

MINUTES OF A MEETING OF THE LICENSING ACT 2003 SUB-COMMITTEE (A) HELD REMOTELY - VIA MICROSOFT TEAMS ON FRIDAY, 14 MAY 2021 AT 10:00

Present

Councillor – Chairperson

DRW Lewis

AA Pucella

JE Williams

Apologies for Absence

Officers:

Julie Ellams

Democratic Services Officer - Committees

Kirsty Evans

Senior Licensing Officer

Andrea Lee

Senior Lawyer

Yvonne Witchell

Team Manager Licensing

13. DECLARATIONS OF INTEREST

None

14. LICENSING ACT 2003 - SECTION 34 - VARIATION OF PREMISES LICENCE

Introduction from Team Manager, Licensing

The Team Manager Licensing explained that as outlined by the Chairperson, this was an application to vary the premises licence submitted by BDM (South Wales) Limited in respect of Braseria El Prado, Laleston. A copy of the application form and the plan were included in the papers. The application sought to

- Amend the premises licence to permit the sale by retail of alcohol to now allow for sales of alcohol both on and off the premises, including an online purchasing and collection service. (The Team Manager Licensing reported a correction to the report and changed “delivery service” to “collection service”).
- Extend the area for licensable activities to include a room on the first floor of the premises.
- Extend the area of the premises to include external seating areas.
- To remove the embedded restrictions currently applying to the premises licence.
- To add a period for drinking up time of 30 minutes on all timings on the licence but not otherwise extend the hours for licensable activities.
- To add a condition that the operation of external areas will cease at 2200 hours daily.

The times the licence authorises the carrying out of licensable activities remained the same:

Supply of alcohol

Live Music

Recorded Music

Monday to Saturday 1000 to 0000 hours

Sundays 1200 to 2330 hours

Christmas Day 1200 to 2330 hours

Good Friday 1200 to 2330 hours

New Year's Eve As per the Regulatory Reform (Special Occasions Licensing) Order 2002

The Team Manager Licensing explained that the report was prepared in advance of the meeting and any last minute changes proposed by the applicant would be reported later. She explained that the embedded restrictions which the applicant sought to remove were a legacy of the Licensing Act 1964 which were carried over to this premises licence when it was converted on the implementation of the Licensing Act 2003. Boxes "a" to "e" within the application were the measures offered to mitigate the objections. Copies of relevant representations received from residents were included in the report and all the representations from Shared Regulatory Services.

The Team Manager Licensing explained that the application had been advertised in accordance with the regulations. The applicant had restarted the 28 day consultation and the Team Manager Licensing confirmed that the website and press notices also ran correctly. None of the representations had been withdrawn and therefore a full hearing was required. In accordance with the regulations, further to the request made by the applicant, plans were circulated in advance of the meeting.

Applicant's Case

Mr Matthew Phipps, the solicitor for the applicant outlined the application. He was supported by Mr Geraint John, who was able to give more information regarding the noise element.

The solicitor explained that the application was for El Prado. He referred to comments raised by residents that a change in approach was proposed from a smart brasserie restaurant to premises showing televised sport. This was incorrect, it was not a pub, it would not have TV's and would not be showing sport. The business was owned and operated by the Martinez family and they operated brasserie premises and food was very much at the centre of the offer. Photos had been circulated of the function room including the fish and meat counter and a photo of the menu from one of their other businesses which you could expect to see here. It was a top quality offer with food to an exceptional standard. There were also photos of the outside area and the furnishings giving a steer on what they might expect. The family were taking the business forward by investing in the business. They had run the business for a number of years before someone else took over and they had now taken the business back with the intention of returning it to its former glory. They wanted to have a successful business run to the highest standards proving an excellent customer service.

The solicitor explained that the variation elements were set out in paragraph 3.2 of the report. He referred to the elements which in his opinion were not contentious:

- Amend the premises licence to permit the sale by retail of alcohol to now allow for sales of alcohol both on and off the premises, including an online purchasing and collection service.

This was in line with many restaurants around the country and allowed customers to purchase a bottle of wine to take home and consume with their meal. Delivery was not part of the application.

- Extend the area for licensable activities to include a room on the first floor of the premises.

A photo had been provided showing a function room.

- To remove the embedded restrictions currently applying to the premises licence.

These were conditions carried over.

- To add a period for drinking up time of 30 minutes on all timings on the licence but not otherwise extend the hours for licensable activities.

This was a legitimate expectation for the business and was common place across most businesses.

He then referred to the more contentious element:

- Extend the area of the premises to include external seating areas.

