

LICENSING SUB COMMITTEE

Minutes of a meeting of the Licensing Sub Committee held by video conference on Thursday, 11 November 2021 at 9.30 am.

PRESENT

Councillors Hugh Irving, Brian Jones and Rhys Thomas

ALSO PRESENT

Team Leader – Places Team (TD), Senior Licensing Officer (JT), Licensing Officer (ES), Licensing Enforcement Officer (KB), Trainee Solicitor (JH) and Committee Administrators (KEJ & SJ [Zoom Host])

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 appointed Chair for the meeting.

2 DECLARATION OF INTERESTS

No declarations of personal or prejudicial interest had been raised.

3 LICENSING ACT 2003: APPLICATION FOR VARIATION OF A PREMISES LICENCE - THE COVE, 17 - 19 WATER STREET, RHYL

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

- (i) an application having been received from Ms. A. Nelson to vary an existing premises licence and extend the operating hours in respect The Cove, 17 – 19 Water Street, Rhyl and amend current conditions relating to door supervisors (Appendix A to the report);
- (ii) the applicant having requested authorisation to extend the hours as follows –

LICENSABLE ACTIVITY	DAYS APPLICABLE	TIMES
Supply of alcohol (for consumption on and off the premises)	Sunday – Thursday	11.00 – 03:00
Provision of Recorded Music	Sunday – Thursday	11.00 – 03.00
Provision of Live Music	Sunday – Thursday	11.00 – 02.00
Opening hours of the premises	Sunday – Thursday	11.00 – 03:00

- (iii) the current premises licence (Appendix B to the report) authorised the provision of licensable activities as listed above on a Friday and Saturday (Appendix B to the report) and the application was relevant to Sunday – Thursday only for which licensable activities currently ended at 12 midnight;
- (iv) the application having also requested that the current licence conditions relating to door supervisors be amended as follows –
 - Sunday to Thursday – 1 door supervisor from 21:00 to 03:00
 - Friday and Saturday (and Bank Holidays / Events) – 2 door supervisors from 21:00 to 03:00
- (v) one written representation (Appendix C to the report) having been received from an Interested Party in response to the public notice relating mainly to possible disturbance from noise with a number of noise recordings having also been submitted in support of the representation (previously circulated);
- (vi) a process of mediation between the Applicant and Interested Party having failed to result in an agreed position in this case;
- (vii) the proposed Operating Schedule having been included as part of the application detailing a number of proposed steps to promote the four licensing objectives as a result of the variation (Section M, Appendix A to the report);
- (viii) 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
- (ix) the options available to the Sub Committee when determining the application.

The Senior Licensing Officer introduced the report and detailed the facts of the case. She also drew members' attention to the supplementary information provided by the Applicant in support of her application which included letters from nearby residents and details of noise control measures (circulated prior to the meeting).

APPLICANT'S SUBMISSION

Ms. A. Nelson (Applicant) was in attendance in support of the application.

By way of background Ms. Nelson explained that she had taken over operation of the premises in 2019. The variation application had been submitted predominantly to extend the licensing hours Sunday – Thursday from 12 midnight to 3.00 am in line with current operating hours on Friday and Saturday. The maximum operating hours may not be used routinely but could be utilised if required.

Ms. Nelson responded to members' questions as follows –

- she fully engaged with the Police and was an active participant in the Pubwatch Scheme and actively promoted Time for Home and Ask Angela initiatives

- other licensed premises in the vicinity operated later hours and the street became busier later at night, therefore an extension to current licensing hours would have a big impact in terms of the future viability of the business
- the proposed changes to doors supervisor conditions had been requested to reflect the change in operating hours; the intention was to employ one door supervisor initially but if the later hours proved successful and numbers increased the situation would be reassessed and additional door supervisors employed as appropriate; all staff had been trained in conflict management
- one noise complaint had been received in July 2021 via the Licensing Enforcement Officer and steps had been taken to ensure the music was not too loud and that the front doors remained closed
- there had never been any issue at the premises involving the Police; the Police had been called by the premises on two occasions due to incidents outside of the premises but not associated with them
- complaints were managed by determining the type of event (if any) it was attributed to at the premises with a view to addressing the issue – only one complaint had been received in July 2021 and steps had been taken to ensure that the front doors remained closed and music kept to a reasonable level
- she had been involved in the hospitality industry for some time but had not had much experience with noise complaints – she was aware that the previous licensee had noise complaints but thought they had been resolved
- she would be mainly responsible for ensuring the steps detailed in the operating schedule to promote the licensing objectives were carried out but provided assurances that an experienced bar manager with a personal licence was also employed at the premises and all other staff had been appropriately trained
- she was fully aware of the Licensing Objectives and actively promoted them
- noise reduction measures taken included removal of the speakers at the front of the bar so only the speakers at the back of the bar were working and noise reducing Perspex screens had been ordered to be installed over the glass
- the busiest days of the week were Tuesdays and Sundays – there was much competition for business with other venues in the area and customers tended to visit their premises from approximately 11 – 11.30 pm onwards
- with regard to the four noise recordings submitted by the Interested Party there appeared to be no pattern, with three of the recordings taken around 9.00 pm and one later on a Sunday – the only formal complaint had been received in July 2021 when only background music had been played with no reason as to why it would be particularly highlighted or noise levels louder on that occasion.

