

LICENSING SUB COMMITTEE

Minutes of a meeting of the Licensing Sub Committee held in the Council Chamber, Russell House, Churton Road, Rhyl LL18 3DP on Tuesday, 5 March 2019 at 11.00 am.

PRESENT

Councillors Alan James, Barry Mellor and Arwel Roberts

Ward Members – Councillors Bobby Feeley and Huw Hilditch-Roberts

ALSO PRESENT

Solicitor (AL), Licensing Officer (JT) and Committee Administrator (KEJ)

1 APPOINTMENT OF CHAIR

Councillor Alan James was appointed Chair for the meeting.

The Chair welcomed all parties to the meeting and all present were introduced. The hearing procedures had been circulated previously to all parties and copies of the Statement of Licensing Policy were made available at the meeting.

2 DECLARATION OF INTERESTS

No declarations of interest had been raised.

3 LICENSING ACT 2003: APPLICATION FOR VARIATION OF A PREMISES LICENCE - MRH RUTHIN, PARK ROAD, RUTHIN LL15 1NB

The Licensing Officer submitted a report by the Head of Planning and Public Protection (previously circulated) upon –

- (i) an application having been received from Malthurst Retail Limited for the variation of a Premises Licence in respect of MRH Ruthin, Park Road, Ruthin to vary their hours to open 24 hours for the sale of alcohol as an off licence together with the provision of late night refreshment (Appendix A to the report);
- (ii) the premises currently operated as a petrol filling station open 24 hours together with a small convenience store with current licensing hours authorising the sale of alcohol for consumption off the premises only Monday to Sunday from 06:00 to 23:00;
- (iii) the applicant having requested authorisation for provision of the following –

LICENSABLE ACTIVITY	DAYS APPLICABLE	TIME FROM	TIME TO
Supply of Alcohol (for consumption off the premises)	Monday – Sunday	24 hours	

Provision of late night refreshment (both on and off the premises)	Monday – Sunday	23:00	05:00
Premises Opening Hours	Monday – Sunday	24 hours	

- (iv) nine written representations having been received from interested parties in response to the public notice (Appendix B to the report) relating mainly to possible disturbance from noise and anti-social behaviour;
- (v) mediation having not been an option in this case given the number of representations received;
- (vi) the North Wales Police having submitted representations to the application along with a number of proposed conditions, which had subsequently been agreed with the Applicant, to be incorporated within the premises operating schedule should the variations be granted (Appendix C to the report);
- (vii) the proposed Operating Schedule having been included as part of the application detailing a number of additional conditions;
- (viii) the need to consider the application taking due account of Guidance and the Council's Statement of Licensing Policy; other relevant legislation and relevant representations received, and
- (ix) the options available to the committee when determining the application.

The Licensing Officer summarised the report and outlined the facts of the case.

APPLICANT'S SUBMISSION

Mr. Robert Botkai – Solicitor, Mr. Keith Dissamayake – Site Manager and Designated Premises Supervisor, and Mr. Paul Masher – Area Manager Motor Fuel Group were in attendance for the Applicant (Malthurst Retail Limited).

Mr. Botkai provided some background advising of the recent change of site ownership but confirmed the application remained correct. The current Premises Licence permitted the sale of alcohol between 06.00 and 23.00 in line with its previous opening hours. Since February 2018 the premises had been trading 24 hours a day and the application had been made to reflect the current trading hours. Reference was made to Guidance issued under Section 182 of the Licensing Act in relation to hours of trading which stated that shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises to match their opening hours unless there was good reason for restricting those hours. The Council's own Statement of Licensing Policy was also quoted as it related to the general permission for shops and supermarkets to sell alcohol during normal opening hours unless they were the focus for disorder and disturbance.

Mr. Botkai reported upon the two separate elements of the application as follows –

- Late Night Refreshment – the premises already sold hot drinks and had a limited hot food offer. The intention was to sell hot drinks only between the hours of 23.00 and 06.00 and the Applicant was willing to accept a condition on the licence prohibiting the sale of hot food between those times. It was hoped that this concession would help to address some of the residents' concerns
- Sale of Alcohol for 24 hours – it was submitted that the Police were the experts on crime and disorder. The Police had visited the site and a number of conditions had been agreed between the Police and the Applicant to be imposed on the licence if granted which had been reproduced at Appendix C to the report. The Police had been satisfied with the application on that basis. The application had been served on all statutory consultees and no objections had been received from any of the responsible authorities.