Before the pandemic this sort of application did not exist. What they were seeking to do was to allow, as per the amended plan submitted, for an outside space to the front of the premises for up to 18 customers and to have a space on the right hand side in the pergola for 12 people. He considered this to be a moderate sensible application. The original application was for 52 people and that had raised concerns. They had heeded these concerns. There was a parallel dialogue with planning.

- To add a condition that the operation of external areas will cease at 2200 hours daily.

He referred to the Business and Planning Deregulations which were introduced the previous year. He explained that last year, National Government sought to support the hospitality industry by deregulating a number of features of licensing and planning elements allowing people to do certain things. Everyone who had an on licence was entitled to presume they had an off licence for consumption off the premises. Pubs wanted to accommodate customers in gardens, patios and car parks outside and permission had already been given for this. There was a sunset clause on this permission which was due to expire in September. He understood that it had been extended to January next year and that it could be extended again to May or June. Either way they could do it but in time this would drop away and now was the time to consider the position on a permanent basis in a controlled, supervised manner. He did not accept that the concerns raised by the officer and residents were reasonable and proportionate and that refusing the application was a reasonable response. A reasonable response would be to allow the permission allowing them to conduct their activities in a lawful and legitimate manner. He did not accept the concerns raised regarding noise and disturbance. If it was uncontrolled and unsupervised it would be a risk. It was lacking context such as the existing noise background, the location and the proposals in line with the planning permission.

Geraint John provided further information in relation to the context within which the proposal was set. The premises sat alongside a very busy road and having conducted a number of site meetings, it was evident this sat within a very noisy environment. Welsh Government had noise mapping data which quantified this. In meetings they had had to curtail their conversation or raise voices in order to be audible. The fence that existed at the top of the bank would insulate those properties from a certain amount of road noise in addition to the premises. The additional planting that had already taken place and the additional acoustic skin still to be erected would provide protection from activity on site and better protection from road noise.

The solicitor referred to the residential anxieties about the proposals. There would inevitably be concerns but the licensing process would provide conditions to attach to the licence to ameliorate what had been proposed. He suggested a list of conditions that

the committee might want to consider. He could not provide a cast iron guarantee but he could provide conditions the breach of which would be a criminal offence and permission and the license could be removed. Having all the legal bodies involved at an early stage was a much better approach than just getting on with what they were already allowed to do.

The solicitor suggested that all customers outside should be seated. This was a good starting point attending to many concerns. There was a space behind where the seats were set out in the front area which would be left empty. They had to provide sufficient space to meet regulations including DDA legislation. They were happy for 18 people to the front and 12 to the side and for this to be a condition.

The solicitor explained that they were content for the front outside area to cease trade and occupation at 9.30 pm. Originally they had asked for 10 pm but were happy to change to 9.30 pm. He added that they would seek permission for smokers to occupy the space after 9.30 pm. They proposed a further condition that no drinks or food be allowed out the front after 9.30 pm.

The solicitor proposed that there would be no music outside. They would have liked to have background music but it was a point of concern so they were prepared to take that out.

The lighting would be properly controlled so that it did not intrude on the neighbours and contact details for management on site would be made permanently available to neighbours so that they had an immediate line into premises to raise concerns. A CCTV system would be installed to cover the outside area to allow officers to find out if any complaints or criticisms were legitimate. Staff would be trained in matters concerning underage sales and operating procedures as well control of and the management of the outside space and customers therein. They could have prominent, clear and legible notices displayed at all exits requesting the public respect the needs of local residents and to leave the premises and area quietly. Patrons would be encouraged by staff to leave quietly and respect the interests of the occupiers of any nearby noise sensitive premises. Where appropriate the licensee or a suitable staff member would monitor patrons leaving at the closing time. A noise management plan (NMP) could be implemented within 21 days of the grant of this licence and retained for as long as the premises continued to operate outside. The Designated Premises Supervisor (DPS), or another responsible member of staff acting on behalf of the DPS, could carry out regular physical checks within the area immediately outside the premises regularly. They could be monitoring the behaviour of customers including the volume when talking and what they were saying. They could also be checking for empty glasses or litter and, if those items were present, they could remove them. They could re-enforce the messages about the sensitivities of residents and others and encourage smokers to reduce any adverse impact of their own activities. Management would encourage verbal messages by staff to customers inside and outside the premises and written notices.

There were residents in close proximity as in many premises across the country. National Government had said that everyone could do it. This would support businesses to survive and the hospitality sector and this was in all their interests.

The solicitor added that public nuisance would be generated but the application should not be refused on that basis. He believed that with the proposed conditions it would be fair and proportionate to grant.