RESPONSIBLE AUTHORITIES REPRESENTATION

The Senior Licensing Officer confirmed that no formal representations had been received from Responsible Authorities but advised that the Council's Environmental Health/Pollution Control Section had asked that the existing conditions be retained on the licence and complied with. Both North Wales Police and North Wales Fire and Rescue Service had confirmed no objection to the application.

INTERESTED PARTY REPRESENTATION

One written representation had been received (Appendix C to the report) from Mr. N. Moorcroft, a nearby resident with a number of properties in the vicinity objecting to the application on the grounds of noise nuisance arising from the premises.

Mr. Moorcroft drew attention to the site plan of the area to illustrate the location of his residence and his tenants in relation to the premises. He acknowledged the balance of business and residential properties in the vicinity and advised that there had historically been an issue with noise nuisance which tended to worsen and improve as and when licensees/management of the premises changed. Reference was made to various noise monitoring strategies which latterly related to a Noise App via a link from the Council's Environmental Health Section – unfortunately due to a technical problem the recordings had not been accessed and consequently he had ceased recording. Mr. Moorcroft advised that the noise levels emanating from the premises had increased following the easing of Covid related restrictions in July and due to the technical issue with the Noise App evidence of the noise nuisance could not be obtained via those means in order to address the issue.

Mr. Moorcroft detailed the detrimental impact of the noise nuisance experienced on both him and his tenants who had been unable to sit in their front rooms or use the front facing bedrooms during the summer months or open the windows as the noise from the premises was too loud. Patrons congregating outside the premises to smoke also caused noise nuisance with 22 customers counted at 1.15 am on one particular night, in addition to the loud music playing with the door wide open. The premises had a double entry system with both doors to be kept closed but the front door was rarely closed, only more recently with the onset of the colder weather – in the summer the doors had been left open and the noise level was such that himself and his tenants were unable to have guests and could not utilise their front rooms. Mr. Moorcroft also questioned the credibility of the letters from tenants in the supplementary information given the excessive noise emanating from the premises.

In closing Mr. Moorcroft reiterated that the premises was being operated in such a manner that it was having a detrimental impact on the wellbeing of himself and his tenants. He had no issue with the premises but it needed to operate in compliance with its licensing conditions to address the noise nuisance and impact on residents.

In response to members' questions, Mr. Moorcroft advised–

- no complaints had been made to the North Wales Police as they had made it clear that there were other agencies who dealt with noise issues
- there had been some confusion over the use of the Noise App due to an automated response 'waiting approval' from the Council – he had mistakenly believed the delay had been due to stretched staff resources but in reality it had been a technical issue which had since been resolved and use of the Noise App could resume – however in light of that problem recordings had not been taken during the time the most noise had been generated from the premises
- he was confident that the Council's Environmental Health/Pollution Control Section would be able to control noise problems in relation to the premises

- elaborated upon the noise made by customers congregating outside of the premises in the early hours of the morning, waking up residents and stopping them sleeping, which would extend all week if the application was granted
- the licensee did not operate the premises in accordance with the conditions on the licence, keeping the front doors open and extending the business outside
- one of his tenants had given notice on the flat due to the noise levels generated and the incoming tenant had to be advised of the noise levels emanating from the premises at present but it was hoped they would soon be controlled
- in terms of noise mitigation measures including speaker modifications he conceded that there had been an improvement in noise levels recently which he had attributed to the front doors being kept closed due to the onset of the colder weather which had a significant impact on noise levels, the proper control of the front doors by door staff would also make a big difference in that regard
- the noise recordings had been taken from his front room and provided an indication of the noise levels at quieter times given that noise recordings had not been taken at busier times due to the technical issue with the Noise App
- the noise nuisance had impacted on wellbeing as he had been woken up at all hours and unable to sleep; it was accepted that it could be a busy street and not all noise generated was attributable to the premises, but operating to the current licensing conditions would make a huge impact on the overall noise level
- he was unable to provide a specific date when he was awoken at 1.15 am on a Sunday morning as it happened so frequently and was not an isolated event
- 22 customers had congregated outside the premises on one occasion, laughing, shouting and joking in the early hours of the morning generating significant levels of noise and door staff were not controlling those customers outside
- there had been historical noise problems with the premises which were resolved until the next change of ownership of the premises when the problems would start all over again – the involvement of the Council's Environmental Health/Pollution Control and Licensing Officers usually resolved the issue.