Mr Botkai was grateful for the opportunity to address residents' concerns relevant to the application and acknowledged that issues would arise from time to time when residents lived in close proximity to a petrol station. He was also willing to consider other concerns unrelated to the application outside of the hearing. In making his client's case and addressing issues raised Mr. Botkai responded as follows –

- specific concerns had been raised regarding Saturday night in particular due to people leaving other nearby licensed premises in the early hours – that would be an issue for his client to monitor and he did not believe it would create a problem given the way people generally behaved
- referred to his previous experience regarding concerns raised by residents in relation to 24 hour sites at licensing hearings advising that in the vast majority of cases residents' fears did not actually materialise; if any problems did arise residents were encouraged to report them and he provided assurances that action would be taken to address them
- his client was not aware of any anti-social behaviour experienced at the site
- broken glass had been raised as a concern but it was not necessarily procured from the premises and was more likely to have originated from pubs in the area
- the drink driving representations were not relevant to the application and there was no link between the two or evidence in that regard
- the car park next to the premises had been an issue for residents over the years with problems associated with 'boy racers' etc., and the Council had taken steps to address that. The car park was not the responsibility of the premises and if problems persisted in that regard it should not be held against the Applicant
- road traffic accidents referred to had no relevance to the application
- concerns regarding a hot food booth were unfounded given that there was a limited hot food offer currently and the intention was to sell hot drinks only for late night refreshment which also addressed concerns raised over food littering
- there would be a single cashier operating through a night pay window between 23.00 and 05.00 which was in line with how most stores operated and the Police had been satisfied with that approach and had raised no objection in that regard
- referred to written representations received from Mr. K. Bennett and apologised that he had not received a written response to his letter sent to the Store Manager in September 2018 – the letter had been forwarded to MRH Head Office but it coincided with the sale of the company and no response had been

sent. However steps had been taken in response including cordoning off the car jet wash at night, and following removal of the cones a token operated jet wash had been introduced limiting its operation to no later than 21.00; vacuuming was not permitted during the night, and whilst there was some signage on the forecourt asking people to leave quietly, additional signage could be installed

- the point regarding lorry drivers switching off their engines was unclear but he was willing to discuss the issue further with a view to resolution
- provided an undertaking not to carry out cleaning works during the night
- advised that contact numbers for the Site Manager would be distributed to facilitate better communication with residents
- steps had been taken to ensure there would be no deliveries between the hours of 22.00 and 07.00 to address concerns and though they were not relevant to the application, it demonstrated a willingness to listen and address concerns.

In closing, Mr. Botkai referred to the powers to bring a licence review in the event that there was real evidence of problems – he added that he had acted for MRH for fifteen years and was not aware of any reviews that had taken place, and in his more recent experience of Motor Fuel Group he was not aware of any licence reviews. Mr. Botkai was confident that if the application was granted, a licence review would not be forthcoming and any issues of concern, whether or not pertinent to the Premises Licence, would be addressed.

Members put questions to Mr. Botkai who responded as follows –

- there was no requirement in the Licensing Act to demonstrate a need for a licence
- the intention was to operate from 23.00 to 05.00 through a night pay window during which time doors would be locked and customers would not be permitted to enter the store. The Designated Premises Supervisor confirmed there were currently no queues of people at night and that was not expected to change
- experience elsewhere had shown that in similar circumstances people behaved in a certain way – it was not considered that people would leave the pubs in the vicinity to buy alcohol from the garage. However the situation would be monitored and if it did become an issue then, as a responsible licensee, the premises would stop selling alcohol. Reference was made to previous cases where Police held concerns that premises would become a focal point but following a trial period those fears had not materialised and the temporary licence had been made permanent – in this case there was no evidence in that regard and the Police had not objected to the application. Whilst the residents' concerns were understandable they were not borne out in his experience
- the premises was already trading for 24 hours – the only change in provision would be selling hot drinks between 23.00 and 05.00 and extending the sale of alcohol from the current licensing hours (06.00 to 23.00) to 24 hours in line with the current trading hours of the premises
- staff were fully trained and were not permitted to sell alcohol to anyone who was already intoxicated
- reiterated that it was proposed to monitor the new licensing hours and in the event of any problems, as responsible licence holders, the practice would be stopped. The Police had not asked for any restriction of hours or monitoring and

there was no evidence to support restricting the licence to 02.00. Whilst noting residents' concerns he did not believe those problems would materialise.

NORTH WALES POLICE SUBMISSION

In the absence of a representative from North Wales Police, their representations as detailed within the report were taken as read. Conditions put forward by the Police had been agreed with the Applicant in order to further promote the licensing objectives in the event that the application was granted as applied for.

