

BRIDGEND COUNTY BOROUGH COUNCIL
REPORT TO LICENSING ACT 2003 SUB-COMMITTEE

18 MARCH AND 21 MARCH 2022

**REPORT OF THE CHIEF OFFICER – LEGAL AND REGULATORY SERVICES, HR AND
CORPORATE POLICY**

LICENSING ACT 2003
APPLICATION TO VARY A PREMISES LICENCE UNDER SECTION 34

1. Purpose of report

- 1.1 The purpose of this report is to determine an application received from Upperbay Ltd to vary the premises licence in force at Trecco Bay Leisure Park Porthcawl.

2. Connection to corporate well-being objectives/other corporate priorities

- 2.1 This application falls within the Council's function as a regulatory body and as such has no link to the corporate well-being objectives.

3. Background

- 3.1 The premises has the benefit of a premises licence BCBCLP535 which authorises the following licensable activities which relate to the application under consideration:

Supply of alcohol
Plays
Films
Indoor Sporting Events
Boxing or Wrestling
Live Music
Recorded Music
Provision of late night refreshment

- 3.2 Current permitted hours for licensable activities relevant to this application:

Provision of Regulated Entertainment (Live and Recorded Music). Live Music and Recorded music are currently authorised for both indoors and outdoors:

Standard Hours for Live Music:

Monday to Sunday: 1000 - 0200 hours
Outdoor area only:
Monday to Sunday: 1000 - 2300 hours

Non-Standard Timings for Live Music:

New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.

An additional hour to the standard and non-standard times on the day when British Summertime commences.

Standard Hours for Recorded Music:

Monday to Sunday: 1000 - 0200 hours

Outdoor area only:

Monday to Sunday: 1000 - 2300 hours

Non-Standard Timings for Recorded Music:

New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.

An additional hour to the standard and non-standard times on the day when British Summertime commences.

Current opening hours specified on the premises licence:

Monday to Sunday: 0545 to 0230 hours

Incorporating:

Fish & Chip Shop and Papa John's;

Monday to Sunday: 0545 - 0300 hours

Non-Standard Timings for Opening Hours:

New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.

An additional hour to the standard and non-standard times on the day when British Summertime commences.

- 3.3 A copy of the current premises licence is attached at **Appendix A**.
- 3.4 A copy of the current plan attached to the premises licence is attached at **Appendix B**.
- 3.5 The licensing authority has received an application to vary the premises licence. The application is attached at **Appendix C**.
- 3.6 A copy of the plan attached to the application is attached at **Appendix D**.
- 3.7 The terms of the application as submitted are as follows:
 - 3.7.1 Provision of Regulated Entertainment:

To extend live and recorded music outdoors Monday to Sunday 1000 to 0200 the following morning (currently 2300 hours outdoors)

3.7.2 Opening hours to be extended Monday to Sunday 24 hours a day;

To amend /remove or update conditions due to the changes requested on the layout plans which are set out in Section 15 Box of the application form

3.7.3 To approve alterations at the premises both indoors and outdoors within the current licensed areas as shown on the proposed layout plans submitted to the Licensing Authority with this application, changes to include the following:-

3.7.4 Internal

Layout changes within the Funtasia building and Burger King;

The "Time Out" nightclub to be removed and replaced with an Indian Restaurant;

The "Coast" venue to have minor internal alterations.

3.7.5 External - in the area outlined in green already covered by the Premises Licence.

Addition of two new outdoor bars within the current licensed outdoor area - Beach Bar and Coffee / Bar

Reconfiguration of the outdoor seating area under the Canopy / Pavilion.

3.7.6 For information, the premises licence currently authorises the sale of alcohol on and off the premises.

3.8 When discharging its licensing functions, the licensing authority must promote the licensing objectives:

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

3.9 Each of the above objectives has equal importance.

4. Current situation/proposal

4.1 The application has been advertised in accordance with the regulations on site, in a newspaper and on the Council's website. The application has been served on the Responsible Authorities.

4.2 The licensing authority has received representations from Shared Regulatory Services in its role as a Responsible Authority (environmental health functions) and other persons as defined in the legislation. All representations received are attached in **Appendix E**. For information purposes only, a location plan is attached at **Appendix F**.

4.3 The following Responsible Authorities responded to the consultation and made no representations: South Wales Police, and South Wales Fire and Rescue Service.

- 4.4 At the time this report was prepared none of the representations had been withdrawn and therefore a hearing of this application is necessary.
- 4.5 Any further updates will be provided between at the start of the Sub-Committee meeting as permitted under the Licensing Act 2003 (Hearings) Regulations 2005.
- 4.6 The statutory guidance issued under Section 182 of the Licensing Act 2003 provides as follows:

“Where a representation concerning the licensing objectives is made by a responsible authority about a proposed operating schedule and it is relevant (see paragraphs 9.4 to 9.10 below), the licensing authority’s discretion will be engaged. It will also be engaged if another person makes relevant representations to the licensing authority, which are also not frivolous or vexatious (see paragraphs 9.4 to 9.10 below). Relevant representations can be made in opposition to, or in support of, an application and can be made by any individual, body or business that has grounds to do so.”

