

STATUTORY LICENSING SUB-COMMITTEE

Minutes of a Remote Meeting held on 25th August 2023.

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

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

Present: Councillors G. Bruce, P. Drake, and J.M. Norman.

Also present: Mr. and Mrs. Fox (Applicant), K. Evans (Licensing Officer, Vale of Glamorgan Council), R. Price (Legal Officer, Vale of Glamorgan Council), A. Rudman (Democratic and Scrutiny Services Officer, Vale of Glamorgan Council), C. Booker (Other Persons) and Councillor N.C. Thomas.

(a) Announcements –

Prior to the commencement of the business of the Sub-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 Officer also 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) Licensing Act 2003 – Variation of a Premises Licence – Foxy’s Deli, 7 Royal Buildings, Victoria Road, Penarth, CF64 3ED –

The Chair welcomed those present to the Sub-Committee hearing and thanked the Democratic and Scrutiny Services Officer for making introductions.

The Chair subsequently invited K. Evans, Licensing Policy Officer, 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 a variation of a premises licence at Foxy’s Deli, Penarth. The premises was a small, family run, café business.

The premises already benefitted from a premises licence; PRM AS0147 (attached at Appendix A to the papers) which authorised the sale of alcohol for consumption on and off the premises during the following hours:

Monday to Saturday 08:30 hours to 18:00 hours,
Sunday 10:00 hours to 14:00 hours.

The Application, made on 5th July 2023 and set out at Appendix B of the report, sought to vary the existing premises licence to the following:

The sale of alcohol for consumption on and off the premises:

Monday to Thursday: 08:30 hours to 22:40 hours,
Friday and Saturday: 08:30 hours to 23:30 hours,
Sunday: 08:30 hours to 22:40 hours.

Opening hours:

Monday to Thursday: 08:30 hours to 23:00 hours,
Friday and Saturday: 08:30 hours to 00:00 hours,
Sunday: 08:30 hours to 23:00 hours.

The application also included an Operating Schedule, at Appendix B Box M, which set out the steps the Applicant proposed to take to promote the licensing objectives.

In accordance with the requirements of the Act, copies of the application were forwarded to the Responsible Authorities and advertised in accordance with the regulations, at the premises, in a local newspaper and on the Vale of Glamorgan Council website. Two representations had been received in respect of the application, one from a local resident and one from a local landlord. No representations were received from any of the Responsible Authorities. A copy of the representations received were included at Appendix C to the hearing papers.

The Officer added that, as part of the local resident representation, four videos had been submitted as supporting evidence for the Sub-Committee's consideration and, as the two representations had not since been withdrawn, a full hearing was necessary for the Licensing Sub-Committee to determine the application.

With no questions raised for the Licensing Officer, the Chair subsequently invited the Applicants, Mr. and Mrs. Fox, to present their case.

The Applicants advised that Foxy's Deli was a small, family run business and had been at the premises and operating for 22 years. Despite the application stating longer opening hours and supply of alcohol from 08:30 hours, it was not the intention of the business to operate the sale of on and off sales of alcohol from 08:30 hours. They added that the last calendar year had been extremely difficult for the business and the business had been struggling financially since the impacts of the Covid-19 national pandemic. Therefore, in order to survive it was necessary for the business to adapt and they wished to offer food platters with wine to their family orientated customers. The business was dependent on their mortgage as well as maintaining the employment of nine members of staff.

The Chair then asked all parties present if they had any questions of the Applicant, to which Councillor Norman asked why the Applicant felt a need to change the operational ethos of the business from a café to bar style. In reply, the Applicant advised that they did not intend or wish to operate as a bar as the ethos of the business was a family friendly restaurant. Wine was already served at lunch times at the business and there was no intention of changing the business approach. The variation would allow the business to continue to operate as it currently was but with longer opening hours.

As a supplementary question, Councillor Norman also enquired after the outside area in front of the premises and if the intention was for the seating at the front of the premises to be used until 22:00 hours. The Applicant advised that their current licence already permitted them to use the seating area at the front of the premises until 22:00 however, this was not the case currently and there was no intention to do so going forward. However, they hoped to adapt their business practice going forward as necessary to create a profit for the business with slightly longer opening hours. In response to a supplementary question from the Applicant, the Sub-Committee confirmed that they had visited the business in the past.

With no further questions for the Applicant, the Democratic and Scrutiny Services Officer reiterated that there were no representations received from Responsible Authorities and therefore no Responsible Authority representatives were present at the hearing. Subsequently, the Chair invited the Other Person in attendance, Mr Booker, to make their representations.

Mr. Booker advised that he was representing a tenant who lived above the Foxy's Deli property who was concerned with the additional drinking hours set out within the application, especially since a separate business near to the premises, Gin 64, already offered the same service of late-night alcohol sales.

