

## **LICENSING SUB COMMITTEE**

Minutes of a meeting of the Licensing Sub Committee held in the Council Chamber, County Hall, Ruthin on Thursday, 19 September 2024 at 2.00 pm.

### **PRESENT**

Councillors Gwyneth Ellis, Bobby Feeley and Hugh Irving

### **ALSO PRESENT**

Legal Advisor (NF), Senior Licensing Officer (NJ), Licensing Officer (ES) and Senior Committee Administrator (KEJ)

## **1 APPOINTMENT OF CHAIR**

Councillor Bobby Feeley 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 declarations of interest had been raised.

## **3 LICENSING ACT 2003: APPLICATION FOR VARIATION OF A PREMISES LICENCE - ELLIS'S BAR, 42 - 44 WATER STREET, RHYL**

The Senior Licensing Officer submitted a report (previously circulated) upon –

- (i) an application having been received from Mr. Leigh Wright and Mrs. Christine Wright to vary an existing Premises Licence by way of the removal of the building to the rear of the premises to create a beer garden in its place at Ellis's Bar, 42 – 44 Water Street, Rhyl (Appendix A to the report) (plan circulated at the meeting);
- (ii) the Applicant having also proposed no music in the beer garden after 11pm and CCTV/door staff monitoring the beer garden after 11pm together with a secondary door fitted onto the beer garden to avoid the breakout of noise;
- (iii) the current Premises Licence (Appendix B to the report) authorised the provision of licensable activities from 09.00 to 04.00 on Monday – Sunday;
- (iv) seven written representations having been received from "Other Persons" in response to the requisite public notice relating mainly to possible disturbance from noise, anti-social behaviour, and public nuisance (Appendix C to the report) together with photographs referred to in one representation (Appendix D to the report);

- (v) the Applicant having engaged with the North Wales Police and Council's Environmental Health Section prior to submitting their application and consequently both Responsible Authorities having confirmed no comments or objections to the application (Appendix E to the report)
- (vi) mediation having been offered to all parties considering the representations received with no formal agreement having been reached. As part of mediation the Applicant had offered a number of adjustments to the application, such as raising barrier screens and suggested closing the beer garden after 11pm, along with his agent submitting a statement to "Other Persons" (Appendix F to the report). One further representation having been made from one "Other Person" confirming the proposed adjustments did not address their concerns (Appendix G to the report);
- (vii) the need to consider the application taking due account of Guidance and the Council's Statement of Licensing Policy; other relevant legislation and relevant representations received, and
- (viii) the options available to the Sub Committee when determining the application.

The Senior Licensing Officer summarised the report and facts of the case.

A plan accompanying the variation application omitted from the report had been circulated at the meeting.

### **APPLICANT'S SUBMISSION**

The Applicant, Mr. Leigh Wright was in attendance in support of the application and was represented by Counsel Brett Williamson, Linenhall Chambers, Chester. The Applicant's Bar Manager was also in attendance in an observer capacity.

Mr. Williamson referred to the Applicant as a long-standing business owner who was well known locally with a good reputation for operating licensed premises in Rhyl. It was explained that Ellis's Bar currently operated as a nightclub with licensing hours to 4.00am with a building at the rear of the premises trading as Hidden also until 4.00am which would remain if the application was unsuccessful. However, the Applicant wished to convert that rear part of the building to a beer garden by removing the roof and installing tables and chairs with a view to gradually turning from a nightclub theme to a day-to-day bar with families and children attending and future plans to establish a kitchen with the potential to serve food.

A number of concessions had been offered as part of the mediation process and responses provided to the issues/concerns raised as follows –

- the beer garden would close completely at 11pm with patrons asked to leave
- music before 11pm would be controlled, the existing speakers for internal use would be replaced with a suitable external speaker playing background music
- there was suggestion on occasion for live music to be played, in order to mitigate noise emanating from the main building a double set of doors would be installed

- clarified that the reference to smoking not being allowed given it would be a substantially enclosed public area was incorrect and smoking would be permitted when the roof was removed. However, it would be strictly controlled automatically by separate regulations governing smoking in outdoor public places
- to address privacy concerns to residential properties shielding/screens could be erected to minimise visibility to upper floor windows
- it was an existing licensing requirement that door staff were in place from 10pm each night so there would be in person supervision for the final hour at the premises as a whole supported by comprehensive CCTV cameras.

Mr. Williamson submitted that consideration was for a variation of the existing Premises Licence and not the suitability or otherwise of the Premises Licence Holder. He referred to paragraphs 95 and 96 of statutory guidance which stated that representations opposing an application should be relevant and well-founded rather than vexatious or to cause aggravation or annoyance. It was understood the Police may be dealing with matters outside of these proceedings with aspects of opposition in a way certain representation had been raised.

