

LICENSING SUB COMMITTEE

Minutes of a meeting of the Licensing Sub Committee held by video conference on Wednesday, 26 August 2020 at 10.00 am.

PRESENT

Councillors Hugh Irving, Brian Jones and Melvyn Mile

ALSO PRESENT

Solicitor (AS), Planning and Public Protection Manager (IM), Licensing Officer (NJ), 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 - THE NORTH, 27 WELLINGTON ROAD, RHYL

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 in respect of The North, 27 Wellington Road, Rhyl (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 the Prevention of Crime and Disorder, Public Safety and Public Nuisance.”

full details of the Review Application having been attached as Appendix B to the report but in summary relate to a chronology of numerous incidents of crime, disorder and anti-social behaviour linked to the premises, its customers and the running of the establishment dating back to December 2018 leading to a lack of confidence in the overall management and control of the premises; consequently the Police recommended modification of the Premises Licence as a means of addressing areas of concern;

- (iii) reference having been made to utilisation of the joint enforcement protocol with North Wales Police and the Council to deal with problems at licensed premises culminating in the application to Review the Premises Licence;
- (iv) there having been two representations received in response to the requisite public notice of the Review Application (attached at Appendix C to the report);
- (v) representations having also been received in response to the Review Application from Mr. Robin Jones, Director of The North, Rhyl Ltd (Premises Licence Holder - PLH) and Designated Premises Supervisor (DPS) (attached at Appendix D to the report);
- (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 outlined the facts of the case. She also drew attention to additional information from North Wales Police (which had been agreed and circulated to all parties prior to the hearing) which included reference to further incidents that had occurred since submission of the Review Application covering the period March 2020 – August 2020.

APPLICANT’S (NORTH WALES POLICE) SUBMISSION

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 reiterated the grounds for review and submitted that despite continuing dialogue between the management and the Police, the management had not effected a change to eliminate or even radically reduce the difficulties with the continued operation of the premises. The additional information submitted in evidence by the Police demonstrated that problems had not been appropriately addressed and continued to affect the area. Consequently, the Police had no confidence in the way the premises was being managed which they submitted required a root and branch change. In detailing the recommended modifications to the licence, it was the Police’s view that they were entirely proportionate given the broad and serious nature of the problems which persisted.

The Police supported and encouraged a vibrant, lively and safe late night economy and in that spirit had not requested closure of the premises but, given the weight of evidence in this case, it may be a consideration for the Sub Committee.

The Police Solicitor referred to the comprehensive evidence provided in the Review Application and volume of call outs to the premises in the last five years with over a third having occurred during December 2018 and January 2020 with 55 calls to the Police regarding incidents connected to the premises. The Police highlighted their serious concerns regarding the management and control of the premises resulting in people being put at risk. Mr. Preston elaborated upon the evidence provided in the Review Application and the chronology of incidents during December 2018 and February 2020 relating to crime, disorder and anti-social behaviour. Despite repeated attempts by the Police and Council to engage with the premises and resolve issues there maintained a serious lack of management control and the premises continued to draw violent crime and disorder. Reference was also made to the additional information submitted by the Police, which highlighted further incidents since March 2020 and the problems which continued with the premises.

Mr. Preston then responded to the written representations submitted by Mr. Barry Jones, Door Supervisor at the premises (Appendix C to the report) and Mr. Robin Jones, PLH/DPS (Appendix D to the report), and confirmed that the Police maintained their version of events and highlighted where that evidence had been further corroborated by Police reports and CCTV footage.

In closing the Police submission, Mr. Preston referred to the wealth of evidence demonstrating the clear and ongoing failure of management to control the premises with no real significant progress made in addressing issues of concern, and the failure of the premises management to comply with the licensing objectives.

PC Sheridan responded to questions regarding the recommended modifications to the licence conditions advising that, whilst there was no guarantee that they would resolve all the issues associated with the premises, they were considered the best opportunity to keep staff, customers and the community safe and effect improvement; ultimately it would be the management's responsibility to adhere to those conditions. It was also confirmed that there was a Track and Trace Log maintained at the premises.

INTERESTED PARTIES REPRESENTATION

Representations had been received from two Interested Parties – Mr. Barry Jones, Door Supervisor at the premises and Ms. Gail Rickett (Appendix C to the report). It was noted that Ms. Rickett was not present to speak to her representations. Mr. Jones was in attendance in support of the premises with Mr. Robin Jones (PLH/DPS) but did not speak directly to the Sub Committee thereon and was content for the Legal Representative, Mr. Leo Charalambides to speak for them.