APPLICANT'S FINAL STATEMENT

In making a final statement Ms. Nelson stated that she fully understood Mr. Moorcroft's comments and having been at the premises for some time agreed it was not an ideal situation in terms of noise generated but she was trying to run a business. She responded to specific issues raised by Mr. Moorcroft as follows –

- she had no specific connection with those tenants who had provided letters in support of the application and only leased the pub area – only one objection had been received from Mr. Moorcroft with none of his tenants having submitted representations in their own right
- she accepted full responsibility for the sliding doors being left open which had been due to the need for additional ventilation in light of Covid-19 given that there were no windows inside the premises – however those doors were shut at 9.30 am when louder music had been played on the premises
- there were different types of music on certain nights of the week, for example on the first Friday of the month there was a rock band but there had been no complaints arising from that; DJs were no longer used apart from a Tuesday which was the busiest night of the week

- in terms of noise nuisance from people congregating outside, whilst it was accepted that some were customers stepped outside the premises to smoke, it was generally a busy street with a kebab shop and taxi rank nearby, and therefore all noise nuisance could not be solely attributed to the premises
- explained the difficulties in ensuring the doors remained closed at all times given that she was the only bar staff working during quieter periods and therefore she was responsible for both running the bar and managing the door – if a later licence was granted then door staff would be at the premises every day of the week and would be better able to monitor the door
- the door did not close automatically; it was a fire door and could not be modified
- it was difficult to respond to the noise recordings, one featured a group of men chanting but that was not common to the premises because they did not televise any sports, and with regard to the customers smoking outside they would be better controlled outside the premises as opposed to moving them further down the street where they would likely cause more issues
- steps had been taken to minimise noise – speakers had been removed from the front of the premises, Perspex had been ordered to go on the windows and there was a decibel reader in the premises from which recordings were taken.

In response to final questions Ms. Nelson further explained the difficulties of ensuring the front doors were kept closed given there was only one bar staff on duty (due to the general lack of customers) who had responsibility for the bar and door monitoring. It was easier to manage when door staff were on duty as they had responsibility for monitoring the front doors to ensure they were kept closed. Ms. Nelson also confirmed that she would be willing to consult with the Council's Environmental Health/Pollution Control Section to agree a noise reduction plan.

ADJOURNMENT TO CONSIDER THE APPLICATION

At this juncture (10.40 am) 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, subject to conditions, the substantive application in relation to the variation of permitted hours for the licensable activities as applied for to 3.00 am Sunday – Thursday be granted, and the element of the application in relation to the amendment of conditions in respect of door supervisors be refused.

The conditions to be imposed on the licence related to noise reduction measures in order to promote the Licensing Objectives, in particular the Prevention of Public Nuisance as follows –

- *to consult and agree a noise reduction policy, plan, implementation and monitoring with the Council's Environmental Health/Pollution Control Section, such agreement not to be unreasonably withheld by the Council's Environmental Health/Pollution Control Section*
- *the professional installation of a noise reduction screen to the front doors of the premises*

- *the front doors to be supervised at all times save for emergencies to facilitate adherence to pre-existing conditions 1 and 2 in respect of Public Nuisance.*

The reasons for the decision being as follows –

In determining the application the Licensing Sub Committee had carefully considered the report presented by the Licensing Officer together with the written representations made by the parties and oral submissions during the hearing and response to questions. The Sub Committee had also taken into account other factors including, but not exclusively, the relevant government guidance concerning the Licensing Act 2003 and the Council's Statement of Licensing Policy. The Sub Committee also took into account the representations in support of the application but apportioned less weight to those representations than those from Mr. Moorcroft who submitted his objections within time and who the Sub Committee found to be very reliable and compelling in his evidence.

The Licensing Sub Committee concluded, given the evidence presented by Mr. Moorcroft in terms of noise nuisance attributable to the premises, that the Licensing Objective of Public Nuisance was compromised. However they concluded ultimately that this could be managed by way of appropriate conditions that were fair for both the Applicant and Mr. Moorcroft. They considered that Mr. Moorcroft had been a compelling witness and had clearly articulated the noise nuisance experienced by himself and his tenants from noise emanating from the premises, both in terms of music being played on the premises and from patrons congregating outside the premises. The Applicant had accepted that some of the noise nuisance could be attributed to her premises and had referred to a number of measures taken to address the issue, including modifications to speakers inside the premises and the forthcoming installation of a noise reduction Perspex screen, and had confirmed that she would be willing to consult and work with the Council's Environmental Health/Pollution Control Section on further noise mitigation measures. With this in mind the Licensing Sub Committee decided to impose a number of conditions on the Premises Licence in relation to noise reduction measures which it considered necessary and proportionate to promote the Licensing Objective of Public Nuisance.

In determining the element of the application relating to the amendment of conditions in respect of doors supervisors, the Licensing Sub Committee concluded that the door supervisors had a key role in minimising noise levels arising from the entry and exit of customers. Given the evidence heard the Sub Committee, particularly noting there were issues with noise late at night on different days and with the Applicant conceding Tuesday nights were often her busiest nights, did not want to relax the requirement to have at least two door supervisors at the premises at those times in the night. The Sub Committee considered they played a key role in managing the front doors to the premises and it was conceded much of a noise issue arose from the doors not being closed when they should be. The Sub Committee noted that door supervisors also played a key role in maintaining order at the premises and considered that the reduction in door staff provision as applied for would be contrary to the promotion of the Licensing Objective relating to the Prevention of Public Nuisance resulting in a clear risk of greater noise issues emanating from the premises to the nuisance of nearby residents.

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

The meeting concluded at 11.55 am.