Finally, Mr. Williamson thanked the Sub Committee for the opportunity to present the case and the Applicant welcomed the opportunity to answer members' questions.

Members put questions to the Applicant who responded as follows –

- the intention was to change the business model for the premises to move away from a nightclub theme, confirming the plan involved removal of the existing dance floor, with a view to providing more live music at the front and sports
- the proposal to create a beer garden involved removal of the building at the rear of the premises which had been built in 2000 as an extension to expand the business at that time; its usage could have generated noise complaints in the past
- the plans involved removal of the existing speakers which would be moved 44ft further away with no proposals for music in the beer garden
- the new business model would cater for a different clientele and the intention was to close the beer garden at 11pm due to security, cost, and propensity for noise after that time. Opening to 11pm did not generate the level of noise from patrons later at night with clientele prior to 11pm not being too noisy.

The Senior Licensing Officer clarified that the plan formed part of the Premises Licence and the proposals to significantly change the premises layout required approval. No licensable activities were proposed to take place in the beer garden.

## **REPRESENTATIONS FROM RESPONSIBLE AUTHORITIES**

The North Wales Police and Council's Environmental Health Section having confirmed no comments or objections to the application (Appendix E to the report).

## **REPRESENTATIONS FROM OTHER PERSONS**

Seven written representations had been received (Appendix C to the report) from Other Persons relating mainly to noise, anti-social behaviour, and public nuisance.

Two of those who had submitted representations were in attendance – Ms. Jacqueline Mcsharry and Mr. Gareth Morris. Ms. Mcsharry advised that she also spoke for others who had submitted written representations.

Ms. Mcsharry detailed her opposition to the variation application and creation of a beer garden on the following grounds –

- the invasion of her privacy and those of nearby neighbours in close proximity who would be overlooking the beer garden. The offer to put screens up was only mentioned after an objection had been made with no concern beforehand
- noise concerns, the written response from the Applicant referred to patrons being expected to leave the beer garden by 11pm but in today's submission said patrons would be asked to leave, and there was no confidence that would be monitored
- smoke pollution, it had been clarified that smoking would be permitted in the beer garden and there were serious concerns regarding the impact of that on nearby residents, many of whom were more vulnerable to the effects of smoking
- noise had been a consistent problem over thirteen years which had a devastating impact on residents with only a short period of respite following noise complaints
- further general noise complaints from the venue and hours of alcohol sales permitted under the existing Premises Licence
- some residents had not been aware of the application until the deadline for representations had passed and had missed their opportunity to submit objections
- concerns over the impact on residents' welfare if the application was granted.

Given previous history, Ms. Mcsharry had no confidence that noise from the beer garden would be controlled and in addition to the invasion of privacy, noise from patrons, music and smoke pollution were elements that could not be controlled.

In response to a member's question, Ms. Mcsharry advised that whilst the offer to install screens would help with invasion of privacy, the area was surrounded by overlooking neighbours and so screens would need to be provided for all. In any event, screens would not reduce noise or address smoke pollution.

The Applicant and his representative clarified issues in response to members' questions and concerns raised as follows –

- confirmed there was no intention to vary the licensing hours of the premises (9.00am – 4.00am) which currently operated between 10pm – 3.30am
- it was hoped the creation of a beer garden would aid a gradual move away from the late-night economy to more of a pub with opening hours going forward being dependent on the success of the transition to day time trade
- to mitigate noise concern the music in that area would cease at 11pm rather than 4am and the proposal was for the playing of background music
- Environmental Health would continue to monitor complaints going forward but a condition relating to noise levels could be considered if there were concerns
- the rear building had been closed for some 6/7 weeks due to the downturn in trade [Ms Mcsharry refuted that statement, adding that the enclosed space amplified noise and it had not been closed with music blaring the last few weekends].

The Legal Advisor responded to a member's question advising that smoking was not a licensable activity in itself and therefore not a matter for members to consider when making their decision. The Senior Licensing Officer added that smoking legislation was enforced by Trading Standards.

### **APPLICANT'S FINAL STATEMENT**

In a final statement, Mr. Williamson acknowledged the strong emotion from nearby residents advising that the Applicant understood the issues and, whilst it was not possible to address every concern, hoped to go some way to mitigating concerns with the offer of privacy screens, modified hours, and the proposed change in the way the business was operated which he submitted had to be of some benefit to the immediate nearby residents than what was currently in place.