The Chairperson invited questions from the panel and the objectors.

The Shared Regulatory Services representative (SRS) asked what would happen to the seating and the umbrellas after the outdoor area had closed. The solicitor replied that he understood that during service the furniture would remain outside. It would be secured so that it could not be stolen. After service the chairs would be taken inside and the tables would remain outside. She then asked if when the front external area was in use, the bi fold doors would be open. The solicitor replied that it would be weather dependent and if the weather was good they would be open.

The SRS representative asked what capacity they had been operating at outside during the last 3 weeks. The solicitor replied that there were more than 30 and this application would restrict them from what they had been legitimately undertaking until then. She asked if there were more than 30 most nights. He replied that it was broadly busier on Friday/Saturday and Sunday lunchtimes in the long term, he would not expect full occupation apart from good weather, weekend, and on occasions.

The SRS representative asked if they could guarantee that noise would not be an issue. The solicitor replied that he could not guarantee this as with any licensed premises but this was reasonable, proportionate and likely and they had suggested sensible conditions.

An objector asked about the plans submitted as part of the planning application. The Chairperson replied that that was a separate issue. The legal Officer explained that the Licensing Committee based their decision on licensing objectives and it was for the applicant to decide if the conditions differed.

An objector asked what the maximum capacity was if the building was used as a bar. He asked where those drinking outside would go when time was called outside and would this breach the fire regulations for the building. The solicitor replied that in terms of the fire regulatory capacity, that would be dealt with separately under the fire risk assessment. The numbers they worked to in the premises did not risk breaking the actual fire risk capacity at all.

An objector asked if they did not get a license for the external numbers, would they return the internal numbers to 102 downstairs and 10 upstairs. The solicitor replied that they would not be allowed to make changes to the internal configuration without going back to Licensing. If they did not get permission they would continue to have people outside until next June. He added that the capacity may have been 102 but the premises would rarely operate at full capacity.

An objector stated that the structure at the side of the building had already been erected and this demonstrated that they were going to do what they wanted. The solicitor replied that that was incorrect and it had not been glazed. The objector replied that it was being glazed as they were speaking. The Chairperson replied that this was a planning issue and not relevant for this meeting.

An objector referred to the concessions that the applicant was prepared to make to get the application granted including winding up outside at 9.30 pm. She asked about the comment "no mood type music" because she was under the impression there would be no music at all. The solicitor confirmed there would be no music outside at all.

The objector said that the people outside would be able to continue to smoke until 12.30, utilising the outdoor furniture having loud conversations with each other over the noise of the traffic. The solicitor replied that he was trying to explain the noise context. The Committee would consider the volume of traffic and the number of people outside after

9.30pm smoking. He had not referred to loud voices. So long as they monitored and supervised this, it was a solid basis on which to proceed.

A panel member stated that this was a high quality restaurant and asked if it was likely that someone would pop into the small bar just for a drink. The solicitor replied that the small bar area was predominantly for those diners who were waiting for other guests to arrive before being shown to their table.

A panel member asked if the license was granted, and someone popped in for a drink, if the outside capacity had been reached, would they be allowed to take their drink outside and sit on the wall. The solicitor replied that they would not. They recognised that there needed to be some sense of proportion and they were confident 18 and 12 would not cause a nuisance.

A panel member asked the objector about her concerns about smokers going outside after 9.30 pm and talking loudly. She stated that this was a restaurant not a pub and approximately 15% of the population were smokers and back in within 3 to 4 minutes. She added that it was rare for anyone to stay outside without a drink in their hand and they would return to be with their guests. She could not see that this would be a problem. The objector replied that the smoker would have the comfort of the furniture and could stay out to have a chat.

An objector asked if this was a bar restaurant or restaurant. The sign across the road said bar restaurant. The applicant had applied to have the embedded restrictions removed and anyone could pop in for a pint. It would now be open for coffee or drinks all through the summer. The solicitor replied that that was correct and they would be able to have a drink without a table meal. This would allow them to accommodate some customers they could not have historically. The objector asked how many customers there would be and if they would be under pressure. The solicitor replied that the applicant had been under pressure following the last 15 months but they would not be under pressure serving customers. The objector stated that it would therefore be a public bar. The solicitor replied that it would allow a customer to have a drink without a table meal but it was not a pub.

An objector stated that on the first weekend following closedown, she was aware of a table of 6 drinking without meals even though their license did not permit this. If the smoking area was occupied outside where did they expect the smokers to stand. The reality was they sat on the wall close to schoolchildren walking home. The management were not managing and had no chance with six large males. They were acting inappropriately and people left for that reason.