PUBLIC REPRESENTATIONS FROM INTERESTED PARTIES

Nine written representations (Appendix B to the report) had been received from interested parties relating mainly to noise nuisance and anti-social behaviour. Those interested parties present at the hearing included (1) Ms. C. Williams, (2) Ms. A. Lapage, (3) Mr. K. Simmons, and (4) Mr. K. Bennett – all residents or in attendance on behalf of residents/business of Park Road, Ruthin.

Councillor Huw Hilditch-Roberts had been appointed by two interested parties to speak on their behalf – (1) Ms. C. Williams and Mrs. A. Jones (not present). (2) Mrs. A. Lapage, (3) Mr. K. Simmons and (4) Mr. K. Bennett advised that they intended to speak in their own right.

Councillor Huw Hilditch-Roberts – advised that the garage was located in a rural market town, in a residential area, close to three public houses which had door staff at certain times so that anti-social behaviour could be managed, and the kebab shops closed 30 minutes before the public houses as a means of addressing anti-social behaviour. Residents were concerned that the garage was accessible from every public house in the town leading to a challenge with increased footfall and noise creating a hotspot, particularly given that the town was slow to empty, and it would become a focus for youngsters to congregate with queues on the garage forecourt. The Applicant had indicated that hot food would not be sold but if the licence was granted as applied for there would be no restriction. Other licensed premises in the town had controls and restrictions to help address anti-social behaviour and allowing a 24 hour licence would set a precedent. Residents' concerns were clear with crime and disorder being a potential issue; concerns around public safety and noise nuisance with those residents in the nearby care facility having to cope with those issues. The absence of crime and disorder issues would change if a 24 hour licence to sell alcohol was granted. In response to the Applicant's view that problems could be dealt with via review, Councillor Hilditch-Roberts countered that it would be more difficult to revoke a licence once it had been granted, and in the interests of residents, and the good work already carried out in the town to address the problems, he asked that the application be refused.

Mrs. A. Lapage – submitted that the Applicant had dismissed the points raised by residents but they were very real – residents lived in a very noisy street where cars drove at high speed and drink driving was an offence which should not be promoted. She referred to her written representations and argued that for the wellbeing of residents the application should be refused given that there were already issues relating to crime and disorder and public safety in the town. As part

of her submission Mrs. Lapage made reference to recent road traffic accidents and poor driving behaviours and believed that selling alcohol for 24 hours would further compound those problems. With regard to public nuisance she reported upon existing problems in the car park adjacent to the garage and road outside with cars revving and engines running during the night. She reported upon a meeting with the Police and the Council to address concerns and whilst nuisance had reduced it had not been eliminated and granting the application would increase the problem. Finally she raised concerns regarding broken glass in the vicinity and links between alcohol and child abuse. She urged members to vote against the application.

Mr. K. Simmons – objected to the application which he believed would have a detrimental impact on the community. He reiterated the points made in his written representation and findings in the British Medical Journal (2016) regarding licensing policies; fact sheet published by the Institute of Alcohol Studies and the role between alcohol and criminal activity; the Council's Statement of Licensing Policy, specifically in relation to crime and disorder and promotion of the licensing objectives, and cumulative impact: arguing that the area in the vicinity of the garage should be classed as a residential area under stress. Mr. Simmons submitted that the Applicant had not demonstrated how the operation of the premises would not add to the cumulative impact already experienced and urged refusal the application.

Mr. K. Bennett – highlighted a number of points in his written submission and focused on the health and wellbeing of residents, particularly from noise nuisance associated with the premises at night, including cleaning and maintenance activities which the Applicant had indicated had been addressed. Residents had not been consulted or notified prior to the change in opening hours and the problems experienced related to night time issues since the premises opened 24 hours and related to public nuisance, crime and disorder and public safety. He elaborated upon a number of those issues documented within his written submission and also referred to speculation regarding a Costa or Greggs concession which would create an attraction and impact on existing anti-social behaviour; 'boy racers' driving onto the garage forecourt in two/threes at a time, noisy and shouting; challenged the use of the night pay window; hauliers parking outside; and highlighted that his concerns related to every night of the week, not just Saturday. Mr. Bennett had no confidence in the assurances provided by the Applicant given that he did not believe most of the issues in his letter to the Store Manager had been addressed, and that no reviewing or monitoring had taken place since the premises started operating 24 hours. Rather than dealing with the matters retrospectively via review, Mr. Bennett felt that the application should be refused at this stage.

At the close of the residents objections Councillor Hilditch-Roberts summarised the issues raised and argued that, given the location of the garage in a residential area within a short walking distance to other licensed premises, granting the application would create a focal point in the town for people to congregate in the early hours of the morning with no controls in place leading to increased anti-social behaviour and noise nuisance issues with public safety difficult to manage.