### **ADJOURNMENT TO CONSIDER THE APPLICATION**

At this juncture (2.45 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 the application for a Variation of Premises Licence be granted as outlined in the application subject to the following additional conditions –

- *regulated entertainment cannot take place in the outdoor area of the premises beyond 11pm*
- *SIA accredited door staff must be on site monitoring the outdoor area while it was open to patrons and should assist where necessary with the monitoring of noise nuisance caused by patrons in the outdoor area*
- *CCTV must cover the outdoor area while it was open to patrons*
- *a secondary door must be fitted at the entry/exit point to the outdoor area as provided for in the proposed plan of the varied licensable area.*

The Chair conveyed the Sub Committee's decision to all parties present and the Legal Advisor outlined the conditions to be imposed adding that the full decision and detailed reasons therefore would be issued in writing within five working days.

The reasons for the decision were as follows –

The Sub Committee, having regard to the representations from both the Applicant and Ms Mcsharry found that the Licensing Objective of 'prevention of public nuisance' was engaged by the application given the main purpose was to change an entirely indoor licensable area to a part outdoor one which was near neighbouring residences.

Although the Sub Committee considered the licensing objective of 'prevention of public nuisance' was engaged, they found the risks of a public nuisance arising out of noise nuisance could be mitigated with the additional conditions detailed above.

The Sub Committee considered adding a condition preventing regulated entertainment from taking place in the outdoor area beyond 11pm was appropriate in promoting the licensing objectives as this would give to the greatest risk of noise nuisance given the proximity to neighbouring residences. The Sub Committee considered it was not appropriate to go any further than this as the Premises Licence Holder with the assistance of SIA accredited door staff and other employees should be able to manage the risk of noise from patrons in the outdoor areas.

The Sub Committee considered that the requirement for SIA accredited door staff to monitor the outdoor area was appropriate and proportionate for the promotion of the licensing objectives.

The Sub Committee also considered that a secondary door at the entry/exit point of the outdoor area as provided for in the proposed plan was appropriate to mitigate the risk of noise nuisance from speaker systems inside travelling to the outdoor area and was therefore appropriate for the promotion of the licensing objective of prevention of public nuisance.

The Sub Committee had to adopt a realistic view on the proposed use of the premises. The evidence before the Sub Committee was that the Applicant intended to transition away from late-night venue to a premises that was open during earlier hours which showed live sport and music with an intention further down the line of establishing the venue as a restaurant. Members found that the proposed use had a reduced propensity to cause a public nuisance arising out of noise nuisance than the premises' current use.

The Sub Committee noted that the responsible authorities, particularly Environmental Health had not objected to the application, and this was a matter the Sub Committee gave weight to in reaching their decision.

Although the Sub Committee was concerned about the complaints about noise, there was no evidence before them of complaints to the Licensing Authority or any subsequent enforcement action taken by any responsible authorities. The Sub Committee gave weight to this factor and in the absence of such evidence did not consider it was appropriate and proportionate to take any further action in the form of additional conditions.

The Sub Committee also noted the concerns raised about smoke pollution which again was not a matter for them as smoking itself was not a licensable activity. Regulations concerning smoking in public places were covered by and enforced under a separate legal framework.

The Sub Committee noted concerns raised about matters such as privacy of neighbouring residences if patrons from the premises could see into their property from the outdoor area. This was not a matter that engaged one of the four licensing objectives and therefore the Sub Committee did not have the power to add a condition requiring the Applicant to install protective screens in the outdoor area as this would have minimal, if any impact on noise and would therefore not assist with the promotion of the licensing objectives. Notwithstanding, members encouraged

the Applicant to take reasonable and proportionate steps such as this when carrying out licensable activities in the outdoor area.

In the circumstances the Sub Committee was satisfied that the licensing objectives, in particular the 'prevention of public nuisance' would be upheld in granting the application subject to the additional conditions described above.

## **EXCLUSION OF PRESS AND PUBLIC**

**RESOLVED** that the press and public be excluded from the meeting for the following item of business on the grounds that it would involve the disclosure of information relating to an individual which may breach their privacy or be likely to be a breach of the Data Protection Act 1998.

