

LICENSING SUB COMMITTEE

Minutes of a meeting of the Licensing Sub Committee held by video conference on Thursday, 4 February 2021 at 10.00 am.

PRESENT

Councillors Brian Jones, Barry Mellor and Melvyn Mile

ALSO PRESENT

Team Leader – Places Team (TD), Licensing Officer (NJ), Democratic Services Manager (SP), Trainee Solicitor (EW) and Committee Administrators (KEJ & RTJ)

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 Brian Jones, Vice-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 Brian Jones 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 ROYAL VICTORIA, SANDY LANE, PRESTATYN

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

- (i) an application having been received from Mr. M. O'Grady, Company Secretary of Victoria Apartments (Prestatyn) Ltd for the Review of a Premises Licence held by Admiral Taverns Limited in respect of The Royal Victoria, Sandy Lane, Prestatyn (a copy of the existing Premises Licence and current operating schedule having been attached as Appendix A to the report);

- (ii) the application having originally been submitted in February 2020 and the Licensing Sub Committee hearing scheduled to hear the application in March 2020 having subsequently been postponed due to the Covid-19 pandemic;
- (iii) the grounds for review which related to the prevention of crime and disorder and prevention of public nuisance licensing objectives and in particular, as stated on the application, noise issues at and around the premises affecting residential properties along with anti-social behaviour (full details of the Review Application having been attached as Appendix B to the report);
- (iv) the North Wales Police having submitted representations (Appendix C to the report) in response to the requisite public notice of the Review Application and having reviewed Police systems had raised no concerns in respect of the venue's responsibilities under the licensing objectives relating to the prevention of crime and disorder and public nuisance;
- (v) comments received from the Council's Pollution Control Section (Appendix D to the report) having confirmed some involvement since 2017 in relation to noise complaints associated with the premises but those complaints had not been substantiated and therefore no further action had been taken;
- (vi) there having been nine statements received from leaseholders/residents of Victoria Apartments (Appendix E to the report) in support of the Review Application referencing noise disturbance and anti-social behaviour;
- (vii) representations having also been received from the Premises Licence Holder Admiral Taverns Limited (Appendix F to the report) and the Designated Premises Supervisor (Appendix G to the report) in response to the Review Application and issues raised therein;
- (viii) mediation between parties having resulted in the Applicant submitting proposals to address concerns, namely a reduction in opening hours and sound proofing measures (Appendix H to the report). The Premises Licence Holder having responded that they could not agree to the proposed reduction in hours as the venue would not be viable but agreed to meet officers on site to consider noise reduction measures (Appendix I to the report). However due to Covid-19 restrictions a site meeting had yet to take place;
- (ix) 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
- (x) the options available to the Sub Committee when determining the application.

The Licensing Officer introduced the report and detailed the facts of the case.

APPLICANT'S SUBMISSION

The Applicant, Mr. M. O'Grady, Company Secretary of Victoria Apartments (Prestatyn) Ltd (VAPL) was in attendance in support of the Review Application.

In making his case Mr. O'Grady referred to the grounds for review as detailed in the application which had been supported by nine witness statements (Appendix E to the report). He provided some background in terms of the different parties involved, including Admiral Taverns as freeholder of the entire building, and explained the former hotel had been converted into twenty-two residential units let on long leases with one flat retained by Admiral Taverns together with the Victoria Pub. Until 2017 two directors of VAPL were also board members of Admiral Taverns and given the conflict of interest they had been removed and replaced with long leaseholders – one of those Ms. D. Harrison was in attendance at the hearing.

Mr. O'Grady responded to the written representations submitted by Admiral Taverns (Appendix F to the report) as follows –

- reference had been made to complaints not being taken to the Council but in the statement provided by Mrs. E. Davies (Appendix E to the report pages 42 – 45) she referred to ongoing complaints directly between her and the Designated Premises Supervisor over the last five years
- mention had been made to generic statements being provided with an inference they had been prepared by one party. Mr. O'Grady confirmed he had prepared a generic witness statement which he provided to Mrs. E. Davies in order to record evidence and there was nothing improper in that approach
- with regard to the lack of evidence to corroborate noise nuisance in terms of noise logs/council action it was submitted that evidence had been openly provided by leaseholders/tenants which had not been directly challenged
- with regard to calls for more dialogue moving forward no attempts had been made by Admiral Taverns to place any importance on the needs of tenants
- it was understood that the premises operated the latest opening hours in the town above one of the most densely populated buildings, and there was a need to ensure that the noise level was commensurate with that.

