

LICENSING & GAMBLING ACTS SUB COMMITTEE
9TH OCTOBER 2007

DIRECTORATE OF FINANCE AND CORPORATE SERVICES

REPORT OF THE LICENSING MANAGER
– J. M. SULLIVAN

INDEX OF REPORT ITEMS

PART 1 – Doc.Code: LICAS-091007-REP-FS-JS

SECTION A – MATTERS FOR DECISION		
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1. Licensing Act 2003 Applications		
Ref.No.: 006569 Description: Review of Premises Licence Name: The Old Swan Inn Address: Old Swan Inn, 58 Gurnos Road, Ystalyfera, Swansea, SA9 2HY	2-5	Ystalyfera
Ref.No.: 006700 Description: Vary Premises Licence Name: Kiwi's Address: The Parade, Neath,	6-8	Neath North

1.1. Application for Review of Premises Licence

Ref.No.: 006569 Wards Ystalyfera
Affected:
Premises Name: The Old Swan Inn
Premises Address: Old Swan Inn, 58 Gurnos Road, Ystalyfera, Swansea, SA9 2HY
Applicant Name: PC John Williams
Applicant Address: Port Talbot Police Station, Station Road, Port Talbot, SA13 1JB
DPS Name:
DPS Address:
Application Date: 15/08/2007

1.2 Current Licence

Supply of Alcohol:
Sunday – Thursday 08:00 – 00.00
Friday & Saturday 08:00 – 01:00
Non-standard timings:
Bank Holidays 08:00 – 01.00

Films:
Monday – Sunday 10:00 – 23:00

Indoor Sporting Events:
Monday – Sunday 12:00 – 00.00

Live Music:
Friday & Saturday 10:00 – 23:30
Non-standard timings:
Bank Holidays 10:00 – 23:30

Recorded Music:
Sunday – Thursday 10:00 – 23:30
Friday & Saturday 10.00 – 00.30
Non-standard timings:
Bank Holidays 10:00 – 00:30

Facilities for dance – time as above

Late Night Refreshment:
Sunday – Thursday 08:00 – 00.00

Friday & Saturday 08:00 – 01.00

Opening Hours:

Sunday – Thursday 08:00 – 00:30

Friday & Saturday 08:00 – 01:30

Non-standard timings:

Bank Holidays 08:00 – 01:30

Conditions attached to licence:

A documented procedure must be in place to verify the age of person who appear to be under eighteen years of age to prevent them gaining access to the premises and or purchasing alcohol. The means of verification should be restricted to:-

- (1) Accredited Proof of Age Scheme's e.g Portman, Validate
- (2) Photocard driving licence or passport.

Where drinks are likely to be consumed in the open air e.g. beer gardens, toughened or plastic vessels must be provided.

Ensure that all windows and doors are kept closed whilst amplified music is being played.

Background amplification to be controlled behind bar.

Beer garden to close at 22.30.

1.3 Background Information

The premises are a public house. This comprises on room open plan with beer garden (to rear) and small patio areas to rear and front of the premises.

1.4 Application for review

The application for review of the premises licence is as follows:-

Applicant: P.C. J Williams – Licensing Officer South Wales Police

Address: Neath Police Station, Gnoll Park Road, Neath

Status of Applicant: Responsible Authority

Date of Application: 15/8/07

1.5 Grounds for Review

The application relates to the following licensing objective(s):

The prevention of crime and disorder

The prevention of public nuisance

Details

1. There have been a number of complaints from residents in respect of noise coming from the premises as a result of music being played. Despite liaison with the DPS this problem still persists as can be evidenced by complaints from residents to both the Police and Local Authority Licensing Department. Complaints are also made that the doors and windows of the premises are open at times when music is being played which is in contravention of condition of the premises licence. This results in public nuisance, contrary to a licensing objective.
2. There have been incidents of disorder associated with the premises.
3. The DPS has provided a Section 9 statement in relation to a matter before a District Judge that he is aware that poker is played by a group of persons in his premises for low stakes. This is an illegal activity.

1.6 Further Representations

When a review is submitted, all responsible authorities and interested parties are also able to make representations. Further representations have been received supporting the application for review by the police and also supporting the Old Swan against the review.

- 1.61 Representations received in support of the application for review by the police.