APPLICANT'S FINAL STATEMENT

In making his final statement Mr. Botkai asked members to consider the evidence presented and whether it was likely that there would be an increase in crime and disorder and public safety put at risk. In considering the evidence and submissions put forward Mr. Botkai responded that –

- the premises already had a licence to sell alcohol between 06.00 and 23.00. Councillor Hilditch-Roberts had stated that there was no crime and disorder at the garage at present and was concerned for the potential for crime and disorder if the application was granted – the Applicant did not consider granting the application would lead to crime and disorder and neither did the Police who had met with the operator to discuss the application
- the location for the garage to become a hotspot was disputed – there were currently no problems with youths congregating and no reason to think the situation would change if the licence was granted
- the premises had never had an issue with queues at the night pay window and the situation was not expected to change if the licence was granted
- whilst understanding residents' concerns they were unlikely to materialise
- in terms of bringing a review, the process was straightforward in the event of crime and disorder as a consequence of selling alcohol, and it would be easy to remove those hours if there was evidence to do so
- in terms of reference to traffic accidents, there was no link to the premises or the application and could not be held against the Applicant, similarly there was no connection with the premises regarding references to child abuse or relevance to the application regarding concerns over parking of the sheep transporter
- there were no grounds to refuse the application on the basis of the articles referred to by Mr. Simmons in his submission, including cumulative impact
- there were no plans for a Greggs concession at the store and the Applicant had already offered a condition not to serve hot food between 23.00 and 05.00
- measures had already been taken to address issues raised including CCTV which was a deterrent and useful to the Police to aid their enquiries – numerous measures had been carried out which had not necessarily been detailed within the Operating Schedule and the company complied with its own statutory policies and procedures in terms of management and operational issues
- offered a condition to close the shop door to customers between 23.00 and 5.00 with any sales between those hours made through the night pay window.

In closing Mr. Botkai asked the Sub Committee to consider the application based on the evidence heard – he was very aware that if the fears of the residents were to materialise they would face a review of the licence. He asked for the opportunity to address any outstanding concerns which would prohibit granting the licence.

ADJOURNMENT TO CONSIDER THE APPLICATION

At this juncture (12.50 p.m.) the Licensing Sub Committee adjourned to consider the application.

DECISION AND REASONS FOR THE DECISION

RESOLVED that the variations as applied for be determined as follows –

- i. Provision of Late Night Refreshment 23:00 – 05:00 Monday to Sunday – GRANTED FOR HOT DRINKS ONLY (no hot food provision)*
- ii. Supply of alcohol for 24 hours Monday to Sunday (for consumption off the premises) – REFUSED*

The Chair conveyed the Sub Committee's decision to all parties present and the Solicitor reported upon the reasons for the decision as follows –

Members had carefully considered the application and representations submitted in this case.

In considering the application in context the Sub Committee noted that Ruthin was a small rural market town and that the garage was located in very close proximity to local residents, in the middle of a residential area with a care home facility nearby. The Sub Committee found that the structure and location of the premises had a tendency to amplify noise in a very small and contained area – anything occurring in that area would be amplified throughout, particularly at night. The premises was also situated in close proximity to other licensed premises in the town, all within walking distance. Those other licensed premises were strictly controlled, with door staff and restricted hours of operation, specifically so because of the issues which currently existed in the town generally relating to anti-social behaviour and alcohol related crime.

The Sub Committee found that having such a premises which was accessible for 24 hours, within walking distance of other licensed establishments, would undoubtedly create a hub for anti-social behaviour – this was considered inevitable due to its location. The provision of hot food would also become an attraction and create a public nuisance with the associated behaviours, such as littering and noise.

Whilst the use of the car park adjacent to the garage was not under the jurisdiction and control of the premises, it did however naturally create a hub for people gathering with a tendency to engage in anti-social behaviour and public nuisance. The attraction of the garage serving hot food and alcohol would be a magnet for those people.

Whilst the Applicant had given some assurances about control measures, the Sub Committee had heard unrebutted submissions that the night kiosk was not being used which was a cause for concern.

Members had disregarded irrelevant issues such as parking outside the garage (hauliers with sheep); road traffic accidents outside the town; the association with drink driving, and the submission about alcohol leading to an increase in child abuse.

Taking all relevant considerations into account the Sub Committee remained certain that the introduction of alcohol and food sales over a 24 hour period would be in conflict with the licensing objectives.

All parties had a right to appeal against the Licensing Sub Committee's decision to the Magistrates Court within 21 days.

The meeting concluded at 1.30 p.m.