

## STATUTORY LICENSING SUB-COMMITTEE

Minutes of a Remote meeting held on 3<sup>rd</sup> July, 2020.

Present: Councillors Mrs. P. Drake, Mrs. R. Nugent-Finn and J.W. Thomas.

Also present: Multiple Licensing Officers (Vale of Glamorgan Council), Legal Officer (Vale of Glamorgan Council), Democratic Services Officers (Vale of Glamorgan Council), Mr. Philip Brown, Mr. David Hughes, Mr. Matthew Phipps and Mr. Philip Carl Ryan.

The Democratic and Scrutiny Services Officer explained the procedure to be used for the hearing and advised that a copy of the procedure was available within the agenda.

(a) Appointment of Chairman –

Councillor J.W. Thomas was elected Chairman for the duration of the hearing.

(b) Declarations of Interest –

No declarations were received.

(c) Licensing Act 2003 – Grant of Premises Licence – Beachcliff Traditional Fish and Chips, The Esplanade, Penarth, CF64 3AS –

The Chairman welcomed those present to the Sub-Committee hearing and invited each person to introduce themselves (a short adjournment was held while an attendee resolved some technical issues).

The Chairman then invited the Licensing Officer to present the report, who advised this was an application under the Licensing Act 2003 ("the Act") for the grant of a Premises Licence at Beachcliff Fish & Chips, The Esplanade, Penarth, CF64 3AS, submitted by Pen Trading Limited. The application sought licensable activities of late-night refreshments and the sale of alcohol as indicated within the report.

There had been no representations made from the Responsible Authorities.

Five representations had been made by Other Persons as a result of the advertising of the application which were referred to within the report. The reason for the hearing was that these representations had not been withdrawn.

The Officer finally noted that two additional bundles of information had been submitted for consideration – one by the Other Persons and one by the Applicant – which had been distributed to all parties prior to the meeting.

Following the Licensing Officer's presentation of the report, the Chairman invited Mr. Phipps (the Applicant's representative) to present the case.

Mr. Phipps advised that a note outlining the application had been submitted to the Sub-Committee for their review. To summarise this, he started by saying that this was an application with several component parts:

- Permission to sell alcohol on and off the premises until 23:00 hours Sunday, Monday, Tuesday and Wednesday;
- That on Thursday, Friday and Saturday the permission to sell alcohol be extended until 00:00 hours (12 midnight);
- That on Thursday, Friday and Saturday sell hot food and hot drink until 00:00 hours (12 midnight) (late night refreshment);
- To have 30 minutes 'wind-down' period.

Mr. Phipps stated the Applicant recognised that one of the key concerns raised by Other Persons was the off-sales of alcohol after 23:00 hours and on the note submitted to the Sub-Committee the Applicant had proposed that the only permission for the sale of alcohol after 23:00 hours would be for on sales only and to consume drink with food on the premises after 23:00 hours on Thursday, Friday and Saturdays – following the receipt of the representations from other interested parties.

Mr. Phipps added that this was not a 'greedy' application but rather a sensible, measured and proportionate one.

Mr. Phipps went to say that the application proposed that the Designated Premises Supervisor would be Mr. Philip Carl Ryan (also present at the hearing), an experienced Licensee with 20 years' experience working throughout Cardiff and now The Vale. Mr. Ryan was resident above the premises.

Mr. Phipps referred to there being a number of conditions proposed to attach to the Licence. These attended to the issues anticipated in a License of this sort, and he then summarised these as follows:

- Comprehensive CCTV system. This had already been installed in the premises and covered both the inside and immediately to the outside of the property;
- An incident log would be kept;
- No super strength beer or lager to be supplied;
- No self-service of alcohol at the premises;
- No noise nor fumes, steam or odours to escape from plant or equipment;
- Litter and cleansing procedures had been put in place in conjunction with no collections of waste or recycling after 23:00 hours and before 08:00 hours (which he would return to later on, as these issues had been raised by Other Persons);
- No "bottling out" between 22:30 hours and 08:00 hours;
- No deliveries between 22:00 hours and 08:00 hours;
- Waste to be properly presented;
- Regular litter patrols;

- Smoking area to be supervised;
- Challenge 21 Proof of Age Policy applied in relation to alcohol.