The solicitor replied that he was sorry to hear that and that was not his understanding at all. He understood it had been well managed since 12 April. The objector replied that she lived directly opposite and had had to shut windows because of the noise already. If the premises was at full capacity, where would the smokers stand. Children out of school should not be witnessing drunks and having smoke blown over them. The solicitor replied that it was for management to manage and he would take it back and make sure this did not happen.

A panel member asked for confirmation from the solicitor that each person drinking at the premises would need to be seated. The solicitor replied that was correct and they would not want to attract people not having meals.

The objector replied that he was concerned that there was an area in the premises designated as a bar and that people could walk in and out any time of day without eating. The panel member replied that they could do that in other premises nearby. The objector replied that El Prado had a cache with very respectable residents leaving at

2.30 in the afternoon and he was concerned that the nature of the customers would change.

A panel member stated that smokers would normally leave a pub, stand to have a quick cigarette and return to their seat. The objector was implying that there were a large number of smokers in Laleston. The objector replied that a lot of the clientele arrived from outside the village by car/taxi. The percentage of smokers in the population was 17% and from experience they would come outside the pub and start talking to others not necessarily from the same table. The conversation would then get louder and louder. The other problem was the phone signal which was better close to the wall. As a result a number of people would have conversations on their mobile close to the road. They needed to provide a shed or to make provision for this and the smokers.

An objector stated that the premises had been there since 1991 but it had never operated in this way before. They were seeking to extend the licence for 30 mins for drinking up time. It had never been an issue and they had never operated late at night. He asked if they were planning to operate to their full licence now. He was concerned that an already noisy situation could get worse and become unbearable. With regard to the embedded rights, he asked what form of entertainment did they intend to offer. He was astounded to find that they could offer live music until midnight. What was their intention regarding entertainment? The solicitor replied that every single licensed premises in the country had an automatic right to play recorded and live music to 11 pm providing the capacity of the premises was less than 500. There was no reason to expect there would be any change to policy or procedure. Restrictions from 1964 were not appropriate now and this was an effort to get rid of them. The drinking up period was standard practice. This was a commercial venture and the opening times would depend on the demand and allow flexibility. The objector was concerned that the system could be abused. The solicitor understood that and replied that they could be taken to task if they abused this trust.

An objector asked how the premises could accommodate taxi pick ups and the click and collect service. The problem with taxis was that they would park on the main road and this was a road safety issue. How would this be managed? The solicitor replied that like thousands of other restaurants, they wanted to be able to allow people to have wine if they chose to eat at home. No one would be using this as an off licence but it would allow them to purchase a bottle of wine with a meal. To suggest there would be endless vehicle volumes collecting wine was unfair. They had to manage arrivals and the business of food collection.

An objector questioned if the takeaway service was temporary or if this was a permanent facility. There was only parking for 20 people which was inadequate. The solicitor referred back to the licensing objectives and asked how they would be undermined by this application. The objector referred to their human rights and they wanted their rights to be taken onto account. They could not offer a guarantee or discuss these extreme scenarios but in his experience, the application would not generate these sort of problems.

A panel member explained that she understood that a bottle of wine could be purchased with a meal but she thought it unlikely that someone would pay El Prado prices when they could buy a bottle somewhere else considerably cheaper. The objector asked why the applicant was offering this service if it was not going to happen very often. This was a residential area in a village and not a town or city and would have a huge impact on local residents. This could be life changing and it should have been done properly within a solid building. The panel member replied that there were marquees across the borough and premises were allowed to place table outside. The objector replied that

they had no objections to temporary arrangements but this could be 365 days a year and life changing.

An objector explained that the residents were not fearful of a doomsday scenario but the cumulative effect of what the new owners had done. If they added the capacity of the outside areas to the capacity inside, the bar and function room and people having coffee, takeaways and the option to buy alcohol, this would have a massive cumulative effect on the village. The new owners had changed their plans a number of times and they were in limbo. What guarantee was there that there would be no more changes and this was accurate? The solicitor replied that this was not about guarantees but the Licensing Committee needed to be satisfied that on the balance of probabilities this would be likely. They submitted an application seeking 52 chairs. This had since been reviewed in line with the discussion with officers and representations and reduced down to 30. If they were now being criticised for removing the seats then that was unfortunate. They were trying to find a balance that was fair. An objector stated that this was a substantial change and should go back out to consultation. The Legal Advisor replied that the number had been reduced to try to accommodate the objections and therefore further consultation was not necessary.