Responsible Authorities

Environmental Health Officer

Neath Port Talbot CBC

His representations are reproduced at Appendix 1. Representations from Environmental Health show a list of 6 residents living in Gurnos Road and the dates on which complaints of noise were reported.

- 1.62 Representations received in support of the Old Swan against the review

Interested Parties

Mrs C. Whiteman	55 Gurnos Road, Ystalyfera
Mr A. Hilton	57 Gurnos Road, Ystalyfera
Mr R. Slough	1 Swan Lane, Ystalyfera
Ms W. Jones	59 Gurnos Road, Ystalyfera

These relate to support of the Old Swan against the review, in particular that the noise levels are acceptable, conditions are adhered to and praise for the management.

These representations are reproduced at Appendix 2.

1.7 Licensing Officer's Report

The applicant initially submitted an application in 2005 to convert and vary the licence. This application was subject to representations by the Police and Environmental Health. Following amendments to the application, all representations were withdrawn.

When considering the application for review members are required to have regard to all relevant representations and take such steps (if any) as it considers necessary for the promotion of the licensing objectives.

The steps are:-

- (a) To modify the conditions of the licence.
- (b) To exclude a licensable activity from the scope of the licence.
- (c) To remove the designated premises supervisor
- (d) To suspend the licence for a period not exceeding three months.
- (e) To revoke the licence.

1.8 Recommendation

That members determine the application after considering all relevant representations.

List of Background Papers

Application for review of premises licence.

Officer Contact

J Sullivan - Licensing Manager

Tel 01639 686326 email j.sullivan@npt.gov.uk

Wards Affected

Ystalyfera

2.0 Application for Variation of Premises Licence

Ref.No.: 006700 Wards Neath North
Affected:
Premises Name: Kiwi's
Premises Address: The Parade, Neath, Neath Port Talbot
Applicant Name: Rushouter Ltd
Applicant Address: Progress Works, Seawall Road, Cardiff
DPS Name: Mr James Andrew Gretton
DPS Address: 75 Clonakilty Way, Pontprennau, Cardiff
Application Date: 22/08/2007

2.1 Variation Application

1. To remove the embedded Public Entertainment Licence condition, which relates to the time of the last entry/re-entry to the premises.
2. To include the additional provision of live music, on any two Thursdays per calendar month, from 21:00 to 23:00 in the area shown on the attached plan.

2.2 Background Information

Large Semi Detached building in Neath Town Centre. Open plan bar to the ground floor with patio area to the side. Toilets on the first floor.

2.3 Promotion of Licensing Objectives

The following information has been provided by the applicant:

The Prevention of Public Nuisance

All music equipment used outside the premises will be fitted with devices which will allow the volume to be set and maintained at a suitable level.

2.4 Relevant Representations:

Responsible Authorities

Environmental Health – See Appendix 3

Interested Parties Representations

Miss J.T. Brinkworth	1/3 Riverside, Neath] See Appendix
Mr G. Frysny	4 Croft Road, Neath] 4

2.5 Policy Considerations

It is considered that the following policies are relevant to this application:

Statement of Licensing Policy

Prevention of Public Nuisance

- Licensed premises, especially those operating late at night and in the early hours of the morning can cause a range of nuisances impacting on people living, working or sleeping in the vicinity of the premises. The council wishes to maintain and protect the amenity of residents and businesses from potential consequence of the operation of licensed premises. However it also recognises the economic, social, and cultural importance that such premises provide, and will endeavour to ensure that a reasonable balance is maintained.
- The Council will expect operating schedules to demonstrate that suitable and sufficient measures have been identified, and will be implemented and maintained to prevent public nuisance. The extent and nature of these measures will be determined by the style and characteristics of the premises and events.

Secretary of State's Guidance

- Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It is important to remember that the prevention of public nuisance could therefore include low-level nuisance perhaps affecting a few people living locally as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of interested parties (as defined in the 2003 Act) in the vicinity of licensed premises.
- Where applications have given rise to representations, any necessary and appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late evening or early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. In certain circumstances, conditions relating to noise in the immediate vicinity of the premises may also prove necessary to address any disturbance anticipated as customers enter and leave.

2.6 Summary

The Environmental Health Officer makes representations in respect of the prevention of public nuisance. Concerns are expressed that live music outside of the premises will give rise to public nuisance particularly to the nearby hotels. The residents express similar concerns in respect of noise nuisance.