Mr. Phipps stressed the conditions set out addressed the concerns raised by the Other Persons and indeed the license – if granted - would impose a regulatory obligation on the Applicant and this would be to everyone’s advantage.

Mr. Phipps noted that the Applicant first applied for this license in January and after the consultation this would have been heard in March but for the outbreak of Covid 19 – up until the end of March 2020, the Applicant successfully obtained a number of Temporary Event Notices to allow the premises to trade with the sale of alcohol until 23:00 hours. The Applicant was unaware of any concerns being articulated about that at all.

Mr. Phipps referred to the representations within the report and there appeared to be no issues with the sale of alcohol before 23:00 hours but rather with sales after this time on Thursdays, Fridays and Saturdays.

Mr. Phipps then made reference to the representations and addressed each of these accordingly. For example, in relation to the representation made about potential late night anti-social behaviour and conduct as well as early morning refuse collections, Mr. Phipps stated that this application specifically attended to and effectively neutralised any such behaviours from this premises. He added that midnight was not an unreasonable timeframe for these premises, Mr. Phipps referring to other premises in the vicinity which had hours that extend to 01:00 hours and even 02:00 hours in the morning. Another example was a representation made about the late-night off-licence element of the application. The Applicant had now reflected on the concerns expressed within the representation and felt this could be a legitimate point of concern for residents and others and the Applicant would not be proceeding with this as a result.

Mr. Phipps also noted that none of the Responsible Authorities had submitted a representation to this application such as South Wales Police or Environmental Health. This was a particularly significant point in favour of this application and reflected the conduct of the premises during the consultation process and Temporary Event Notices.

Mr. Phipps then returned to the concerns around litter that had been raised – for example, in the photographs submitted by the Other Parties concerning litter that had been left around the litter bins situated around the Esplanade. Mr. Phipps had submitted photographs showing staff from the premises picking up rubbish discarded around the bins in order to alleviate this. This operated as part of a waste collection system by the Applicant and Mr. Phipps had submitted photographs showing that the premises’ commercial waste had been managed effectively. The Applicant had already put in conditions in order to deal with these issues and was happy for the Sub-Committee to add additional conditions to help address this (for example, producing a waste management plan).

Mr. Phipps noted the attendance of the Other Persons at today’s meeting. He added that the Applicant was more than happy to hold six monthly meetings with Other

Persons – such as local residents in order to address their concerns regarding the premises.

A short adjournment was held in order for the Sub-Committee and the Other Persons to have the opportunity to look at the written representation submitted by Mr. Phipps regarding the points referred to above.

After the short adjournment, the Chairman asked the Other Persons (Mr. Brown and Mr. Hughes) if they had any questions to raise on Mr. Phipps' representation. It was established that the Other Persons did not have any questions on the representation and therefore the Chairman invited the Other Persons to make their representations.

One of the Other Persons, Mr. Hughes, read out the representations from Elizabeth Stokes, Christopher and Sheila Wyatt, and Pat and Martin Dorrell. In summary, their representations covered the following issues:

- The Beachcliff was in an area with a number of residents living close by to the Beachcliff premises. Extended hours of trading would impact residents – noise, odour, litter, and so on;
- 23:00 – 00:00 (midnight) opening times were too late for an area with a number of elderly residents living close by and the potential for noise and other disruptive behaviour that these extended opening times would engender, plus bottle collections early in the morning;
- The CCTV installed at the premises could not prevent crime in itself and appeared to look inside the premises only and not the outside;
- Reference was made to no other fish and chip shops selling alcohol and all closed at 22:30 hours. Other premises and times of closing were detailed who operated later but only on a temporary basis. It was felt that the Applicants could not be trusted in adhering to licensing and other council regulations;
- There were no issues with the premises operating and selling alcohol until 23:00 hours – it was the extension of this after that time plus allowing people to drink outside that caused concern from the Other Persons.

