

LICENSING SUB COMMITTEE

Minutes of a meeting of the Licensing Sub Committee held by video conference on Thursday, 20 August 2020 at 10.00 am.

PRESENT

Councillors Hugh Irving, Brian Jones and Melvyn Mile

ALSO PRESENT

Solicitor (AS), Public Protection Business Manager (IM), Licensing Officer (JT), Democratic Services Manager (SP) and Committee Administrator (KEJ)

The Local Democracy Reporter was also in remote attendance to observe proceedings.

POINT OF NOTICE

Due to the current restrictions on travel and requirement for social distancing as a result of the coronavirus pandemic the meeting was held remotely by video conference and was not open to the general public.

WELCOME

Councillor Hugh Irving, Chair of the Licensing Committee welcomed everyone present and made introductions. He also drew attention to the procedures to be followed at the hearing which had been circulated previously to all parties.

1 APPOINTMENT OF CHAIR

Councillor Hugh Irving was formally appointed Chair for the meeting.

2 DECLARATION OF INTERESTS

No declarations of personal or prejudicial interest had been raised.

3 LICENSING ACT 2003: REVIEW OF A PREMISES LICENCE - Y BODUNIG, HIGH STREET, DYSERTH

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

- (i) an application having been received from North Wales Police for the Review of a Premises Licence held by Mr. Abdulhamit Salih Colakoglu in respect of Y Bodunig, High Street, Dyserth (a copy of the existing Premises Licence and current operating schedule having been attached as Appendix A to the report);

- (ii) the grounds for review as stated on the application being as follows –

“Failure to promote the Licensing Objectives, particularly Public Safety and the Prevention of Crime and Disorder.”

full details of the Review Application having been attached as Appendix B to the report but in summary related to various reports that the premises had been open on a number of separate occasions in breach of the regulations imposed in response to the coronavirus pandemic which required the closure of all public houses, clubs and restaurants; the Police having also cited issues with regard to the provision of CCTV evidence and their lack of confidence in the collective ability of the premises management to operate responsibly; consequently the Police sought permanent closure of the premises;

- (iii) reference having also been made to a previous Review brought by the Police resulting in the removal of the then Designated Premises Supervisor (DPS), Mr. Derek Coulton, who was replaced with the current DPS Mr. Nihat Colakoglu; however Mr. Derek Coulton remained as Manager responsible for the day to day running of the premises;
- (iv) there having been four representations received in response to the requisite public notice of the Review Application (attached at Appendix C to the report) – Mr. Derek Coulton acting as an Interested Party together with three further letters from other Interested Parties which, whilst acknowledging the issues raised by the Police, were supportive of the premises remaining open;
- (v) no response to the Review Application having been received from the Premises Licence Holder (PLH) Mr. Abdulhamit Salih Colakoglu;
- (vi) the need to consider the Review Application taking due account of the Council’s Statement of Licensing Policy; Guidance issued by the Secretary of State; other relevant legislation and representations received, and
- (vii) the options available to the committee when determining the application.

The Licensing Officer introduced the report and detailed the facts of the case. She also drew attention to additional information which had been circulated to all parties since publication of the report which included (1) the chronology of CCTV footage on 30 March which had been omitted from Appendix 14 of the papers, and (2) two reports of further information and recent developments at the premises submitted by the North Wales Police. It was also noted that the DPS – Mr. Nihat Colakoglu would be representing the PLH – Mr. Abdulhamit Salih Colakoglu in his absence.

APPLICANT’S (NORTH WALES POLICE) SUBMISSION

The Assistant Force Solicitor Mr. Gareth Preston and the Police Licensing Officer PC Manus Sheridan were in attendance on behalf of the North Wales Police.

In making the case for the Police, Mr. Preston submitted that the management of the premises had comprehensively failed to abide by the licensing objectives,

particularly public safety, which given the global pandemic was inexcusable. The Manager at the time, Derek Coulton, had been removed as DPS in 2014 following a previous Review by the Police but had remained as Manager with day to day responsibility of the premises. There had been no evidence of active management by the DPS or PLH. The ground for Review was the failure to promote the licensing objectives, particularly the promotion of public safety and the prevention of crime and disorder.