2.7 Recommendation

That members determine the application after taking into account the representations received

List of Background Papers

Application for variation of premises licence.

Officer Contact

J Sullivan - Licensing Manager

Tel 01639 686326 email j.sullivan@npt.gov.uk

Wards Affected

Neath North



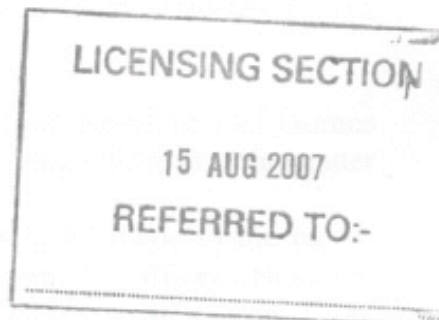
Tony John From **Oddi wrth**
Tel **Ffôn**
01639 686360 Date **Dyddiad**
15/08/2007 Your Ref **Eich Cyf**
Our Ref **Ein Cyf**
TJ/128291

Memorandum **Memorandwm**

To At

TO: Jim Sullivan, Licensing Officer

From: Tony John, Environmental Health Officer



**SUBJECT: The Old Swan Inn, 58 Gurnos Road, Ystalyfera, Swansea,
Neath Port Talbot, SA9 2HY**

I forward to you details of complaints and actions taken by this section in relation to noise complaints from the above premise between January 2006 and the current time.

15/5/2006 – Complaint from Resident 1 of Gurnos Road made to the out of hours service relating to loud music.

03/7/2006 – Further complaint from Resident 1 of Gurnos Road claiming that music was being played with windows and doors open. Also that there were crowds of people outside listening to the music. She also queried the licensing conditions and claimed that drinking continues until 03:00. This matter was referred to the licensing section.

06/7/2006 – Complaint from Resident 2 of Gurnos Road concerning loud music. Log sheets subsequently submitted for the remainder of July indicating that he was disturbed by loud music on 11 days. A letter was sent to the licensee informing him of the complaint who telephoned me on 3rd August 2006 when the legal position was made clear to him. Further log sheets were submitted by the complainant on 8th September 2006 indicating an ongoing noise problem and noting incidents on 7 days in August where he was disturbed.

24/7/2006 – Complaint from Resident 3 of Gurnos Road concerning loud music.

25/7/2006 – Complaint from Resident 4 of Gurnos Road complaining of loud music.

1/8/2006 – Complaint from Resident 5 of Gurnos Road complaining of loud music. Log sheets were submitted on 30th August indication that there were 6 days between 4th and 18th August when there was disturbed by loud music from the premises. On 30th August a letter was sent to the licensee informing him of the complaint and on 31st he telephoned me. He was informed of the procedure and he informed me that he considered that he was doing everything to minimise disturbance and that the complaints were frivolous and that he goes

across the road and cannot hear the music. When discussing the issues with the complainant I was informed that in addition to the loud music there were issues of bad behaviour by patrons and there were concerns of intimidation.

Over the winter period no further complaints were received possibly due to the licensee having windows and doors closed and also local residents having windows closed.

22/6/2007 – Complaint to the out of hours service from Resident 1 of Gurnos Road of loud music with the doors of the Old Swan being left open. The matter was referred to licensing.

06/7/2007 – Complaint from Resident 1 of Gurnos Road made to the out of hours service of loud music with doors being left open. An officer visited the area at approximately 21:00 and found the doors closed but noted that the music was clearly audible in the street.

06/7/2007 – Complaint made to the out of hours service from Resident 5 of Gurnos Road concerning loud music and doors being left open. An officer visited the area at approximately 21:00 and found the doors closed but noted that the music was clearly audible in the street.

09/07/2007 – Complaint of loud noise from Resident 6 of Gurnos Road concerning the level of entertainment noise from The Old Swan – often with the doors open. The complainant is willing to keep log sheets if there is a further problem.

13/08/2007 – Complaint from Resident 1 relating to entertainment noise disturbance over the previous weekend due to windows and doors being left open.

I pass on this information in support of an application by the police for a review of the licence applicable to The Old Swan, Gurnos Road, Ystalyfera.



Tony John
Environmental Health Officer.

