

STATUTORY LICENSING SUB-COMMITTEE

Minutes of a Remote Meeting held on 31st October, 2022.

The Committee agenda is available [here](#).

The Meeting recording is available [here](#).

Present: Councillors P. Drake, J.M. Norman, and M.R. Wilkinson.

Also present: Mr. and Mrs. Holland (Applicants – Willmore’s 1938), Mr. R. Thomas (Other Person), Ms. G. Donovan-Jones (Other Person), Mr. and Mrs. Phelps (Other Persons), Licensing Officers (Vale of Glamorgan Council), Legal Officer (Vale of Glamorgan Council) and Democratic and Scrutiny Committee Services Officer (Vale of Glamorgan Council).

(a) Announcements –

Prior to the commencement of the business of the Committee, the Democratic and Scrutiny Services Officer read the following statement: “May I remind everyone present that the meeting will be live streamed as well as recorded via the internet and this recording archived for future viewing”.

The Legal Officer advised that a copy of the procedure for the meeting was available to Elected Members within the agenda papers circulated in advance of the meeting.

(b) Appointment of Chair –

RESOLVED – T H A T Councillor P. Drake be elected as the Chair for the duration of the Sub-Committee hearing.

(c) Declarations of Interest –

No declarations of interest were received.

(d) Grant of a Premises Licence – Willmore’s 1938, The Former Golf Kiosk, Cliff Parade, Penarth, CF64 5BP –

The Chair welcomed those present to the Sub-Committee hearing and invited each person to introduce themselves.

For the benefit of Other Persons present, the Legal Officer also advised that the Representations set out in writing at Appendix D of the papers referred only to

matters as defined in Section 18 (6) of the Licensing Act 2003 that is, "representations which are about the likely effect of the grant of the premises licence on the promotion of the licensing objectives:

- The prevention of crime and disorder,
- Public Safety,
- The prevention of public nuisance, and
- The protection of children from harm."

The Chair subsequently invited the Team Manager for Licensing to present the report to the Sub-Committee, who advised that the report was to consider an application under the Licensing Act 2003 ("the Act") for the grant of a Premises Licence at Willmore's 1938, the former Golf Kiosk, Cliff Parade, Penarth, CF64 5BP, submitted by Charlotte Court of Will-Cater Ltd.

The report papers included the application process; a copy of the application form; proposed conditions submitted by South Wales Police; and a schedule of representations received by the Council.

Supplementary information was also received and had also been circulated to all parties. This included photographs of the location in question, submitted on behalf of a residents' representative and a set of photographs and link to a press report, submitted by the Applicant.

The application sought authorisation for the licensable activity of the sale by retail of alcohol. The permitted hours applied for were 10:30 to 22:30 each day of the week, for consumption on and off the premises and no application was made for non-standard timings outside of the times quoted.

Also included in the original Application was the request for the permission to provide Recorded Music. However, under The Deregulation Act 2015, this activity was no longer licensable, provided that the premises was licensed to sell alcohol, and the activity takes place between 08:00 and 23:00.

The application included an Operating Schedule which set out the steps the applicant proposed to take to promote the licensing objectives and was set out in Box M of the Application form at Appendix A.

On 3rd October, 2022 the Licensing Authority was notified that a number of additional conditions had been proposed by South Wales Police in relation to the application and that the Applicant had agreed to the inclusion of these conditions in the Operating Schedule. A copy of the agreed conditions was included at Appendix B for consideration. The Team Manager for Licensing requested that the Sub-Committee note that the timings for the sale of alcohol were reduced to 10:30 until 22:30 after the application was circulated for consultation.

The application was advertised in accordance with the Regulations. Under The Licensing Act 2003 (Premises and Club Premises Certificates) Regulations 2005 a Responsible Authority or any other person may make relevant representations at any time during the 28-day consultation period. During this period, 11 representations

were received from Other Persons and the relevant representations which related to the licensing objectives were summarised within Appendix C.