Finally Mr. O'Grady referred to his proposals put forward as part of the mediation process (Appendix H to the report) for opening hours in line with other pubs in the town, namely until 11.00 pm Sunday to Thursday and 12 midnight Friday and Saturday. Admiral Taverns responded that they could not agree to a reduction in hours to 11.00 pm each day including weekends (the proposal was in fact 12 midnight on Friday and Saturday) because it would not be a viable business model. Mr. O'Grady argued that this demonstrated the premises was busier later at night. In terms of proposals to install soundproofing measures, despite assurances in that regard, Admiral Taverns had not progressed any noise reduction measures to date.

COUNCIL'S POLLUTION CONTROL SECTION'S SUBMISSION

Ms. M. White, Environmental Health Officer spoke to the written representations submitted by the Council's Pollution Control Section (Appendix D to the application) advising that six noise complaints had been received between 2017 and 2019. On each occasion the complainant had been asked to submit a noise log but only one had been returned which provided generic information that noise was an issue on a Friday, Saturday and Sunday with no specific dates given. Recording equipment was offered to one tenant, but it transpired she was actually the Landlady of the

premises and it was explained that for the purposes of noise monitoring it was the tenant who required the recording equipment and nothing further was reported. Therefore Pollution Control could not substantiate the noise nuisance allegations.

NORTH WALES POLICE SUBMISSION

Mr. A. Haggas, Licensing Manager from North Wales Police had joined the meeting but no dialogue could be established and technical issues were assumed. Consequently the written representations from North Wales Police (Appendix C to the report) would be taken into account during the Sub Committee's deliberations.

Members put questions to Mr. O'Grady (Applicant) who responded as follows –

- he had drafted a template witness statement to assist with the practicalities of collating evidence and Mrs. E. Davies had assisted in the process of gathering that evidence from leaseholders/residents; this explained the generic form and consistent language used and each form had been signed as a true statement
- nine statements had been submitted in support of the Review Application; he himself owned one of the flats but he did not reside there and had not provided a witness statement. Having walked around the building he described the noise to be at a level that you would not expect from within a residential building
- explained that the weight of the evidence had been provided by leaseholders, given that the apartments were largely rented out on short term tenancies those tenants would have little to gain by contributing to the review proceedings
- with regard to reviews on Airbnb about the building having no mention of noise he explained that his own flat was let on that basis and was situated as such within the building that it did not suffer noise; he explained that the level of noise experienced was dependent on where the flat was situated in the building, with those directly above the pub being the worse affected, and mostly at weekends. There were approximately 3/4 flats rented out on a short term basis via Airbnb
- in terms of the Council's offer of noise monitoring equipment being declined due to timing it was reiterated that the monitoring equipment had been offered in January and the complainant had explained it was quiet at that time and there was normally a problem with noise from March to December
- confirmed he had made several trips to the building to oversee exterior renovations being carried out – he was at the building approximately four times a year. He pointed to a number of those interested parties present who were regularly at the building and best placed to report on the issues experienced
- noted the late opening times of other licensed premises in Prestayn put to him in response to calls for the opening times of the premises to be curtailed in line with other pubs in the area.

The Chair asked the Environment Health Officer to further expand on her statement in terms of dates and times of complaints received and she advised that –

- complaints had been received in June 2017, April 2018, June 2018, October 2018 and December 2019 – on each occasion noise nuisance log sheets had been sent to the complainant but none had been returned
- in February 2019 completed noise log sheets had been returned recording that the complainant could not sleep until after 2.00 am on Friday, Saturday and

Sunday which was a regular weekly occurrence affecting, to varying degrees, 5/6 apartments in the building. No specific dates or times were given in terms of the noise nuisance. It also recorded that the Landlady was very approachable and understanding when reminded about noise but after time noise levels increased again. Noise monitoring equipment was offered but declined

- following a complaint in May 2019 noise nuisance log sheets and a 'Noise App' were sent to the complainant but no response was received.

INTERESTED PARTIES SUBMISSION

Nine written representations (Appendix E to the report) had been received from leaseholders/tenants of Victoria Apartments in support of the Review Application which all related to noise disturbance and some related to anti-social behaviour. Interested parties present at the hearing included (1) Mrs. E. Davies, (2) Mr. G. Jones, and (3) Mr. J. Morris and Ms. A. Hollrah and each was given the opportunity to address the hearing in support of their written representations.

