Persons under the age of 16 years to be accompanied by an appropriate adult at all times.

Reason for Decision

1. Members had regard to the two Relevant Representations (RR) (RR1 page 18 & RR2 page 19) made but in the absence of the Other Persons attending could only consider the matters raised in the written Relevant Representations and could not seek clarification or their views on the applicant's representations in support of the application and the document and further information provided. The Other Persons at page 18 of the report had commented that the plan provided, showing the car park, smoking area and external area in different colours, was older and reliance should be placed on the plan in the report (page 14) which was more up to date and showed more residential accommodation.

2. Accordingly the Committee accepted the applicant's representations that it was more likely than not the persons attending the premises would leave via the wooden gate shown in the photograph in the additional documents provided rather than via the village so disturbance would not be increased.
3. No evidence of disturbance from the Ship, which was trading, save a mention in RR 2 but no detailed information of any issues which could assist the committee. Committee mindful no reps from Environmental Health as a Responsible Authority who had been consulted. Committee noted the premises was not currently trading and its past operation as a restaurant would be very different to the proposed new operation for which the licence being applied for. The new licence would allow customers to buy just a drink without food which is not currently the case. The Committee noted the Applicants comment that the whole village was aware of the application and the majority chose not to make relevant representations. No relevant representations made any responsible authorities.
4. Also RR 2 details (page 19) were not made available so committee could not determine if the likely effect of the grant would affect that property as suggested and therefore less weight could be given to RR1.
5. The Committee noted the officer's information that the Authority's car park in the busy season would be open to 23.00 hours and the planning situation, whilst not relevant to the application, did not require any applications for the proposed new operation.
6. It was evident that the proximity of the RR1 would be mean the occupiers could be adversely affected by activities at the premises and the Committee placed greater weight on the concerns raised in RR1 and considered how any adverse effects could be mitigated.
7. The Committee considered migration but were aware that there had always been differences between the respective premises opening hours and accepted the applicant's position that for the 0.30 minutes difference in terminal hours any effect of migration would be minimal in the absence of any evidence to the contrary from responsible authorities/other persons.
8. The Committee disregarded any references to problems with car parking and need for further premises as they were not relevant factors for the promotion of the licensing objectives.
9. The Committee accepted the RR1 that noise nuisance from the external area/car park/smoking area could be the likely effect of a grant so modified the conditions in appendix D as set out in amended below .
10. The members were satisfied the modified conditions would limit any public nuisance from the premises.
11. In the absence of any evidence to the contrary the Committee accepted the applicant's representations regarding the layout and available space in the car park as evidenced by up to date photographs provided to accommodate cars and the external area and there was no public safety issues that needed to be addressed.
12. The Members had legal advice that the proposed modifications to the conditions on the licence were appropriate and conditions controlling the use of the external area/smoking area/ and car park which were accepted as being outside the licence premises applied for was lawful by virtue of s18(10)of the

LA 2003 and as held at [39] of R(On the application of Developing Retail Ltd) v East Hampshire Magistrates Court [2011]EWHC 618 (Admin).

13. A condition was to be added to Appendix D in the terms that no amplified music was to be played in the external area/car park/smoking area after 19.00 hours.

The meeting ended at 11.55 am

Chair