

LICENSING SUB COMMITTEE

Minutes of a meeting of the Licensing Sub Committee held in Conference Room 1a, County Hall, Ruthin on Wednesday, 24 April 2019 at 9.30 am.

PRESENT

Councillors Melvyn Mile, Rhys Thomas and Huw Williams

ALSO PRESENT

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

1 APPOINTMENT OF CHAIR

Councillor Huw Williams 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 declaration of interest had been raised.

3 LICENSING ACT 2003: APPLICATION FOR A NEW PREMISES LICENCE - RHYL SPICE, 64 - 66 QUEEN STREET, RHYL

A report by the Head of Planning and Public Protection (previously circulated) was submitted upon –

- (i) an application having been received from Gamlins Law Solicitors on behalf of the Applicant, Md Muhim Uddin (Appendix A to the report) for a new Premises Licence in respect of Rhyl Spice, 64 – 66 Queen Street, Rhyl proposing to operate as a restaurant and takeaway with the provision of a telephone delivery service, and in all cases alcohol would only be sold or delivered when a customer had purchased a meal;
- (ii) the applicant having requested authorisation to provide the following licensable activities –

LICENSABLE ACTIVITY	DAYS APPLICABLE	TIME FROM	TIME TO
Late Night Refreshment Indoors and Outdoors	Monday – Sunday	23:00	02:00
Supply of Alcohol (for consumption on and off the premises)	Monday – Sunday	11:00	02:00
Hours that the premises would be open to the public	Monday – Sunday	11.00	02.00

Last entry to restaurant and takeaway facility at 01.00. Telephone delivery service until 02.00. (Alcohol to be sold ancillary to food)

- (iii) the North Wales Police having submitted representations and proposed a number of conditions (which had been agreed by the Applicant) to be imposed on the licence, if granted, relating to the delivery of alcohol in order to promote the prevention of crime and disorder and protection of children from harm licensing objectives (Appendix B to the report);
- (iv) two written representations having been received from Interested Parties (Appendix C to the report) in response to the public notice relating to possible disturbance from noise and air pollution;
- (v) officers having offered mediation between the Applicant and the Interested Parties with no resolution having been reached to date;
- (vi) the need to consider the application taking due account of the Council's Statement of Licensing Policy; Guidance issued by the Secretary of State; other relevant legislation and relevant representations received, and
- (vii) the options available to the committee when determining the application.

The Licensing Officer (NJ) introduced the report and outlined the facts of the case.

APPLICANT'S SUBMISSION

The Applicant Md Muhim Uddin and his legal representative, Mr. P. Williams from Gamlins Law Solicitors were in attendance in support of the application.

Mr. Williams clarified the proposals for operating the licence advising that alcohol would be sold ancillary to the provision of substantial meals. Alcohol sales would cease at 01.00hrs for the restaurant and takeaway facilities in line with the last entry times and at 02.00hrs for the telephone delivery service of takeaway meals.

North Wales Police had made representations with regard to proposed additional conditions to be incorporated in the Operating Schedule in respect of the delivery of alcohol which had been agreed with the Applicant. With regard to the two written representations received from Interested Parties in response to the requisite public notice, Mr. Williams advised that both referred to noise from patrons leaving after 23.00hrs and congregating in the smoking area together with odour issues. He submitted that those concerns had been based on the conduct of the previous occupiers advising that the premises had been closed down some months earlier due to poor management. The Applicant had only been operating since 9 April 2019 on a limited basis and had not traded beyond 23.00hrs and therefore the concerns raised must have been associated with the previous occupants. The Applicant would operate in accordance with stringent conditions as detailed in the application in order to promote the licensing objectives, and particular attention was drawn to the measures to be implemented in order to prevent public nuisance and minimise noise disturbance to nearby properties given the Interested Parties concerns. In terms of odour issues the extractor system had been refurbished and

ventilation extended which together with good management of filters should address those concerns. Members' attention was also drawn to Guidance issued under Section 182 of the Licensing Act 2003 with regard to the role of responsible authorities in making representations and it was highlighted that no representations had been received from Environmental Health Officials with regard to noise or pollution concerns and no evidence of compliance had been provided in that regard.

Mr. Williams further addressed the representations received from the Interested Parties advising that they had both been submitted on the same day and had been set out in a similar format highlighting the same nuisance. Both Interested Parties had failed to engage in mediation despite numerous attempts and as neither had attended the hearing it was not possible to fully consider their representations and ascertain why they had not previously complained to Environmental Health Officials and why no other residents in the vicinity had raised any objection. It was also submitted that there were a number of other food outlets in the vicinity and it was not clear whether the Interested Parties had a vested interest or were associated with similar establishments – particularly given that one of the Interested Parties had until recently operated a similar outlet. In light of the stringent conditions offered it was submitted that, in accordance with paragraph 9.6 of the Guidance issued under Section 182 of the Licensing Act 2003, the representations be categorised as frivolous, concerning minor issues at most and in relation to which no remedial steps would be warranted or proportionate.