Mrs. E. Davies – advised that she had made a number of complaints to Pollution Control and noise nuisance was experienced from March through to New Year celebrations, every weekend, and had been ongoing for years. She initially contacted the Licensing Team to discuss the issue but had subsequently met the Landlady who advised she deal directly with her. Consequently she had been going into the pub frequently to request the music be turned down. Whilst the Landlady had been very accommodating, she was not always on the premises, and the volume inevitably increased after time. Soundproofing had been discussed but the Landlady said she could not afford to install it. The Landlady had since left and there were concerns regarding the operation of the pub under new management who may not be as accommodating and utilise maximum licensing hours.

Mrs. Davies explained that her flat was used for short term let and so she had been unable to use the noise monitoring equipment provided; her neighbour no longer stayed in the building at weekends due to the noise so she could not undertake monitoring either, and she had little success when using the Noise App. She used Airbnb for short term lets because the flat was not suitable for a full time tenant due to the noise and she only let during the week or ensured tenants were aware of the noise at the weekend and provided a discount to compensate. One flat had been empty for months and two lots of tenants were leaving because of the noise.

In response to calls for mediation from Admiral Taverns she had been trying to mediate with the Landlady for many years without success. It was accepted that the pub was complying with its licensing hours but residents had not been contacted about the licence change to 3.00 am which was far too late to be operating in a residential building. Other licensed premises in Prestatyn with late licences were located in the town centre and had appropriate soundproofing. In terms of anti-social behaviour experienced some residents had called the Police in the past but little had come of it and residents were therefore reluctant to report it. In closing she called for the licensing hours to be reduced and soundproofing installed to address the noise issue.

Ms. D. Harrison – stated she could not sleep in her flat due to the music beat coming from the pub and had upgraded her windows in an attempt to combat noise nuisance. She highlighted nuisance from customers congregating outside, smoking at the front of the building and hailing taxis, etc. She added that other licensed premises in Prestatyn did not trade into the early hours regardless of their permitted hours. [Ms. Harrison had not submitted written representations prior to the hearing].

Mr. G. Jones – reported he had lived in the building until 2011 and had complained to the Council during that time about noise vibrations which would keep him awake at night. His tenant regularly complained about noise and vibration very late at night keeping him awake together with people outside smoking and causing disturbances which he found distressing.

Mr. J. Morris and Ms. A. Hollrah – advised their flat was not directly affected by music/noise but music could be heard faintly at times and the whole building vibrated from the effects of the music. The fact that noise nuisance was experienced in other flats closer to the pub was undeniable with residents complaining about the noise and anti-social behaviour. They considered licensing hours to 3.00 am far too late in a residential setting and believed the case put forward in support of the Review Application to be an accurate representation and empathised with affected residents. In terms of the generic nature of the statements assurances were provided that there had been no collusion whatsoever.

PREMISES LICENCE HOLDER'S REPRESENTATION

Mr. D. Kelly, Licensing Team Leader Admiral Taverns was in attendance for the Premises Licence Holder (Admiral Taverns) in support of the licence review.

Mr. Kelly confirmed the imminent departure of the current Landlady/Designated Premises Supervisor and he had not received confirmation as to whether a new tenant had been recruited. In the event of a new tenant and subsequent reopening of the pub after lockdown the emphasis would be on appropriate management of the premises to address the issues of concern raised. Assurances were given that Admiral Taverns took a proactive approach to any complaints received and there would be dialogue with the Council and Police; given the lack of evidence in this case and the fact that the Council had not taken the noise complaints further it was difficult to gauge the extent of the problem and ascertain the best course of action. In light of the noise references in the written statements Mr. Kelly considered that sound proofing measures would be appropriate and a meeting with Pollution Control officers on site had been agreed when Covid restrictions allowed. The proposal to reduce opening hours was not considered appropriate in this case with the issues raised being better addressed by implementing other management control measures, such as management of the beer garden, smokers, etc.