PREMISES LICENCE HOLDER'S REPRESENTATION

Mr. Robin Jones (PLH/DPS) was in attendance with his Legal Representative, Mr. Leo Charalambides, Kings Chambers. Mr. Jones had submitted a written response

in support of the licence review, providing some background information and disputing some of the details of the incidents provided by the Police, and recounting his version of particular events and incidents referred to (Appendix D to the report).

Mr. Charalambides drew members' attention to the responses submitted by his client as detailed within the report to the Licensing Sub Committee to be taken as read. He referred to the Guidance issued under Section 182 of the Licensing Act 2003 in terms of the purpose of the review to identify as far as possible the causes of concern and consider remedial action which should be proportionate. Consequently a co-operative approach was required and he drew attention to the suggested modifications of the licence conditions submitted by the Police as set out within the Review Application and his client's response thereto. In summary –

- there was agreement to conditions numbered 3, 6, 9 and 10 (with an exception for bottles of wine to be served but decanted into polycarbonate drinkware)
- no agreement to conditions numbered 1 & 2 in relation to restricting licensable activities and opening hours
- no agreement to conditions numbered 4 & 5 regarding restrictions on use of the rear beer garden and smoking shelter
- no agreement to conditions numbered 7 & 8 in relation to the terminal entry hour and re-admittance of customers
- condition numbered 11 regarding use of SIA accredited door supervisors was considered a matter for members but the advantage of the current door supervisor was that he was very experienced with local knowledge; there may also be practical difficulties with recruitment from outside the immediate area
- condition numbered 12 regarding removal of Mr. Jones as DPS would have little or no effect given he remained in charge at the premises and was committed to its success, consequently there would be no advantage to his removal.

Mr. Charalambides also challenged the robustness and reliability of the Police's evidence and argued that it did not stand up to scrutiny, particularly given the wealth of information and lack of discernment afforded to it by the Police. He referred to the inclusion in evidence of 'prank calls' and 'lock ins' during permitted hours together with comments made which were not in the spirit of partnership working and raised concerns regarding the reliance on Police perceptions and feelings as opposed to facts and evidence. Reference was made to the unreliability of particular intelligence and witnesses which demonstrated the unreliability of the evidence presented and he provided examples where his client and staff had been fully cooperative with police and of good management practices in particular circumstances which had been criticized by the Police (incident on 23 March 2020 and 28 March 2020 referred). His client had also demonstrated openness when responding to the list of police incidents providing full and frank admissions.

Mr. Charalambides accepted that the premises was challenging given that it operated in the nighttime economy and alcohol was involved. He highlighted the importance of partnership working to address challenges and identify solutions in the spirit of cooperation and highlighted the benefits of that approach, such as when the premises closed voluntarily (21/22 December 2019 referred) to help disperse patrons in response to Police concerns. He also highlighted the impact of Covid 19 advising that, whilst closed, his client had invested in the premises but

now operated on a vastly reduced level, approximately a quarter to a third of capacity. His client had been thankful for the advice of responsible officers in that regard, particularly given the unprecedented situation and changes in guidance. In closing, Mr. Charalambides argued that the modification of licence conditions agreed by his client would be proportionate and sufficient to address the problems identified and ensure the premises remained a vibrant part of the nighttime economy and he urged members to modify the licence conditions on that basis.

In response to members' questions, Mr. Charalambides –

- agreed there had been occasions where patrons had become rowdy and needed to be dispersed by the Police and the premises which was part of operating in the nighttime economy in a pressured area, but there had been no more than a handful of arrests which had been facilitated by CCTV footage provided by the premises, and the fact the premises had been willing to cooperate was to their credit and should be encouraged. The Police had been happy that the first agreed action plan for the premises had worked but a higher level plan was now required. He submitted that reviews were not failures but part of the regulation of the nighttime economy and a means of responding to new and changing challenges
- referred to positive action taken by his client including investment in CCTV and production of footage to the Police to use as evidence; investment in staff with five holding Personal Licences; attendance at meetings with authorities, and securing funding for radios for Rhyl pubs with a view to preventing crime and disorder and providing a positive benefit to policing in the local community
- clarified with regard to condition numbered 12 concerning the removal of Robin Jones as DPS that it was a matter for the Sub Committee but given that Robin Jones was the sole shareholder of the premises and in charge of it, his removal as DPS in practical terms would be unlikely to make any difference.