The period for making representations ended on 3rd October, 2022. As none of the representations had been withdrawn, a full hearing of this application was necessary.

The Chair subsequently invited Mr. and Mrs. Holland (the Applicants) to present their case and bring forward witnesses if necessary. The Applicant confirmed that details presented regarding their application up to this point in the hearing were accurate. They advised, however, that their intention was not to have the premises open throughout the licensed hours applied for, 7 days per week, but to close at 18:00 in winter and 20:00 in summer. The later hours originally applied for were to facilitate holding events without the need to apply for separate Temporary Events Notices (TENs) for such.

As the Applicant had no further representations to make at this point, the Chair invited questions of the Applicant from the Sub-Committee.

In response to a query from Councillor Norman, the Applicants advised that the intended events were community-based events using the green area, including a Christmas Festival Dash family run, a Classic Car and Coffee event, a daytime triathlon and two Food and Picnic Festivals in conjunction with the Event Management Company Production 78. Their aim was that the licence would enable them to compete with neighbouring premises that currently had licenced hours of 10:30 to 22:30.

The Applicants explained that they did not envisage finishing events late and they understood they should consider neighbouring residents, and the concerns they may have, and that they welcomed their representations. They advised that they had been a licensee on another premises for 5 years without complaint and they wanted to attract families to their business, rather than the type of trade that could cause anti-social behaviour. The off-premises licence was intended to offer high-end food and bottles of wine for customers to take home, and not to serve alcohol to the Car Park area or to passers-by in general. They had a Challenge-25 age-check policy in place as agreed with South Wales Police.

In response to a query from Councillor Wilkinson, the Applicants confirmed they had already been granted permission to hold their planned events.

Mr. Thomas subsequently queried the Applicants' planning permission only covering sales of alcohol on the premises, and shorter opening hours. To this point the Legal Officer confirmed that Planning and Licensing were two separate regimes which operated independently of each other. If the two were not compliant with each other this would need to be regularised, as offences could occur and be enforced upon under the relevant Regulations, however, it was not possible to refuse a licence on the basis of planning permissions.

As conditions put forward by South Wales Police and reduced hours of licenced trade had already been agreed prior to the meeting, there were no representations

required from South Wales Police as the Responsible Authority, and the Chair then invited the Other Persons to present their cases.

Mr. Thomas and Mrs. Donovan Jones presented residents' objections to the proposed licence, and some proposed courses of action, which could be summarised as follows:

- The Application was for a very restricted site between homes, a nursing home and a young children's playground.
- Photographs they had submitted illustrated the close proximity of the site to the playground and public path, the limited covered seating and indoor space available, and the fact the car park was not lit at night.
- Contrary to the Police report, the application was not for a new café on the grounds of a caravan and camping site.
- They had advised that the application notice was not properly displayed in accordance with licensing regulations but accepted the subsequent feedback that the notice had been properly displayed.
- The use of the premises had been limited to that of a café for sale and consumption of food or drink on the premises between the hours of 09:00 and 18:00 under planning permission to safeguard the amenities of adjoining occupiers. 'The prevention of public nuisance' as a licensing objective, would also require such limitation.
- The adjoining premises did not provide useful comparison as it had very substantial indoor space and little outdoor space, all contained within its own land.
- There were currently issues with alcohol and drug use in and around the car park. The grant of an off-licence would, in their view, be contrary to the prevention of crime and disorder, which was a key issue and a licensing objective.
- The risk of broken glass and general litter in the cliff top area.

The Other Persons stated that the Police's proposed condition that no open containers of alcohol should be taken away from the premises, except in their controlled outdoor areas, raised the following issues: the planning permission did not allow food or alcohol to be taken off the premises; the only outdoor area controlled by the premises was the rear open area and former shelter; and the wording of the condition was open to potential abuse, as had been seen in other premises. They suggested that the term 'unopened original containers' may be more effective in any similar condition on this licence.