MR A HILTON
57 GURDONS ROAD
YSTALYFERIA
SA9 2JA

Dear Sir

My attention has been drawn to the notice displayed at the Old Swan. As a neighbour opposite the Swan, I find that the noise levels are not intrusive at all. The management have spoken to me regarding noise, but I have said it was not excessive.

Yours Faithfully
A. J. Miller

LICENSING SECTION
24 AUG 2007
REFERRED TO:-

Mr R. Flough

Swan Lane

Yatalyfera

SA9 2JB

20.8.07

LICENSING SECTION

24 AUG 2007

RECEIVED

To Whom it may concern

I am writing this letter after hearing of the allegation made against the Old Swan P.H. I as a neighbour, i.e. I have the New Swan to the front of my house, and the Old Swan to the rear, do not have cause to be concerned. I have lived here for 25 years and have seen times of problems in the past. The present management of both premises should be congratulated on their efforts to make this part of Yatalyfera a nice place to live. Yes I do hear music at weekends.

also singing from the local church, but it is being controlled.

I am not writing as a friend of any manager, I rarely drink, but as someone who feels an injustice as being done.

Yours Sincerely,
R. J. Loft

55 GURNOS ROAD
YSTALYFERA
SWANSEA
WEST GLAM
27/08/2007

To Whom It May Concern.

Dear Sir/Madam

I am quite upset to discover that the Old Swan Inn has had complaints made against them regarding noise and late night nuisance.

I have lived opposite the public house since 2003 and have had no problems regarding these allegations. As a matter of fact I first lived at this address from 2003 until 2005 and then moved to Penrhos in Ystradgynlais. After living in Ystrad for only a year I missed the village life so much that when the tenancy for 55 Gurnos Rd became once again available I had no hesitation in moving back in.

Surely if there was a problem with the public house I would never have returned to live there.

It appears there are one or two people in this street who will complain about anything from car parking to the noise of the traffic. Their idea of community involvement is to try and get me to sign a petition to close both the Old Swan and New Swan inns [which no one would sign by the way].

I believe that I live in a nice busy street at the heart of a small village. We have two public houses, four takeaways, two taxi offices, three hairdressers, a bookies one beauty salon and an engineering consultants.

The objectors are the type of people who would like to see the removal of anything that does not fit in to their idealised view of rural life.

Where will it all end???

No church bells on Sunday morning!!

Thank you for your attention.

Yours sincerely



Mrs Christine Whiteman

Ps. if you want to talk to me please do not hesitate to make an appointment.

LICENSING SECTION

59, Gurnos Rd
Ystalyfera
Swansea
SA9 2JA.

Dear Sir/madam

It has been brought to my attention that the previous Occupant has made a complaint about the "Old Swan" public house.

I have lived at the above address since December 15th 2006.
I have not experienced any problems from living opposite the premises.
There is a smoking area outside where people smoke, but the Landlord has these doors closed at 10 o'clock to ensure that the noise level is at an acceptable level.

There is a certain amount of noise at closing time due to taxis pulling up, which I consider acceptable when living opposite a public house.

There has never been an occasion where I have felt the need to confront the landlord about any disturbances etc.

Yours Sincerely
Wendy Jones.

W. Jones. 23/08/07.

Appendix 3



Tony John From **Oddi wrth**
Tel **Ffôn**
01639 686360 Date **Dyddiad**
23/08/2007 Your Ref **Eich Cyf**
Our Ref **Ein Cyf**
TJ/130191

Memorandum Memorandwm

To At

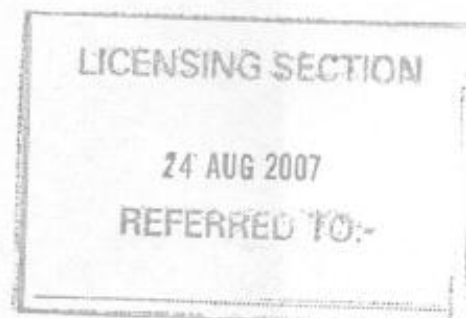
TO: Licensing Section FAO Jim Sullivan

SUBJECT: Licensing Application received for a Variation – Kiwis, 44 The Parade, Neath.

I have the following comments to make relating to the application listed –

1. The application seeks two variations to the current licence.
2. The first variation relates to removing the condition restricting the time of the last entry/re-entry and I have no comment on this.
3. The second variation seeks the use of the external entertainment area for live music on any two Thursdays in any calendar month. I believe that live musical entertainment in the open will have a detrimental affect on the area and is likely to cause public nuisance to nearby hotels in the area.