The SRS representative stated that a condition had been suggested that the takeaway would only operate between 1pm and 8pm so reducing any noise nuisance to local residents. In terms of the plans the applicant had changed them to try to make it better for residents following discussions and site visits.

The Chairperson asked the SRS representative what she thought the maximum number of seats outside should be. She replied that that was difficult because in terms of noise levels, if they reduced the number from 18 people to 9, noise would reduce by 3 decibels but that could still create a nuisance.

A panel member asked if any complaints had been received in respect of the 12 seats under the pergola. The solicitor replied that the representations appeared to cover everything. The pergola would be glazed apart from one panel so could be a less sensitive, concerning space.

An objector stated that "reasonable" could be different for the village, community and residents compared to officers. The solicitor replied that there were 3 representations received from residents in addition to those from the officers and this did not represent the whole community. The Team Manager Licensing confirmed that 3 representations had been received relating to this application as published in the pack.

An objector asked what the point was of glazing the pergola if it had a retractable roof. The noise from that building would affect the houses nearby. Geraint John confirmed that the roof was not retractable and would have louvre panels that shut flat horizontally or could be angled to 45 degrees away from the properties to the rear, to allow ventilation. An objector asked why they did not install an air conditioning system instead. The solicitor replied that the way the building was constructed was for the owner to decide. It was for the committee to decide if the proposal would make and generate a public nuisance, not to comment on the design.

The Chairperson asked for clarification that stop tap was 12 and there was no drinking up time. The solicitor confirmed this was correct. Half an hour effectively encouraged a more sensible departure and in his opinion was a promotion of licensing objectives.

There were no further questions at this stage.

Objectors' Case

SRS Representative

The SRS Representative explained that the application before them was a scaled down version to what the applicant was originally applying for, with almost half the amount of customers externally, reduced closing time of the outside external area and no music being played externally when taking account of the amended plan and conditions being offered by the consultant. The conditions offered by the applicant were appreciated. However, the noise, particularly from 18 customers socialising externally in the front car park could still impact on the closest residential dwellings. Whilst the staff could ask customers who were rowdy to modify their behaviour, they would be unable to prevent the general noise from customers laughing and talking with raised voices. Not everyone would shout or talk loudly, but some would and inevitably where lots of people were present in one area, they would tend to raise their voices so they could be heard above each other.

The SRS representative provided information about a background survey mentioned by the planning agent with reference to the Welsh Government.

She explained that in addition, the external area was likely to have the unintended consequence of increasing the noise levels emanating from the restaurant if the bi-fold doors were left open to service customers using the external seated area. The applicant had been operating outside since he had been permitted to be open. Although there had been no complaints to date, the weather had not been very good. Therefore it was unlikely that residents would have been using the garden or have had their windows open to any great extent. It was also unknown whether the applicant had been operating at full capacity and then would not have been any additional noise from the restaurant due to the bi-fold doors being left open.

The SRS representative explained that the conditions offered by the applicant were appreciated and would help manage the noise. However, due to the potential of public nuisance that could be caused by the external seating area, she maintained her objection to this being used on a permanent basis. The noise from the pergola could be more easily controlled providing the fencing was upgraded to an acoustic quality fence and the glazed sides of the pergola were installed. Nevertheless as one side was intended to be left open and the roof was a louvre roof capable of being left open, noise could still impact on that residential dwelling. The SRS representative suggested a closing time for this area of 9.30 pm and not the 10 pm applied for. She also asked for the pergola area to be glazed and the fence updated to acoustic standards to provide extra protection for the property behind.

An objector referred to the pergola and the fact that as soon as the roof panels were tilted the noise would come out. She also stated that if the car park was not granted, the doors could be left open at any point. Would clients and staff use as a through fare because noise would escape. The SRS representative replied that she had done some calculations based on 12 people in the pergola and noise could be controlled if the area was managed correctly. She thought this would be more of a problem later in the evening if it remained open after 9.30 pm. As far as she was aware there was a door that went directly into the pergola so they did not need to come out of the bi-fold doors. The Legal Advisor explained that this was not relevant to the application being considered. A panel member added that this was Licensing Committee not Planning Committee and they should not be discussing these aspects. The SRS representative replied that it was relevant because she had been asked to comment on the noise from 12 people in the pergola.