The Other Persons in attendance also requested the following be considered by the Sub-Committee, should the licence be granted:

- The refusal of an off license
- And/or that any on-licence was subject to the following conditions: hours limited to 18:00 close; alcohol only consumed on the premises by customers seated at tables; that the premises be limited to a café or food-led establishment; that the licensee should provide litter and recycling bins and encourage their use; that alcohol be served in plastic or polycarbonate

containers; and that glass and other waste should not be disposed of outdoors or removed from site between 19:00 and 08:00.

The Legal Officer confirmed that the use of recorded music was not licensable activity and therefore not a matter that the Sub-Committee could consider. They also clarified that the Council could issue a Community Protection Notice prohibiting the consumption of alcohol in a public place, such as at Barry Island, under Anti-Social Behaviour legislation, but that licensed premises within the area would not be affected by such an order.

Mr. Thomas stated they would circulate their written representations through the Democratic and Scrutiny Services Officer if needed. Councillor Wilkinson subsequently advised that all of the Other Persons' objections and suggestions would be noted and taken into consideration.

The Legal Officer then invited the Applicants to respond to Mr. Thomas' suggestions and proposed conditions of the licence. The Applicants reiterated that the off licence was intended for takeaway food and wine for customers to consume at home and not on site or in the surrounding areas. They also explained their further responses which could be summarised as follows:

- the Police condition for use of sealed containers for off-licence alcohol sales was already agreed.
- Off-Licence alcohol sold during events would be alongside that already sold from neighbouring premises.
- separate TENs were more costly for their business and more time consuming for the Council than a premises license.
- hours limited to an 18:00 curfew would be restrictive in their ability to compete with neighbouring premises, which had later licences.
- Off-Licence alcohol sold during events would be alongside that already sold from neighbouring premises
- It was already their intention to serve alcohol to customers seated at tables on the premises.
- Alcohol sales currently provided approximately 20 percent of their revenue, and therefore the business was food-led.
- They had already put the requested provisions for litter and recycling in place.
- They had a plastic-free policy and preferred glass for its environmental benefits but could look into reusable plastic or composite alternatives.

Following a query from Councillor Norman, the Applicants confirmed that they sold hot food, and that while customers could take away food to eat elsewhere, the majority of the food they sold was eaten in their premises. They also confirmed that while they owned the shelter area, it was available for the use of others, not only their customers.

The Other Persons in attendance subsequently reiterated the preference for individual TENs to be applied for in respect of the planned events as opposed to the grant of a blanket premises license. They also raised concerns over the lack of

control that was possible over customers when selling alcohol for consumption elsewhere.

The Applicants responded by emphasising the points that they had no intention to sell alcohol irresponsibly, and that their events were aimed at family audiences. They added that the Police had found their installation of CCTV and lighting to be a deterrent to crime, particularly in the car park area, and useful as a source of information.

The Legal Officer added that TENs were limited in terms of the number of TENs an applicant could have; the capacity of people in attendance and also the duration of an event, as well as requiring a separate application for each event. They advised that it was commonplace for a premises licence to be issued, and this was often for a longer time than the premises would actually operate but offered the potential for flexibility.

Councillor Wilkinson stated that crime occurring in the car park area was a Police matter rather than a licensing issue, and one which was out of the remit of the Sub-Committee.

Mr. and Mrs. Phelps, as the Other Persons in attendance, outlined their objections to the grant of the license, which could be summarised as follows:

- music played at the proposed times of opening would be too intrusive on residents' lives;
- residents were of the view that they had lost the amenity of the public shelter since the premises took ownership;
- the grant of a blanket premises licence for the hours proposed was unacceptable in such close proximity to a playground, and alcohol consumption would deter from families visiting it;
- A Premises Licence allowed for the potential of alternative uses of the premises than the Applicants currently planned;
- the risk of broken glass and general litter in the area;
- the risk of anti-social behaviour in the area.