APPLICANT'S (NORTH WALES POLICE) FINAL STATEMENT

In making a final statement the Police Solicitor reiterated the serious concerns with regard to the management and control of the premises, including the lack of adherence to the licensing conditions and licensing objectives, together with the serious incidents of violence and assaults, links to criminality, and the falsification of evidence and misleading of Police during investigations. The references by Mr. Charalambides to the premises being cooperative and collaborative had not been borne out in the evidence presented by the Police. The references to any unwillingness by Police to work in partnership was rejected with the Police having worked to engage and resolve concerns and complaints at various stages. Finally reference was made to Covid 19 and the failings of the premises with regard to social distancing and virus countermeasures putting the safety of patrons at risk.

PC Manus Sheridan added that Mr. Charalambides had attempted to downplay the seriousness of the incidents at the premises. He responded to a number of issues raised and explained the role of the Police in acting on information received and highlighted attempts by the management of the premises to deliberately mislead the Police during investigations, failings in the management and control of the premises, and not informing the Police of incidents when appropriate. PC Sheridan

had been particularly concerned to hear the submission that removal of the DPS would have no practical impact on management, which he suggested was a matter for the Sub Committee to further consider as part of their deliberations.

The Chair permitted Mr. Charalambides a final response, in the interests of natural justice and to ensure fairness to all parties. Mr. Charalambides cautioned against the reliability of the Police evidence in the event of a subsequent appeal against the Sub Committee's decision. He reiterated that the premises management did take responsibility which had been demonstrated such as in the investment and provision of CCTV, and the issue was what other steps could be taken. In terms of the premises response to Covid 19 the reference was to guidance and everyone continued to learn as matters evolved. Both sides had agreed a number of modifications to licence conditions to address problems and he urged the Sub Committee to impose those agreed measures in this case.

ADJOURNMENT TO CONSIDER THE APPLICATION

At this juncture (12.30 p.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 conditions of the Premises Licence be modified in line with the twelve modifications as recommended by North Wales Police in their Review Application, including the removal of the Designated Premises Supervisor, as reproduced below –

1. All licensable activities to cease by 11.00 p.m.
2. All customers to leave the premises by midnight. Only people who can be formally identified as staff are permitted on the premises beyond this time.
3. A person who can access and download CCTV footage to be on site at all times when licensable activities are being undertaken. Should there not be such a person on site, then premises must cease all licensable activities until such time that a person is on site and available.
4. The rear beer garden and rear smoking shelter not to be used after 9.00 p.m. Monday to Sunday.
5. A designated smoking area to be utilised after the hours of 9.00 p.m. Monday to Sunday in the rear of the premises. This area is to be limited to 5 persons at a time and the area is to be actively monitored by an SIA door supervisor. No drinks are to be permitted in this area (this is to deter people taking longer than necessary).
6. No persons to be permitted to smoke in the front of the premises after 9.00 p.m.
7. A terminal entry hour of 11.00 p.m. to be implemented Monday to Sunday.
8. No re-admittance to any customer/s who leaves the premises after 11.00 p.m. There are to be no exceptions to this rule, e.g. customers using the ATM or making a phone call.
9. There to be a minimum of one personal licence holder on duty at the premises at all times when licensable activities are being undertaken.
10. All drinks to be dispensed and bottles decanted into polycarbonate drinkware at all times when licensable activities are being undertaken.

11. *All door supervisors to be SIA Approved contractor Scheme (ACS) accredited.*
12. *Removal of Robin Jones as Designated Premises Supervisor.*

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 the responses to questions from Sub Committee members. 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 December 2018 – February 2020 set out in the evidence submitted by North Wales Police, and in the additional evidence presented for the period March 2020 to August 2020, the Licensing Sub Committee found serious failings in relation to the effective management of the premises under the current management regime and had therefore also decided to remove Robin Jones as Designated Premises Supervisor in the hope that, together with the other modifications of the licence conditions, the premises would be better managed in the future in accordance with relevant licensing objectives. The Sub Committee had also taken particular note of the late hour during which a large proportion of incidents had been recorded when making the decision to curtail the operation of licensable activities and opening hours of the premises. The decision had been made on the grounds of the promotion of the licensing objectives relating to the prevention of crime and disorder, promotion of public safety and prevention of public nuisance.

When considering the wealth of evidence presented in this case the Licensing Sub Committee found there to be a sustained pattern of crime, disorder and anti-social behaviour linked to the premises dating back some considerable time. It was also noted that the incidents referred to a range of issues and levels of seriousness which had been carefully considered by the Sub Committee. The Sub Committee was persuaded by the Police's view that modification of licence conditions, as recommended, would provide an opportunity to improve management practices and keep staff, customers and the community safe, and having given regard to the willingness of Mr. Robin Jones (expressed on his behalf) to work in partnership with the Police to resolve issues.

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 1.15 p.m.