Tony John
Environmental Health Officer



1/3 Riverside
Off Bridge Street
Neath SA11 3LH
28 August 2007

Licensing Department
Neath Port Talbot CBC

Dear Sir/Madam

Re: Licensing Application for Kiwis, Neath

After recently obtaining information about Noise Nuisance and having finally made a complaint about the Athletic Club next to our property, which has caused us a noise nuisance over the years, I sought to look into Kiwis licence. The following was included in one of my ASB diaries made to the Police, which I added in note format because I did not know at the time, if it was any form of ASB (i.e. Noise Nuisance) –

Then on **Thursday August 9th** I heard the same blaring noise, which I tracked back to Kiwi's, I got out of bed and dressed to go to the Police Station as it did not go off at 11pm. The noise was blasting down Bridge Street! At 11.05pm I saw a guitarist out on their patio with a guitar and was deafened by the noise - there wasn't that much of an audience. I went up to complain at the Police Station and on the way I passed the Cross keys and could hear that their music was contained. I had a word with Kiwi's manager the next afternoon and he was very considerate and apologetic, he said he was not there that night and as it was a nice evening the live band had decided to play outside instead of his usual indoor spot with the doors closed. I was happy to see he took note and was pleased to see that this was hopefully a one-off and will not happen again in the future as I told him it no doubt disturbed all the Castle Hotel residents as well as the old people in their flats behind Angel Street.

Having spoken to EVH at the council last week who told me that I was to record data on a specific form for Noise Nuisance, I then recorded details from Kiwis made on Saturday August 25 as well as added details of noise nuisance from a previous Sunday of which I did not remember the date. The details can be made available to you through EVH. It is apparent to me that it becomes a public nuisance when the manager places loud speakers in his beer garden. As the Castle Hotel have already complained about the noise nuisance as well as myself, I think it most inappropriate that the manager has no thought for neighbouring residents and tends to put 'money' before moral standards.

Having recorded 3 incidents of loud music nuisance (up to Saturday August 25) I would thoroughly object to Kiwis having a licence made available to them to play Live Music **outside** with speakers included, as the noise would be detrimental to my health as well as spoil the quiet enjoyment of our property. I

have no doubt that I am speaking up for the majority of elderly residents who live in the nearby flats in Church Place as I am sure, they have no idea what their rights are as regards noise nuisance. I only recently found out that people don't 'have to suffer in silence' and intend following this up as I now have the time to do so, which again many people fail to do.

I would strongly advise that you do NOT allow Kiwis a licence to play Live Music outside their premises. I understand the manager there sees his pub as a 'business' but I would like to think it fair that whereby local residents have to put up with background music because they live near to the centre of the town, that they too, would have rights by allowing them to be able to keep their windows open at night without the dread of listening to 'loud' music being played, thereby causing us stress.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'J T Brinkworth'. The signature is written in a cursive style with some loops and flourishes.

J T Brinkworth (Miss)

Mr G. Frysny,
4 Croft Road,
SA11 1RW
01639 630600
4 / 09 / 07

NPTCBC Licensing

To Mr J Sullivan

Licensing Manager
NPTCBC

Dear Sir,

I am writing to you regarding the license changes applied for by the Kiwi Bar in Neath.

I believe that the plan is to play live music on Thursdays and to expand the opening and playing times, and to play music outside the premises in the beer garden.

I would like to state the following – it is already impossible to sleep until the music ceases. This has caused me to have problems with punctuality at work. I normally start work at 6.45 am.

Five weeks ago the bar played music outside in the beer garden, then it was impossible to even watch T.V. let alone try to sleep.

I was forced to leave my house and just walk around town until the music had finished. My house is only 15 meters from the beer garden where the band played.

I understand that people are out on a Thursday, Friday and Saturday and there may be some noise, however I do have a right to live and work also.

In conclusion I wish to strongly object to any license application which will increase the level of noise from the inside or outside of the premises. I am also determined to carry out any lawful procedures to ensure my right to spend quality time in my own home.

Yours sincerely,

G. Frysny (Greg)

Gregory Frysny

LICENSING SECTION

5 FEB 2007