Mrs. Phelps added that the Police had investigated drug abuse in the area and explained that such crime was centred around the nearby public toilets and that a proposal for these to remain open after 18:00 would, in their view, add to the problem.

In reference to the Other Persons' objection regarding the potential scope for a change in activities, the Legal Officer subsequently advised that a granted licence could be reviewed, should a premises not operate in accordance with how the licence application was made, or should the licensing objectives be breached.

The Applicants also responded to the objections of the Other Persons in attendance and advised that that they currently only played ambient music at low levels at the front of the shelter, it was only audible in close proximity to the shelter. They added

that the rear area of the premises was a community space, and no speakers supplied music in this area.

The Chair subsequently invited all parties to sum up their representations or make any additional points, to which Mr. Phelps added that they were in agreement with Mr. Thomas' suggested conditions of the licence.

The Applicants then summed up their representations as follows:

- They operated a family-run, community-led business that employed 6 people in the area;
- They intended to stay within the operating times discussed;
- They had no intention to play loud music on the premises.

With no further points or questions of clarification from the Sub-Committee, the Legal Officer subsequently outlined the procedure that would then be followed. The Legal Officer would provide any necessary legal advice on points of law to the Sub-Committee during private deliberation. The decision was to be provided in writing to all parties within 7 days. Following this, the Applicants, the Licensing Officer, and the Other Persons in attendance disconnected from the hearing as confirmed by the Democratic and Scrutiny Services Officer, and the Licensing Sub-Committee deliberated the application in private.

RESOLVED – T H A T the application be granted subject to modified conditions that are consistent with the operating schedule in a way that are considered appropriate for the promotion of the licensing objectives.

Reasons for decision

Those conditions are to include:

The conditions as outlined in the representations from South Wales Police dated 30th September 2022.

The Sub-Committee were mindful that conditions should only be attached to a licence if they were proportionate and necessary. In relation to proposed conditions by Mr. Thomas, the Sub-Committee heard no evidence of noise associated with the condition to dispose of waste, including bottles, at times that had caused nuisance. In fact, the Sub-Committee only heard evidence of waste transferral at 11.00am in line with what was requested. Again, evidence as to the arrangements for how alcohol would be consumed at the premises did not suggest that there was a need for any additional conditions; for example, alcohol would be consumed at a table in any event. The Sub-Committee was mindful of the environmental impact of reusable plastic for drink glasses and would encourage the Applicants to explore the use of reusable composite and/or plastic as part of their management of the premises, when necessary.

The Sub-Committee was satisfied that there were issues connected to crime and disorder that had been put forward by the Other Persons, though these appeared to

be ongoing and unrelated to the licensable activity proposed. Further, it was noted that South Wales Police, the responsible authority for crime and disorder, had not objected to the licence and that their proposed conditions had been agreed. It was accepted that the additional licence conditions pertaining to CCTV operation would likely operate as a deterrent at the site for instances of crime and disorder and that the Applicants had engaged with the Police as and when requested and as part of the licence process.

The Sub-Committee was satisfied that the neighbouring licensed premises was operating with a similar licence and no issues had arisen because of that licence. There were no litter issues with the premises or noise from bottle emptying etc. No evidence was produced in relation to the use of glassware at the premises.

The Sub-Committee was satisfied that the application was made in order that the sale of alcohol could take place alongside an existing business that predominantly operated as a food establishment and that the premises would not operate as a bar or off-licence in a traditional sense.

In reaching its decision the Sub-Committee had considered the application along with all those who had made both written and oral submissions and had taken into account the Licensing Act 2003 as amended, in particular the licensing objectives and the Home Office Guidance along with the Council's Statement of Licensing Policy.

The Applicant has a 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 Magistrates Court. Should the Applicant be in any doubt as to their legal rights and or responsibilities they should take independent legal advice.