In response to members' questions Mr. Kelly advised that –

- he was unsure as to when the application to vary the hours to 3.00 am had been made but the procedure required a notice of the variation to be displayed at the premises together with a newspaper advertisement

- he accepted there were noise issues associated with the premises later in the evenings and had been in dialogue with the Council regarding noise complaints
- there was no proof that the anti-social behaviour referred to was attributable to the pub and there was an assumption in that regard; he advocated the reporting of any anti-social behaviour directly to the Police regardless of the time
- confirmed he was amenable to discussing the installation of noise reduction measures such as sound proofing with the Council in order to limit noise together with further noise control measures being implemented by the new tenant with better management of the beer gardens, smokers, etc.
- he actively encouraged mediation but did not support a reduction in hours and did not consider it would help the situation, instead he favoured better management control of the premises to address concerns and added that there had been no issues with regard to the licensing hours raised by the Police.

The Chair permitted Mrs. Davies to respond to a number of points raised by Mr. Kelly. With regard to calls for mediation she had been attempting mediation since 2016 with Admiral Taverns, the Landlady of the pub, and contacting the Council. Whilst all had appeared receptive the problems persisted. A further attempt at mediation had been made following the Review Application and whilst positive responses had been received with regard to soundproofing measures, she believed a reduction in hours critical to address the problems. Residents would have made representations to the 3.00 am variation application if they had been aware of it.

The Chair sought clarity from Mrs. Davies regarding specific details of the noise nuisance experienced including times and dates. Mrs. Davies replied that –

- loud music from the DJ and karaoke was experienced every weekend starting in March and became quieter following New Year when the caravan parks closed
- on one occasion the music had been so loud at 8.00 pm on a Sunday she had requested that it be turned down
- noise nuisance experienced in her flat included music and voices
- the Landlady voluntarily closed the beer garden at 8.30 pm due to complaints, however people then tended to congregate at the front of the building instead
- people congregated outside the building to smoke and talk
- leaseholders had called the Police regarding anti-social behaviour but had stopped over the last few years because nothing was done about it.

The Chair invited questions from Mr. O'Grady who submitted that no evidence had been presented to challenge the assertion that leaseholders/tenants had not been consulted on the original variation of hours to 3.00 a.m. and whilst Admiral Taverns had agreed to consider sound proofing measures they had taken no action in that regard over the last twelve months. Mr. Kelly responded that he was in attendance to discuss noise issues, the premises licence and complaints. He explained that the timing of the Review Application just prior to lockdown and the impact of Covid-19 had hampered progress but he was in dialogue with Pollution Control and a meeting on site would be arranged when possible and he welcomed the attendance of other interested parties at that meeting citing mediation as the best way forward.

The Chair also sought clarity from other interested parties present with regard to specific noise nuisance experienced. Mr. G. Jones advised that when he was resident in the building he experienced noise vibrations which he described as 'base thumping – thud, thud, thud'. He contacted the Council in 2011 and was provided with recording equipment but it did not pick up the vibrations. His tenant had advised that the nuisance continued until late and he had difficulty sleeping because of it but no specific timing was given. Ms. A. Hollrah described bass music thumping and vibrations from the pub which permeated the building and continued up to 1.00 am with Thursday, Friday, Saturday and Sundays being the main days. Whilst she was not always affected by the vibrations due to being furthest away from the pub she was aware that others closer to the pub were badly affected.

The Chair put a final question to Mr. Kelly regarding measures to address patrons using the beer garden or congregating outside the premises. Mr. Kelly responded that the new tenant would be responsible for ensuring robust management control measures but various steps could be taken such as cordoning off particular areas, ensuring drinks were not taken outside, signage, and limiting the number of patrons using the beer garden. He suggested closing the beer garden at 11.00 pm would be reasonable and highlighted the tenant's duty of care to customers and residents.

[At this juncture (11.55 am) and in response to a request from Mr. O'Grady, the Chair permitted a ten minute comfort break. Upon resuming proceedings the Chair invited Mr. O'Grady to make a final statement]

APPLICANT'S FINAL STATEMENT

In making a final statement Mr. O'Grady highlighted the following issues –

- pointed to the reluctance of residents to contact the Police regarding anti-social behaviour as the reason for the Police raising no adverse comments
- in terms of Pollution Control not being able to substantiate noise nuisance it was suggested an officer could have visited the building to witness the noise first-hand and the lack of noise logs had been countered by the numerous witness statements attesting to the fact and the oral submissions at the hearing
- Admiral Taverns had twelve months to look into sound proofing measures, far longer if the evidence of Mrs. Davies and others was accepted, and any references to their concern for residents' wellbeing had not been borne out
- notwithstanding the impact of Covid-19 there had been opportunities to obtain quotes for noise reduction works; arguably it would be the best time for those works to have been carried out given normal trading hours would not be affected
- Admiral Taverns wished to present the pub to let with the latest licence possible and refusal to agree a reduction in hours based on the viability of the business model suggested it was because the most profitable hours were the latest hours
- ancillary control measures relating to management of the beer garden and customers smoking etc. did not address the core issue of opening times which was the main means of addressing the problem
- even with a review of the licence pending no definite steps had been taken by Admiral Taverns with regard to sound proofing measures which raised questions as to whether any investment would be made in that regard, particularly given there was currently no sitting licensee at the pub.

