

CITY AND COUNTY OF SWANSEA

MINUTES OF THE STATUTORY LICENSING SUB COMMITTEE

HELD AT COMMITTEE ROOM 1, CIVIC CENTRE, SWANSEA ON
WEDNESDAY, 18 NOVEMBER 2015 AT 10.00 AM

PRESENT: Councillor P Matthews (Chair) Presided

Councillor(s)	Councillor(s)
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A C S Colburn	K E Marsh
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Officers:

L Thomas	- Senior Lawyer
R Westlake	- Senior Licensing Officer
B Walker	- Licensing Officer
S Woon	- Democratic Services Officer

Responsible Authorities:

S Clarke	- Pollution Control Division
J Aazem	- Pollution Control Division
N Bailey	- South Wales Police

28 **ADJOURNMENT.**

The Lawyer advising the Committee stated that due to a medical emergency a substitute Member would be attending. Furthermore, she stated that the Designated Premises Supervisor and the Premises Licence Holder were not yet in attendance and suggested that it would be in the public interest to briefly delay the start of the meeting to allow the parties to attend. The Responsible Authorities agreed to delay the start of the meeting

When the committee convened the Sub Committee **RESOLVED** to adjourn the meeting until 10.45 am for the substitute member to consider the papers.

29 **APOLOGIES FOR ABSENCE.**

No apologies for absence were received.

30 **DISCLOSURES OF PERSONAL AND PREJUDICIAL INTEREST.**

In accordance with the Code of Conduct adopted by the City and County of Swansea, no interests were declared.

31 **LICENSING ACT 2003 - SECTION 51 - APPLICATION FOR A REVIEW OF A PREMISES LICENCE - W50, 50 CROWN STREET, MORRISTON, SWANSEA, SA6 8BR.**

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 premises licence holder Mr Daniel Derrick Thomas and the Designated Premises Supervisor Mr Martyn Craig Smith were not in attendance.

The Senior Licensing Officer stated that an application for a review of a Premises Licence had been made under the provisions of section 51 of the Licensing Act 2003. The application had been received on 24 September 2015.

He also reported that the premises licence holder, at the time of the application for a review, was Mr Martyn Craig Smith, 99 Martin Street, Morriston, Swansea SA6 7BL. However, an application was received on 2nd November 2015 to transfer the premises licence to Mr Daniel Derrick Thomas, 429 Llangyfelach Road, Brynhyfryd, Swansea, SA5 9LN which had taken immediate effect.

The Designated Premises Supervisor (DPS) remained to be Mr Martyn Craig Smith.

The applicant, Mr Huw Morgan, Divisional Officer of Pollution Control acting as Responsible Authority under the Act, considered that the Licensing Objective in relation to the Prevention of Public Nuisance had not been promoted. Full details of the review were attached at Appendix C.

Representations supporting the review application had been made by South Wales Police on 16th October 2015. A copy of the representation and additional evidence were attached at Appendix D.

In response to the Notice of Hearing issued to the Premises Licence Holder on 23rd October 2015, a letter of response had been submitted to the Licensing Authority from Mr Martyn Craig Smith. A copy of the letter was attached at Appendix E.

The Senior Licensing Officer referred to policy considerations and guidance issues by the Home Secretary concerning reviews which was attached at Appendix F.

In response to a question in relation to the absence of the Designated Premises Supervisor and the Premises Licence holder, the Senior Licensing Officer stated that Notices of Hearing had been sent to all parties on 23 October, 2015. Furthermore, he confirmed that Notices of Hearing had been hand delivered to both the Designated Premises Supervisor and the Premises Licence Holders, former and current. An electronic copy was also sent to the current Premises Licence Holder, Mr Daniel Derrick Thomas. No evidence had been received to suggest that the documentation had not been received.

Mr Simon Clark, Pollution Control Division on behalf of Mr Huw Morgan, amplified the representation detailed at Appendix C. He outlined the content of the application for a review, giving a history of actions taken in respect of statutory noise nuisance.

In conclusion Mr Clark stated that the premises was not well run and had caused problems in the past under a previous name with the same manager. The evidence indicated that Mr Smith had not acted responsibly and had caused a public nuisance to local residents. Mr Clark requested that the Premises Licence be revoked.

In response to Member questions, Mr Clark confirmed that:

- Fines of £3230 and £532 remained outstanding;
- Anonymous complaints had been received from more than one member of the public.