The solicitor referred to the comments made by the SRS representative regarding the fact that there had been no complaints made in the last 4 weeks because windows had

been closed due to the poor weather, people were not in their gardens and the premises were not operating at full capacity and asked why that same point did not feature in why it would be legitimate to grant this. This was Wales and it was not fair to ignore the lack of complaints because of the weather when this was the reality for most of the year. The SRS representative replied that with all due respect, when the weather was warm, people would want to open their windows and enjoy their gardens and those residents might not be able to do that because of the noise. The Legal advisor explained that unless there was evidence of this it could not be taken into consideration. The SRS representative replied that the weather over the last 3 weeks had been very poor and she had not made reference to the number of people but to the fact that the premises had been operating at full capacity but not all the time. The Legal Advisor asked if an officer had attended the premises when they had been operating during this period and was it in the representations. The SRS representative replied that an officer had attended twice but it was after the representations were due in. The Legal Advisor explained that those representations should have been submitted and they could only take into account the evidence before them.

An objector asked for clarification regarding the seating area being available all year or just for 5 months of the year. The solicitor confirmed that in the papers it stated it would only be in use for circa 5 months in any year as per the letter.

The Chairperson asked the objector (appendix C) to give her case. She replied that the SRS representative had summed up the concerns and she reiterated that her understanding was that no music of any nature would be played in the outside area.

The objectors (appendix D) explained that it was difficult not to refer back to other things. In summary the way it had been approached and the continual last minute changes had resulted in a lack of trust and faith in what was being said. Extending the hours of business beyond midnight was untenable and there were concerns regarding possible entertainment. The conditions had offered some reassurances however there would still be substantial noise when people were leaving the facility. If they operated to the later time, he asked for a condition to be included where patrons were kept inside the premises when waiting for taxis etc to pick them up. They could also ask who wanted a taxi and arrange it for when they left the premises rather than waiting for it to arrive. This would help to alleviate the length of time they stayed outside and noise after midnight. This should not be that much of a problem. The solicitor replied that this was not a time for questions but for the objector's case to be put forward however he had no objection to the point made. Uber and other companies had ordering apps which they could decide to use but the premises could also provide details if required. He was not sure how it could be translated into a licensing condition. The objector replied that the evidence was this was an issue and the noise from it was considerable.

The SRS representative stated that she had looked at the current licence and the 30 min winding up period was already allowed. The Team Manager Licensing confirmed it was shown however it was applied for on this occasion. The solicitor replied that if the interpretation was that it was already on there then he was happy to withdraw that part of it, if conversely the view was that it was not on there then they did. If 20 mins was included then they were applying for an additional 10 minutes. (The solicitor later confirmed that having checked the original licence, the applicant was asking for something they already had and therefore they did not need to proceed with that because it was already there). An objector asked if that could be rescinded to 11.30 pm and was advised that this could not be done. The solicitor explained that they were withdrawing the part of the application asking for an extra 30 minutes and added that because there was a permission, there was no obligation to use it. They had not traded that period in the last 20 years. The Team Manager Licensing confirmed this was on the original licence and the current application details had been included in the public notice.

The Legal Advisor explained that the premises were allowed to trade in line with their licence.

A panel member added that it would be helpful to have a sign in the lobby asking people to ring and wait for the taxi to arrive, inside the lobby.

The final objector reported that she had removed a considerable amount that she was going to say because it had already been covered. The applicants failed to advertise the fact that he had applied to change the licence and it was by chance that they found out. She believed this was done intentionally. The Licensing Authority needed to comply with article 8 of the Human Rights Act to protect the residents. They appreciated this was for 5 months however they would be enjoying the garden in those months and would like to do so without having to listen to drunks and loud noises possible 365 days a year. In regards to privacy, their home had been invaded with people looking into their home leaving them in an uncomfortable position. They had lived there for almost 30 years without any criminal occurrences to their property. The applicant has asked them to withdraw their objections however as a resident they were entitled to object. Their property has since been vandalised and although circumstantial, it was highly suspicious. The level of noise would be unbearable and their lives would be dictated by opening hours. There was a lack of empathy for the concerns in regard to the proposals. The applicant had already had the signs put up as a bar and restaurant as if it was a done deal. She believed he thought it was a tick box exercise and the rules did not apply to him.

A panel member asked about the condition regarding the operation of the external areas ending at 10 pm daily, and asked if that meant that eating and drinking outside would cease at 10 pm and how would this be policed. The solicitor replied that they originally asked for 10 pm but had now conceded to 9.30 pm to accommodate the concerns. There were a series of conditions relating to management of the outside space detailed in the proposed conditions. An objector asked how those sat outside would be accommodated if they wanted to continue drinking. The solicitor replied that they would need to manage their customers correctly and as professionally as they did in their other premises.