Following the Other Persons confirming that they had nothing further to add, the Chairman invited all of the parties to raise questions of the representations provided by the Other Persons.

Mr. Phipps asked Mr. Hughes regarding the breach of licence by the Applicant's business mentioned in the representations and if he agreed that such a breach could not exist as no licence had been given as yet. Mr. Hughes agreed with this.

Mr. Phipps asked one of the Licensing Officers regarding Mr. Hughes' statement about similar or neighbouring businesses closing before 23:00 hours or midnight. The Licensing Officer provided the closing or licensing times for such businesses (some having a potential licensable hour until midnight or 01:00 hours or 02:00 hours with a half hour 'drinking up' time) but caveated this by saying that these closing or licensable times although given may not be used on a regular basis.

A Sub-Committee Member asked Mr. Hughes for clarification that he did not have an issue with the sale of alcohol at the premises before 23:00 hours. Mr. Hughes stated that yes, the key concern was the sale of alcohol and taking this outside after 23:00 hours. The Sub-Committee Member asked Mr. Hughes and Mr. Brown what the position of their local Elected Members was in relation to this. Mr. Brown and Mr. Hughes stated that they had not had any reaction from the locally Elected Members.

With no further questions, the Chairman invited all parties to sum up their representations.

Mr. Hughes stated that he and the Other Persons were objecting to the late operation of the takeaway after 23:00. Prior to that time, they did not have an issue with the sale of alcohol within the premises. They also felt that the late hours mentioned for other businesses were seasonal only and not all year around as proposed by the Applicant for their business.

Mr. Phipps stated that the proportion of residents in the block who made representations was low proportionately. Elected Members had no concern with the application. It was not the case that neighbouring premises were not operating until later hours. The application was as set out at Appendix A albeit the Applicant had now dropped the request for off sales after 23:00 hours after hearing the concerns of Other Persons about people drinking after 23:00 hours on the Esplanade. On sales after 23:00 hours therefore did not appear to be an objection.

There being no further representations, all parties retired from the Chamber to allow the Sub-Committee to deliberate on the amended application in private.

On returning, the Chairman confirmed that the application was granted for a Premises Licence at Beachcliff Traditional Fish and Chips, The Esplanade, Penarth in the Vale of Glamorgan and that the amended application sought the following:

#### The Sale of Alcohol and Late Night Refreshment

The hours requested in respect of the aforementioned Licensable activities were:

##### Sale of Alcohol

Sunday to Wednesday 10:00 hours – 23:00 hours

Thursday, Friday and Saturday 10.00 hours – 00:00 (Midnight). No off sales of alcohol past 23:00 hours.

##### Late Night Refreshment

Thursday, Friday and Saturday 23.00 hours – 00:00 hours (Midnight).

In delivering the decision of the Sub-Committee, the Chairman summarised the verbal and written representations received by all parties and the comments received during the hearing as set out in the minutes above.

The Chairman advised that following consideration of the application, the representations from the Local Authority's Licensing Department, the Applicant and

his representatives and Other Persons, and having considered the Home Office Guidance along with Sections 3, 7, 8, 12 and 20 of the Council's Statement of Licensing Policy and also taking into account Section 182 of the Licensing Act 2003 (As Amended), the Licensing Sub-Committee.

RESOLVED – T H A T the application, as amended, be granted. The licence will be subject to the conditions offered by the Applicant.

#### Reasons for the decision

Members of the Sub-Committee were satisfied that the application would not cause unnecessary problems for local residents – the fact that the premises had operated with Temporary Event Notices with no complaints emphasised this.

Also, the conditions offered by the Applicants gave protection to local residents which would not be available if the licence was refused but continued to run as at present – for example, noise and odour.

The Applicants were aware that when granted this licence could be reviewed at any time should the operation not be supporting the licensing objectives.

The Chairman advised all persons present that they had the right of appeal against the decision of the Sub-Committee. The appeal must be made in writing and within 21 days to the Cardiff and Vale of Glamorgan Magistrate's Court. Should the Appellant be in any doubt as to their legal rights and / or responsibilities they should take independent legal advice.