In response to a question from the Lawyer advising the Committee, Mr Clark stated that Mr Smith appeared to be confused regarding the status of his premises as he often referred to 'Club' licence

In response to a Member question, the Lawyer advising the Committee confirmed that Mr Smith possessed a premises licence.

Mr Nick Bailey, South Wales Police, amplified his representation detailed at Appendix D. He stated that Mr Smiths' ongoing reference to the premises being a 'Members Club' was an attempt to give exclusivity to the premises.

He outlined the content of the representation, giving a history of actions taken in respect of crime and disorder.

Over the past 18 months there had been a growing number of incidents reported either at, or in the immediate vicinity, of the premises.

Since 1 January, 2015, there had been 25 calls regarding the premises, which ranged from ASB/Noise Complaints; Public Order and Violence; Drugs and Others.

A trend throughout the calls relating to anti-social behaviour was the number of reports that the premises was opening and trading well beyond permitted hours and reports of frequent open drug use at the premises.

Mr Bailey stated that Mr Smith as the Premises Licence Holder and Designated Premises Supervisor had shown a continued disregard for the Premises Licence Conditions.

In conclusion, Mr Bailey stated that:

- the number of incidents, behaviour of customers and lack of any control of the premises by either the DPS or staff had significantly undermined the Licensing Objective of Preventing Public Nuisance;
- the number of assaults and fights undermine the Licensing Objective of Promoting Public Safety;

- the lack of help in terms of providing assistance by way of providing CCTV footage when requested; the levels of drugs found at the premises during the itemiser visit and subsequent reports of open drug usage within the premises undermine the Licensing Objective of Preventing Crime and Disorder.

Mr Bailey further stated that Mr Smith has indicated, on a number of occasions, that the customers were running the premises and he and his staff were struggling to impose any control over them.

Mr Bailey confirmed that he supported the Review Application submitted by the Pollution Control Division requesting the revocation of the Premises Licence.

(CLOSED SESSION)

Members discussed the issues relating to the application.

(OPEN SESSION)

The Lawyer advising the Committee stated that an email had been received by Licensing colleagues from Mr Smith that morning which had only now come to their attention advising that he was setting up a new business and the premises had been sold. Mr Smith had resigned his position fully.

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 **REVOKE** the Premises Licence.

Reasons for Decision

The Sub Committee accepted that a notice of hearing had been served on the Premises Licence Holder (PLH) who was also the Designated Premises Supervisor (DPS) (The Management) at the time an application for a review of the premises licence was made. A further notice of hearing was served on the current PLH following a transfer of the premises licence on 2nd November 2015. No reason for their non-attendance at the hearing had been received although the Sub Committee noted an email dated 23rd October 2015 had been received on 17th November 2015, the day of the Hearing, at 11.13am suggesting Mr Martyn Craig Smith the DPS no longer had any interest in the premises.

In the absence of the current PLH or DPS to challenge and/or provide mitigation, the allegations of the breaches on pages 34, 35 and 36 of the report were found to have taken place.

The Sub Committee also found:

- the Management as being responsible for the breaches.
- the Management was not reactive to issues which arose and had done nothing to resolve the breaches and/or been pro-active to prevent the breaches occurring.
- the applicant's and the Responsible Authority's representations demonstrated that the Management at the time of the incidents had failed to promote the LO's and showed little or no regard for them.
- the applicant's and the Responsible Authority's representations indicated that the Management was aware of the requirements of the Licensing Act 2003 and that although it was known what was needed to be done, had consciously decided not to take the advice that had been given.
- that there was no evidence the current PLH or the DPS was willing or able to take action to avoid further breaches.
- that both the applicant and the responsible authority had given assistance, guidance and support but the Management had disregarded it and had failed on a number of occasions to engage with these parties.
- that previous warnings and prosecutions had not been heeded and by the Management's own admissions could not control his own patrons.

The Sub Committee felt, that in the absence of information from the PLH and/or the DPS, revocation of the premises licence was necessary in order to prevent any further use, which may result in an undermining of the Licensing Objectives. The members were not satisfied that the step of transferring the premise licence would be enough to avoid any further breaches of the licence which going forward would not result in the promotion of the Licensing Objectives which was of paramount importance.

The Sub Committee had grave concerns over the ability of Mr Martyn Craig Smith to be a DPS of a licensed premises and suitability to hold a personal licence.

The meeting ended at 12.25 pm

CHAIR