Summing up

Applicant's Solicitor

The solicitor explained that in terms of what had been applied for and the applicant, the substance of what was being said by some of the objectors was that there was a lack of trust in the professionalism of the operation. They had withdrawn the proposal to have any music at all. They wanted 50 people outside, currently they could have as many outside as they wanted but they had reduced the number to 30 and still been criticised. They had withdrawn the 30 minutes drinking up time which had been applied for in error. The fact that they already had this but had never used it was an indication of the sensitivity of the concerns. A worst case scenario had been presented which was not fair or objective. The SRS representative had asked for a guarantee which was not applicable for this. When challenged about the lack of any complaints, there was reference to the weather but nobody made reference to this being Laleston and not California and this was the weather they should expect. How often would they be at capacity and how often would being at capacity generate a noise nuisance. They believed it was nothing like the extent presumed and based on an assumption that they could not manage their customers. He appreciated this was a change but there had to be some balance and sense of proportionality which was lacking. The point had been made that they had not conducted a noise survey and he asked how often this was done for this purpose. It was not for a music festival or for a new build. They were effectively

asking to limit the permission that National Government had given to every licensed premises in June of last year. They could currently have any numbers (so long as it did not cause a public nuisance) in any space. They were saying limit them to 12 on the side and 18 at the front and limit the hours, add a load of conditions and that was not an unreasonable application. With regard to the comments regarding a lack of empathy and engagement with the community, there were 3 objectors and not a community objection. An extensive letter introducing the business owner and his proposals had been circulated and it was not fair to say they had not engaged. He thought the balance had been fairly struck with the moderated restricted application before them today.

An objector referred to the blanked permission for restaurants and cafes to open alfresco and asked if the solicitor was talking about the Business and Planning Bill 2020 which was introduced by National Government but not all sections applied in Wales.

The Team Manager Licensing replied that the alcohol provisions applied in England and Wales. Pavement Licensing arrangements were split with England and Wales going different ways. The solicitor confirmed that they were entitled to do this as per his summing up. The Legal Advisor confirmed this was correct.

An objector referred to the point made by the solicitor regarding engagement and said that the applicant physically came on to their property and intimidated her asking her to withdraw her objections and he had not been particularly friendly or engaging and if other residents to the rear had not objected, it could be because of the crime committed on her property.

SRS Representative

The SRS representative explained that she had no objection to the removal of the embedded conditions or to the 1st Floor function room or off- sales and she was satisfied that that the applicant could manage the off- sales particularly as off sales for collection took place between 1-8pm. The hours being applied for licensable activities were not changing so there were no representations being made about that.

The SRS representative explained that her representations applied only to the operation of the external areas and the front and side pergola. She believed that the noise from the pergola area could be more easily controlled due to it being partly enclosed. However, it was still open on one side and the louvre roof was likely to remain open in warmer weather. She requested that this area also closed at 9.30pm. She was also concerned about the noise from the car park area and could not say that it would not cause a nuisance. If there were 18 people, talking, laughing and socialising then it would be clearly audible and could cause a nuisance. She added that she would not normally expect a noise survey to accompany a licensing application and she had only referred to it because the planning agent had mentioned the noise survey from Welsh Government in his representations.

She accepted the other conditions and the noise management plan and requested that conditions about glazing to the pergola and the acoustic fence be attached to any conditions.

Objector 1.

This was out of keeping for a little village like Laleston and this had changed in nature. There would be drinkers at the bar not diners and she disagreed with the whole weight of the development and she agreed with the conditions suggested by the SRS representative.

Objector 2.

He explained that reference had been made to “worse case” scenario but based on actual evidence, there had been occasions where it had been extremely noisy. At Christmas time the issues raised were not “worse case” scenario but an actual realisation. He understood the applicant was looking to maximise his business opportunities and although it would not be every night, there would be a considerable number particularly at weekends. This would be their living situation, noise would be horrendous and this would be life changing for residents living nearby who might not appreciate what was proposed.

Objector 3.

In Laleston there were approximately 300 houses, 2 pubs, 1 hotel and a restaurant. They did not need another bar and there was more than enough without this. The applicant had successful businesses in the City and on the coast but this was a village and residents did not need the extra stress. This would become a hospitality hotspot. The previous owner ran the business down then retired and sold the business. The new owner would be serving coffee in the mornings, afternoon teas and evening meals. This was their lives and there would be no peace from 10 am to 1 am the following morning. Their lives would be governed by the licensing Act and as a resident, this was not fair. After Covid he could still get 101 inside and the numbers outside and licensing had no control unless it came up for review.

The Team Manager - Licensing

The Team Manager Licensing referred to the statutory guidance relating to the need for premises and the Legal Advisor confirmed that it was not relevant how many premises were in the village.