Finally reference was made to the review process which represented a key protection for the community where problems occurred after the grant of a licence enabling a request to the licensing authority for the licence to be reviewed.

The Licensing Sub Committee sought clarification regarding the timings requested for licensing hours given that the application had specified the sale of alcohol for consumption both on and off the premises until 02.00hrs. Mr. Williams confirmed the intention sell alcohol up to 01.00hrs in the restaurant and takeaway facility to coincide with the last entry times. Alcohol would only be sold with food as part of the telephone delivery service until 02.00hrs.

The Applicant and his representative responded to members' questions as follows –

- elaborated upon the refurbishment of the odour extractor system which could be further modified/alterd if required in the event of a future complaint
- explained that in their proposed conditions for the delivery of alcohol the North Wales Police had considered a minimum of £5 must be spent on food sales which had been agreed by the Applicant – assurances were provided that alcohol would only be provided if ancillary to a substantial takeaway meal
- clarified that the point/time of sale could occur over the telephone if taking credit card or phone payments or cash payments on delivery – a judgment was to be made by the delivery driver as to whether the customer was believed to be intoxicated and to check identification on the doorstep
- the proposed record to be kept of a banned list of premises where delivery had been refused was an extension to the current system operated by licensed premises whereby records were kept of individuals who had been refused service and/or barred from the premises.

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. The proposed conditions put forward by the Police with regard to the alcohol delivery element 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.

INTERESTED PARTIES SUBMISSION

Two written representations had been received (Appendix C to the report) from Interested Parties living in the vicinity of the premises which related to possible disturbance from noise and air pollution. In the absence of the two Interested Parties their representations were taken as read.

APPLICANT'S FINAL STATEMENT

Mr. Williams confirmed he had nothing further to add to his submission.

ADJOURNMENT TO CONSIDER THE APPLICATION

At this juncture (10.05 a.m.) the Licensing Sub Committee adjourned to consider the application.

DECISION AND REASONS FOR THE DECISION

RESOLVED that, subject to the conditions as set out below, a Premises Licence be granted for the following –

LICENSABLE ACTIVITY	DAYS APPLICABLE	TIME FROM	TIME TO
<i>Late Night Refreshment Indoors and Outdoors</i>	<i>Monday – Sunday</i>	<i>23:00</i>	<i>02:00</i>
<i>Supply of Alcohol – for consumption both on and off the premises via the restaurant and takeaway facilities</i>	<i>Monday – Sunday</i>	<i>11:00</i>	<i>01:00</i>
<i>for consumption off the premises only to accommodate the telephone delivery service</i>	<i>Monday – Sunday</i>	<i>11.00</i>	<i>02:00</i>
<i>Hours that the premises would be open to the public</i>	<i>Monday – Sunday</i>	<i>11.00</i>	<i>02.00</i>
<i>Last entry to restaurant and takeaway facility at 01.00. Telephone delivery service until 02.00. (Alcohol to be sold ancillary to food)</i>			

CONDITIONS

As put forward by the North Wales Police –

FOR THE DELIVERY OF ALCOHOL ONLY:

1. *All customers will be informed at the time of sale that if the delivery driver believes them to already be intoxicated they will not deliver the alcohol and a full refund will be made. No orders will be accepted by customers who are believed to be drunk at the point of sale.*
2. *Customers will be informed when placing an order that the company operates a Challenge 25 policy. If required, the customer at point of delivery must produce an acceptable form of ID.*
3. *Multiple orders may be carried in the delivery vehicle at any one time.*
4. *Deliveries will only be made to bona fide residential or business addresses. Records of all addresses delivered to will be maintained and will be made available to Police or Local Authority Officers on demand.*
5. *Any address where a delivery has been attempted but refused will be placed on a banned list and no further orders will be accepted from that address. Records of all addresses on the banned list will be maintained and will be made available to Police or Local Authority Officers on demand.*
6. *Alcohol sales can only be made when accompanying food sales. A minimum of £5 must be spent on food sales.*

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

Members had carefully considered the application and representations submitted in this case and were satisfied that the proposed agreed conditions with the North Wales Police were proportionate and would provide further protections and aid in the promotion of the licensing objectives. In terms of the written representations submitted by the Interested Parties members found that no complaints had been made to Environmental Health Officials associated with the premises under the current management and Environmental Health Officials had not made any representations despite being a responsible authority. The fact that the objectors had not attended the meeting in support of their concerns meant that the Sub Committee could only take their written representations at face value and had no opportunity to question the objectors further. Consequently the Sub Committee found that the complaints had been based on the previous occupants of the premises. Whilst the Sub Committee had not gone so far as to declare the objections frivolous, little weight had been attached to them and members considered there to be no current concerns. As a safeguard the objectors had the right to bring a review if the operation of the premises was carried out contrary to the licensing objectives. However the Sub Committee was satisfied that the extensive conditions as detailed within the application and to be attached to the premises would suffice in the promotion of the licensing objectives. The slight

amendment to the licensing hours had been made following clarification of the requested permitted hours from the Applicant and his legal representative.

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

The meeting concluded at 10.20 a.m.