In conclusion Mr. O'Grady stated that it was a residential building because Admiral Taverns had converted it into one and there was overwhelming and unchallenged evidence of serious nuisance which was one of the licensing objectives to be taken into account. Given the lack of action by Admiral Taverns to put any noise reduction measures in place Mr. O'Grady urged the Sub Committee to reduce the opening hours of the premises as previously proposed to 11.00 pm Sunday to Thursday and 12 midnight Friday and Saturday.

ADJOURNMENT TO CONSIDER THE APPLICATION

At this juncture (12.15 pm) 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 –

- (a) *the conditions on the Premises Licence that relate to music be modified to curtail the permitted hours for Recorded Music and Live Music on the premises to 12 midnight Monday to Sunday, and*
- (b) *a condition be imposed requiring the Premises Licence Holder to actively consult with the Council's Pollution Control and Licensing Sections with regard to noise reduction measures with a view to producing a plan of works such as appropriate noise insulation and glazing works (at the premises only), to be approved by the Council. The planned noise reduction measures to be completed within six months to the reasonable satisfaction of the Licensing Section in consultation with Pollution Control.*

The reasons for the decision being as follows –

The Licensing Sub Committee had carefully considered the report together with all the written representations made by the various parties and oral submissions during the hearing and response to questions, and had also taken into account many factors including, but not exclusively, the relevant government guidance concerning the Licensing Act 2003, Denbighshire's Licensing Policy and the Licensing Act 2003 Licensing Objectives.

The Licensing Sub Committee had concluded, given the evidence, that the Licensing Objective of Public Nuisance was undermined. There was compelling evidence on the balance of probabilities from some of the residents of specific noise issues emanating from the premises concerning the playing of music at the premises at specific late hours of the day and the Sub Committee had decided to address that by way of modifications to the conditions on the Premises Licence that related to music.

Whilst it was noted that the Premises Licence Holder did not want a reduction in hours, the Licensing Sub Committee noted that the representative of the company accepted there was indeed an issue of noise at the premises. The Sub Committee

decided that it was necessary and proportionate to promote the Licensing Objective of Public Nuisance, to curtail the permitted hours for Recorded Music and Live Music on the premises to 12 midnight Monday to Sunday. All other Licensable activity timings to remain the same.

The Licensing Sub Committee had also decided to impose a condition, that it considered necessary and proportionate to promote the Licensing Objective of Public Nuisance, requiring the Premises Licence Holder to actively consult with the Council's Pollution Control and Licensing Sections with regard to noise reduction measures with a view to producing a plan of works such as appropriate noise insulation and glazing works (at the premises only), to be approved by the Council, in order to address noise emanating from the premises. The planned noise reduction measures to be completed within six months to the reasonable satisfaction of the Licensing Section in consultation with Pollution Control.

In reiteration, on the basis of the evidence presented by the Interested Parties with regard to noise nuisance as set out within their written statements and presented orally at the hearing, the Licensing Sub Committee was satisfied that the level of noise from Recorded and Live Music emanating from the premises was such that it undermined the licensing objective in relation to public nuisance.

The Premises Licence Holder had also conceded that there were obvious noise issues associated with the premises and had been willing to further discuss noise reduction measures that may appease the complainants. Consequently the Licensing Sub Committee considered that the reduction in the permitted hours for Recorded and Live Music together with a condition imposed to undertake noise reduction measures within a reasonable timescale to safeguard the future amenity of residents to be proportionate in this case.

In considering the licensing objective in relation to the prevention of crime and disorder, the Licensing Sub Committee found no compelling evidence in the context of anti-social behaviour directly associated with the premises, and the North Wales Police had raised no concerns in respect of the premises responsibilities in that regard.

In reaching a decision, the Sub-Committee also considered the human rights of parties including the interested parties who live near the premises as well as the interests of the licence holder in the circumstances striking a balance that was fair, proportionate and reasonable for all.

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 1.25 pm.