Furthermore, it was not clear why a family orientated business needed to stay open much later in the day. If Foxy's Deli were to remain open until 23:30 hours along with the Gin 64 business and the Paget Rooms that were all within a short walking distance from each other, the late-night noise levels would be unacceptable and a 23:30 hours closing time as applied for was unnecessary for Foxy's Deli.

Mr. Booker also raised the point that if the current licence for Foxy's Deli permitted the business to operate until 18:00 hours it was reasonable to query why the Applicant had not trialled operating the business until 18:00 hours to date before applying for 22:00.

Mr. Booker then stated his opinion, that the application being applied for was being done so in order to improve future sale prospects for the business and premises. Mr. Booker's final point related to the parklets (outside seating area at the front of the premises) and the fact that, if the application as applied for was approved, then the noise pollution already experienced around the property would become oppressive and would be too much for the residents living in the near vicinity. Noise pollution had already proved to be huge issue with relation to the Gin 64 business in the near vicinity and therefore parklets operating until 22:00 hours at the front of the property was unacceptable.

In response to a question raised by the Other Person at the end of their representations, all Sub-Committee Members confirmed that they had read and understood all of the written representations as well as observed all video footage provided to them in advance of the hearing.

The Chair then asked all parties present if they had any questions of the Other Person. In response, the Applicant advised that the business had no intention of having children in the property at 22:00 hours and wished to highlight the fact that the Gin 64 business in the near vicinity was a completely different business model to Foxy's Deli that did not serve food to its customers as Foxy's Deli did. The Applicant also advised that several interested parties had approached the Applicant over the history of the business with regards to selling the property and business, however neither were currently for sale.

On the same point, the Legal Officer advised that the sale of the business and/or property was not relevant to the licensing application put before the Sub-Committee Members and, if the business was sold in the future, then any relevant licences would be transferred with the ownership. However, the transferring of a licence was a separate process in itself that would need to be undertaken when relevant.

With no further questions for the Other Person, the Chair invited the Applicant to sum up their representations. In response, the Applicant added that they too had read all of the hearing papers and seen the video footage referred to and wished to point out that no objections had been received from South Wales Police in relation to their application. The Applicant wished to share their sympathy in relation to noise pollution for residents in the near vicinity and recognised the difficulty in managing this, however they had also received letters of support from residents in the local vicinity without objection.

In response to Mr. Booker's subsequent statement that the representations in support should be shared with the Sub-Committee, the Legal Officer advised that representations in support could have been submitted by the Applicant in advance of the hearing, however the fact had been set out by the Applicant and therefore would be taken on face value.

The Chair then allowed the Other Person to raise one final question in relation to whether regular noise level testing would be undertaken and/or a condition put on the premises in terms of sound proofing to mitigate noise pollution. In reply, the Legal Officer reiterated that no objections had been received from the Council's Environmental Health Department (Responsible Authorities) in relation to the application and noise testing would only be undertaken following a complaint made against a property and therefore no regular testing would be implemented as part of approval for the application.

The Chair then asked the Sub-Committee Members for their final questions in relation to the case. Councillor Norman subsequently queried why the Applicant had stated an earlier opening time of 08:30 hours on a Sunday. In reply, the Applicant advised that the business did not operate from 08:30 hours on a Sunday and opened

at 10:00 hours therefore, it was their intention to have the licence in place from 10:00 hours on a Sunday.

In response to a point of clarification from the Legal Officer as to whether the Applicant was formally amending their application to state 10:00 hours for the sale of alcohol on a Sunday, the Applicant confirmed that was correct.

With no other parties to consult and no further questions from the Sub-Committee, the Legal Officer confirmed that the Sub-Committee would go into private deliberation, with the decision on the application to be provided to all parties within five working days taking in to account the August Bank Holiday.

Following this, the Applicants, Other Person, and the Licensing Officer in attendance disconnected from the remote 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, with amended hours of 10:00 sale start on a Sunday, be granted.

Reason for decision

In reaching its decision, the Sub-Committee had considered the application along with all those who had made both written and oral submissions. The Sub-Committee 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. There was a presumption in law that licenses should be granted and should matters relating to the Licensing Objectives arise the licence may be reviewed, based on evidence of the non-compliance with the objectives.

The Sub-Committee were satisfied that the premises were currently licensed with no issues having been raised in relation to its current operation by both the Police and/ or the Environmental Health Department. The Sub-Committee were of the view that if issues were to arise by extending the hours of the current operation that the matter could be dealt with by way of a review of the licence based on noise nuisance and or crime and disorder relating to the premises and not neighbouring businesses that operated in the vicinity.