## **4 LICENSING ACT 2003: REVIEW OF A PERSONAL LICENCE**

The Senior Licensing Officer submitted a report (previously circulated) upon –

- (i) the suitability of the Personal Licence Holder to continue to hold a Personal Licence following a conviction obtained in March 2024 of a relevant offence under Schedule 4 of the Licensing Act 2003;
- (ii) the powers conferred on Licensing Authorities to suspend (for up to 6 months) or revoke a Personal Licence where an individual holding a Personal Licence had been convicted of a "relevant offence";
- (iii) referred to the formal Section 132A notice served with no representations received from the Personal Licence Holder within the 28-day timescale;
- (iv) the need to consider the case taking due account of the Council's Statement of Licensing Policy and Guidance issued under Section 182 of the Licensing Act 2003 together with any relevant representations received, and
- (v) the Personal Licence Holder having been invited to attend the meeting in support of the licence review and to answer members' questions thereon.

The Personal Licence Holder was in attendance in support of his licence review and was accompanied by one of his employees whom he had called as a witness.

The Senior Licensing Officer submitted the report and facts of the case.

The Personal Licence Holder submitted that he had been punished for his actions and the conviction had a significant detrimental impact on the day to day running of his business. He had informed the Court that he held a Personal Licence and the Court had advised they would inform the Licensing Authority which was why he had not done so directly. He explained the events leading up to the incident and mitigating circumstances which had been taken into consideration by the Court and had resulted in a reduced sentence. Finally, he provided assurances that he was a responsible Personal Licence Holder, his premises were well run with no issues, and

asked for that to be taken that into account when making their decision. In response to questions, he elaborated on his business and operation of licensed premises.

Members raised further questions regarding the incident, subsequent conviction, and reasoning behind the actions of the Personal Licence Holder. The Personal Licence Holder responded to those questions and also called upon his witness who corroborated his version of events in relation to the day before the offence and the mitigating circumstances put forward in this case. The witness advised that CCTV and security logs had been submitted in evidence which had been accepted by the Court. When asked why he had not made any representations within the 28 days permitted under the Section 132A notice, the Personal Licence Holder explained that he had been served the notice and advised that the matter would be put before the Committee for consideration, and he confirmed his attendance to explain the situation. He apologised that he had not fully understood the process and had not submitted any representations beforehand.

In terms of a final statement the Personal Licence Holder asked members to consider his submissions and look favourably on his licence review. He highlighted the serious implications for his businesses if his Personal Licence was reviewed and reiterated that his licensed premises were well run and without issues.

At this juncture (3.45 pm) the Chair closed the meeting to all other parties and the Licensing Sub Committee retired to consider the case in private session.

## **DECISION AND REASONS FOR THE DECISION**

***RESOLVED*** to propose no further action be taken in respect of the Personal Licence.

The Chair conveyed the Sub Committee's decision to all parties present and the Legal Advisor outlined the next steps adding that the decision and detailed reasons therefore would be issued in writing within five working days.

The reasons for the decision were as follows –

The Licensing Sub Committee had considered the oral representations and the evidence provided in the agenda and reports pack.

The Sub Committee noted the explanation given for the circumstances giving rise to the conviction and that this explanation had been corroborated by a witness. Therefore, the Sub Committee had placed weight on the witness evidence and had accepted the explanation given to them which had been considered significant mitigation in the Personal Licence Holder's favour.

The Sub Committee accepted the Premises Licence Holder had informed the Court of his status as a Personal Licence Holder as required. They were not provided with any contradictory evidence so felt they had no option but to make this finding as they had in general found him to be an honest and credible witness.

The Sub Committee was concerned that the Premises Licence Holder did not inform the Licensing Authority of his conviction. Members of the Sub Committee expect



licence holders to know their responsibilities and to take them seriously, however although they expected him to know the correct protocol, they accepted the explanation that the Court had told him they would inform the Licensing Authority and therefore he did not need to.

The Sub Committee found that the explanation given by the Premises Licence Holder of his arrest was not entirely consistent with the evidence provided. However, they did not consider that anything turned on this and it did not impact on their overall decision.

In the circumstances, the Licensing Sub Committee considered that the Premises Licence Holder remained suitable to hold a Personal Licence and that it was not proportionate to take any further action in respect of his licence.

### **NEXT STEPS**

A copy of the decision notice would be provided to North Wales Police by the Licensing Authority as required by the Licensing Act 2003 S132A.

North Wales Police would be invited to provide representations to the Licensing Authority within fourteen days about whether the licence should be suspended or revoked having regard to the prevention of crime and disorder objective.

If North Wales Police provided representations to the Licensing Authority as described above within fourteen days of the date they received the notice, the Licensing Sub Committee would hold another meeting to determine the Premises Licence Holder's suitability to hold a Personal Licence.

If the Licensing Authority did not receive representations from North Wales Police within fourteen days, it would proceed to make a final decision on the evidence before it.

The meeting concluded at 4.10 pm.