The Police Solicitor elaborated upon the comprehensive evidence provided in the Review Application and drew attention to the numerous incidents during March and April 2020 which clearly demonstrated the premises had been actively trading in breach of the coronavirus regulations and putting public safety at risk. The evidence included intelligence and reports to the police regarding active trading together with subsequent investigations and police visits to the premises, some of which had since been corroborated by CCTV footage obtained from the premises. It was submitted that Derek Coulton had been actively working to deceive the police and licensing authority during this period, creating the illusion that repair/refurbishment works were being carried out as a cover for people drinking in the premises, and with regard to his CCTV drive had been deliberately obstructive. CCTV footage collected from the premises appeared to capture interference of the system and following forensic examination wiped footage had been recovered and matched to the times of specific incidents and corroborating those reports.

The Police Solicitor also drew attention to additional information provided by the Police (previously circulated to all parties) relating to recent developments and further pertinent information. Particular reference was made to the following –

- the premises having hosted a club meeting on 6 August with images on social media showing a complete absence of any social distancing or virus countermeasures. A report by the Environmental Health Officer who attended the premises (with two police officers) on 7 August was read out which highlighted the lack of safety measures to protect patrons and those who may be exposed to virus transmission. Other comments made via social media arising from reporting of the Review in the local press were also highlighted
- a new Manager had been installed at the premises as of 18 August and it was submitted that the management of the premises warranted careful scrutiny with all the parties involved being close business associates, and details of links to other licensed premises were also provided to demonstrate that any change of management between those individuals would be a cause for concern. Due to the nature of the relationship between the parties the Police submitted it was highly likely that the unacceptable management style would endure without a clear change in direction and personalities. Given that and the nature of the risk to the public in this case mediation had not seemed proportionate. Clearly, the management of the premises undermined the licensing objectives and had put people at risk of virus transmission when advice could not have been clearer.

The Police Solicitor also responded to the representations submitted by Derek Coulton (Appendix C to the report) as follows –

- he claimed there were intermittent faults to the CCTV system but no faults were reported to the licensing authority as required by licensing conditions
- he confirmed the PLH was not involved in the business or aware of work carried out at the premises demonstrating that the PLH had no oversight or interest
- claims that there were workers at the premises had been disproved by CCTV footage and clearly showed an illusion being created of work being carried out
- there was no mention of the allegation of people hiding in the premises during the police visit on 29 March or explanation for people drinking in the premises or cash at the bar which was clearly the sale of alcohol by retail
- with regard to the letter from the individual claiming to have undertaken work at the premises it did not provide any detail of dates of work undertaken and did not read as an impartial tradesperson or regular contract
- photographs had been provided to illustrate work carried out but CCTV showed that the work had already been done and people were drinking in the bar.

With regard to the other letters of representation from Interested Parties it was noted that the main emphasis was on the loss of the public house and community impact but the current management had been proven to be unacceptable and unsafe. The final letter of representation from a nearby neighbour had also highlighted concerns in relation to the management of the premises.

In closing the Police submission PC Sheridan drew attention to the following –

- on 29 March Derek Coulton advised Police that only himself and his wife were in the premises but the recovered CCTV footage showed people hiding in the flat during the police visit which was a deliberate attempt to deceive
- referenced comments in the additional information circulated by Police which he believed demonstrated that what went on at the premises was an open secret
- reiterated Police concerns regarding the new Manager given the incidents referred to at other licensed premises they operated
- highlighted the deliberate attempts by Derek Coulton to deceive the Police with regard to the CCTV footage and advised that colleagues who recovered the footage had indicated it had been deliberately deleted
- having personally viewed all the CCTV footage available it was clear that no work had been carried out at the premises during the times claimed.

In response to questions PC Sheridan confirmed that prior to the evidence presented in the current Review Application there had been no recorded crime in the premises since the removal of Derek Coulton as DPS in 2014.

INTERESTED PARTIES REPRESENTATION

Representations had been submitted from four Interested Parties – Mr. Derek Coulton, Councillor David Williams (Dyserth Ward), Dyserth Community Council and Ms. B. Glover (Appendix C to the report). It was noted that Dyserth Community Council and Ms. B. Glover were not in attendance to speak to their representations which would be taken as read.

Mr. Derek Coulton responded to particular issues raised by the Police as follows –

- apologised for what had happened advising that he had resigned as Manager and no longer had anything to do with the premises
- pointed out that his removal as DPS in 2014 had nothing to do with drugs
- refuted allegations made that the premises had been open during lockdown
- insisted people in the premises were there to carry out various works, including workmen and their wives, with no more than five people at any time
- admitted providing drinks to workers in the premises as a way of thanking them with any money taken for drinks due to be given to charity
- explained he had phoned the Licensing Department to enquire as to whether a plumber would be allowed in the premises because he was unsure
- referred to the CCTV equipment advising there was a fault on the system which had been subject to repair several times; there was an iCloud back up; he had nothing to hide in that regard and had freely given the CCTV to police
- he had been offended by the inspection report on safety measures carried out on 7 August advising of the safety measures that were in place
- he was anti-drugs and with regard to the incident on 21 March the offender had been outside but had been brought into the premises by the police.