RESOLVED

This is an application to vary the premises Licence in respect of Braseria El Prado, Laleston.

The application was slightly amended prior to the hearing and the Applicant now seeks to:

1. Amend the premises licence to permit the sale by retail of alcohol to now allow for sales of alcohol both on and off the premises, including an online purchasing and delivery service.
2. Extend the area for licensable activities to include a room on the first floor of the premises.
3. Extend the area of the premises to include external seating areas
4. To remove the embedded restrictions currently applying to the premises licence
5. To add a condition that the operation of external area will cease at 9.30 pm and the outside Pergola to cease at 10pm

The Committee have heard representation from the Applicants and 3 objectors who live near the premises.

The Committee have only taken into consideration relevant representation which were made under the Licensing Act 2003. Any representations which fell outside of this Act were disregarded.

The Committee also heard from an officer of the Responsible Authority Shared Regulatory Services namely Mrs Helen Williams who made representations about her concerns that the licensing of the outside area would cause a noise nuisance to the surrounding properties. The Committee noted and took into consideration that since the premises have been allowed to operate the outside area there have been no evidence of any complaints of noise nuisance and the Responsible Authority did not provide any evidence of noise nuisance at the premises during this period. The Committee were not persuaded that allowing the outside area to open would cause a noise nuisance. The Committee also took into consideration that there were no representations or concerns from the Police about the application.

The Committee when taking into consideration all representations made at the Hearing have decided to grant the application as amended with the following conditions to mitigate any concerns raised by the objectors and the statutory authority namely:-

1. Seating in the designated areas shall be a maximum of 18 in the front outside area and 12 in the pergola area as shown on the plan annexed to the licence
2. Front outside area (18 covers) to cease trade and occupation by customers (other than those smoking) at 9:30 pm
3. The pergola building (12 covers) to cease trade and occupation by customers (other than those smoking) at 10.00 pm
4. No food or drink shall be consumed in the front outside area after 9.30pm.
5. No food or drink shall be consumed in the Pergola Area after 10pm
6. No live or recorded music shall be played or relayed to the outside areas
7. Lighting to be closely controlled by the DPS so that it does not unreasonably intrude upon neighbours
8. A phone number of management on site to be made permanently available to neighbours
9. The premises shall install and maintain a comprehensive CCTV system. The CCTV system shall be continually record when the premises is open for licensable activities and all times when customers remain on the premises.
10. All recordings shall be stored for a minimum period of 31 days with date and time stamping.
11. Viewing of recordings shall be made available immediately upon request of Police or authorised officer throughout the preceding 31 day period.
12. Staff will receive training on matters concerning underage sales and operating procedures as well control of and the management of the outside space and customers therein.
13. Prominent, clear and legible notices shall be displayed at all exits requesting the public respect the needs of local residents and to leave the premises and area quietly.
14. Patrons will be encouraged by staff to leave quietly and respect the interests of the occupiers of any nearby noise sensitive premises. Where appropriate the licensee or a suitable staff member will monitor patrons leaving at the closing time.

15. A noise management plan (NMP) shall be implemented within 21 days of the grant of this licence and shall be retained for as long as the premises continues to operate outside

16. The Designated Premises Supervisor (DPS), or another responsible member of staff acting on behalf of the DPS, will carry out regular physical checks within the area immediately outside the premises at the following intervals.

17. During external physical checks the DPS, or other responsible member of staff acting on behalf of the DPS, will;

Monitor the behaviour of the customers and, where they consider it appropriate ask them to regulate it, re-enter the premises, or leave the area quietly

Check for empty glasses or litter and, if those items are present, remove them

Re-enforce messages about the sensitivities of residents and others and encourage smokers to reduce any adverse impact of their own activities.

Ensure there are no unnecessary delays in closing the doors as patrons leave or enter the premises.

18. Management will by all practical means encourage people who smoke to do so having regard for the sensitivities of local residents, and others in the area, and with a view to reducing any adverse impact on them. Such methods will include, but not necessarily be limited to; Verbal messages by staff to customers inside and outside the premises and written notices

19. Within 42 days of the grant of the licence an acoustic barrier shall be provided along the top of the embankment alongside the existing fence between El Prado and the property at 3 Tyddyn Gwaun which shall be continuous in length along the rear of that property with no gaps between the fencing panels or the ground and shall have a minimum mass of 10kg/m². The height of the barrier shall be agreed in writing with the Licensing Authority prior to it being erected. The barrier shall be retained for as long as the premises continues to operate outside.

The meeting closed at Time Not Specified