- 4.7 Sections 9.4 to 9.10 of the above guidance provides as follows:

- 4.8 “Relevant, vexatious and frivolous representations

9.4 A representation is “relevant” if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. For example, a representation from a local businessperson about the commercial damage caused by competition from new licensed premises would not be relevant. On the other hand, a representation by a businessperson that nuisance caused by new premises would deter customers from entering the local area, and the steps proposed by the applicant to prevent that nuisance were inadequate, would be relevant. In other words, representations should relate to the impact of licensable activities carried on from premises on the objectives. For representations in relation to variations to be relevant, they should be confined to the subject matter of the variation. There is no requirement for a responsible authority or other person to produce a recorded history of problems at premises to support their representations, and in fact this would not be possible for new premises.

9.5 It is for the licensing authority to determine whether a representation (other than a representation from responsible authority) is frivolous or vexatious on the basis of what might ordinarily be considered to be vexatious or frivolous. A representation may be considered to be vexatious if it appears to be intended to cause aggravation or annoyance, whether to a competitor or other person, without reasonable cause or justification. Vexatious circumstances may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. Licensing authorities can consider the main effect of the representation, and whether any inconvenience or expense caused by it could reasonably be considered to be proportionate.

9.6 Frivolous representations would be essentially categorised by a lack of seriousness. Frivolous representations would concern issues which, at most,

are minor and in relation to which no remedial steps would be warranted or proportionate.

9.7 Any person who is aggrieved by a rejection of their representations on either of these grounds may lodge a complaint through the local authority's corporate complaints procedure. A person may also challenge the authority's decision by way of judicial review.

9.8 Licensing authorities should not take decisions about whether representations are frivolous, vexatious or relevant to the licensing objectives on the basis of any political judgement. This may be difficult for councillors who receive complaints from residents within their own wards. If consideration is not to be delegated, contrary to the recommendation in this Guidance, an assessment should be prepared by officials for consideration by the sub-committee before any decision is taken that necessitates a hearing. Any councillor who considers that their own interests are such that they are unable to consider the matter independently should disqualify themselves.

9.9 It is recommended that, in borderline cases, the benefit of the doubt about any aspect of a representation should be given to the person making that representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it."

4.9 The function of determining whether a representation is relevant, frivolous or vexatious is delegated to the Team Manager Licensing under the Scheme of delegation to officers. Having considered the statutory guidance, none of the representations received were deemed frivolous or vexatious. The following matters were deemed as not relevant to the variation application under consideration, or the licensing objectives:

4.9.1 Representations which state that the variation is for a 24 hour licence for the sale of alcohol at the premises. Reason: the application does not seek to vary the current hours for the sale of alcohol.

4.9.2 Representations relating to the impact of the application on traffic or parking. Reason: these do not relate to the licensing objectives and therefore are not a matter for the licensing authority to consider.

4.9.3 Representations relating to the economic impact of the variation or the impact on house prices. Reason: these do not relate to the licensing objectives and therefore are not a matter for the licensing authority to consider.

4.9.4 One representation referred to the application as a planning application. The statutory guidance allows for discretion when including representations from other persons, and whilst the representation refers to the application as being a planning application, it covered noise nuisance from outdoor music and the relevant representations have therefore been included in the schedule.

4.10 Statutory Guidance and Statement of Licensing Policy

The relevant Sections of the Statutory Guidance issued under Section 182 of the Licensing Act 2003 are attached as **Appendices G and H**.

In respect of the Council's Statement of Licensing Policy there are no area policies relating to Porthcawl and the policy relating to noise nuisance is attached at **Appendix I**.

5. Effect upon policy framework and procedure rules

5.1 The report content has no direct effect upon the policy framework and procedure rules.

6. Equality Act 2010 implications

6.1 The protected characteristics identified within the Equality Act, Socio-economic Duty and the impact on the use of the Welsh Language have been considered in the preparation of this report. As a public body in Wales the Council must consider the impact of strategic decisions, such as the development or the review of policies, strategies, services and functions. This report relates to a regulatory function, therefore it is not necessary to carry out an Equality Impact assessment in the production of this report. It is considered that there will be no significant or unacceptable equality impacts as a result of this report.

7. Well-being of Future Generations (Wales) Act 2015 implications

7.1 The well-being goals identified in the Act were considered in the preparation of this report. It is considered that there will be no significant or unacceptable impacts upon the achievement of well-being goals/objectives as a result of this report.

8. Financial implications

8.1 There are no financial implications arising from the report.

9. Recommendations

9.1 The Sub-Committee is asked to determine the application having regard to the Council's Statement of Licensing Policy and the Guidance issued by the Home Office under Section 182 of the Licensing Act 2003 and the application, submissions and representations before them.

9.2 The Sub-Committee is requested to consider whether any additional conditions are to be imposed having regard to the statutory guidance.

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Background documents: None