Councillor David Williams referred to his written representations and advised that the pub had historically been a vibrant part of the community and a focal point and asset to the community. Whilst not passing judgment or condoning what had happened at the premises he spoke for himself, the Community Council and many of the people of Dyserth when he said that it would be considered a backward step if the premises ceased to be a public house and would be detrimental to the community. Consequently he hoped there would be a way of keeping the pub open, perhaps with different management, and secure its future as a public house.

PREMISES LICENCE HOLDER'S REPRESENTATION

In the absence of the PLH Mr. Abdulhamit Salih Colakoglu, the DPS Mr. Nihat Colakoglu attended as his representative.

In presenting his representations Mr. Colakoglu submitted that –

- he had no knowledge of what had been going on at the premises because he had been self-isolating at that time; he had not approved it nor did he condone it
- the PLH could not be held responsible because he had been out of the country since February and was working in a Turkish hospital
- the new Manager had been brought in based on his success at another pub/restaurant and it was hoped to replicate that success at the Bodunig
- responded to issues raised by the Police with regard to other premises operated by the management providing an explanation to allay the concerns raised
- he believed the police had a personal problem with the management team because they would not engage with the mediation process.

Members sought further clarification regarding the management arrangements and Mr. Colakoglu confirmed the ownership/lease arrangements relating to the Bodunig and links with other licensed premises and business associates.

APPLICANT'S (NORTH WALES POLICE) FINAL STATEMENT

In making a final statement the Police Solicitor submitted that there was still no definitive action or clear plan in place as to how the premises would be properly managed. It was noted that Derek Coulton would have no active involvement running the premises but his replacement was a cause of concern to the Police with questions raised as to his suitability. The DPS chose to take no management action during lockdown when he could have used the technology available to him. Similarly because the PLH was abroad did not absolve him from any responsibility and he could designate others to take tasks but there was no evidence of him doing so. The evidence provided by the Police was incontrovertible in terms of activities in the premises and they remained extremely concerned regarding the management of the premises with public safety put at risk.

PC Sheridan responded to comments made during submissions advising that –

- the DPS had not checked on the premises despite living very close by
- the inspection of safety measures undertaken on 7 August had been carried out by the Council's Environmental Health Officer
- the statements of the two police officers attending the drug incident on 29 March confirmed that the incident took place inside the premises
- there was no personal issue with the management of the premises which had only been investigated following reports made by the public.

ADJOURNMENT TO CONSIDER THE APPLICATION

At this juncture (11.40 a.m.) the Chair closed the meeting to all other parties and the Licensing Sub Committee retired to consider the application in private session.

DECISION AND REASONS FOR THE DECISION

RESOLVED that the Premises Licence be revoked.

The reasons for the decision being as follows –

The Licensing Sub Committee had carefully considered the report together with the written representations made by the various parties and oral submissions during the hearing and response to questions. The Sub Committee had also taken into account the relevant law and guidance as part of their deliberations.

On the basis of the evidence provided, and in light of the catalogue of incidents at the premises during March and April 2020 set out in that evidence, the Sub Committee was satisfied that the premises had been run in such a way that was contrary to the Prevention of Crime and Disorder and promotion of Public Safety licensing objectives. The additional evidence presented in respect of the hosting of a club meeting at the premises on 6 August and the lack of social distancing or virus countermeasures during that meeting, which was further corroborated following an inspection of safety measures by the Environmental Health Officer on 7 August, demonstrated the continued management failings to date.

The Sub Committee were of the clear view that the premises needed to be properly managed in accordance with the relevant law and guidance and were particularly aware of the need to protect public safety at this difficult time in light of the current public health crisis arising from COVID 19. The failure to properly manage the premises to date had therefore led to the decision to revoke the licence.

Whilst it was recognised that some steps had recently been taken to change the management of the premises, given the nature of the relationship between the parties involved as set out by the Police and their concerns in that regard, the Sub Committee had no confidence that the current management failings would improve as a result of these proposals and resolved on a unanimous basis that in order to promote the prevention of crime and disorder and the promotion of public safety licensing objectives, it was appropriate to revoke the Premises Licence.

The parties were provided with a summary of the decision later that day and a full reasoned decision was subsequently issued.

The meeting concluded at 12.15 p.m.