

LICENSING SUB COMMITTEE

Minutes of the meeting of the Licensing Sub Committee held in Conference Room 1a, County Hall, Ruthin on Monday, 21st January 2008 at 9.30 a.m.

PRESENT

Councillors B. Blakeley, M.M. Jones and J.A. Smith

Observer: Councillor R.E. Barton

ALSO PRESENT

Solicitor (A. Wright), Denbighshire Licensing Manager (P. Rafferty), Licensing Officer (N. Jones) and Administration Officer (K.E. Jones)

669 APPOINTMENT OF CHAIR FOR THE MEETING

Councillor J.A. Smith was appointed Chair for the meeting.

The Chair welcomed all parties to the meeting and introduced the members of the committee and the officers present. The Hearing procedures had been circulated previously to all parties and copies of the Statement of Licensing Policy were made available at the meeting.

670 LICENSING ACT 2003: OPPOSED APPLICATION FOR VARIATION OF A PREMISES LICENCE – BULL INN, 20 CASTLE STREET, LLANGOLLEN

Denbighshire's Licensing Manager submitted a report by the Head of Planning and Public Protection (previously circulated) upon:-

(i) an application received from Flint Bishop and Barnett, Solicitors acting for the Applicant, Donna Kinik (Designated Premises Supervisor) for the Variation of a Premises Licence in accordance with the Licensing Act 2003 for the following licensable activities:-

- to provide live music in the beer garden until 23:00 hrs on a Friday
- to provide live music in the beer garden until midnight on New Years Eve
- to provide recorded music by way of juke box, with or without a DJ, broadcast of music channels as background noise in the beer garden for the following times:-

Sunday to Thursday 11.00 – 00.00 hrs

Friday to Saturday 11.00 – 01.00 hrs

Christmas Eve/Boxing Day/Bank Holiday Friday, Saturday, Sunday and Monday 11.00 – 01.00 hrs

New Years Eve – from the end of permitted hours on New Years Eve to the start of permitted hours on New Years Day (open from 10.00 on New Years Eve)

[N.B. Under existing permission the premises had the benefit of recorded music for indoor use only for the above times]

- to provide films and recorded music outside the premises by way of screens/tv screens, principally video entertainment and broadcast of televised sporting events of national or international interest for the following times:-

Sunday to Thursday 11.00 – 00.00 hrs

Friday to Saturday 11.00 – 01.00 hrs

Christmas Eve/Boxing Day/Bank Holiday Friday, Saturday, Sunday and Monday 11.00 – 01.00 hrs

New Years Eve – from the end of permitted hours on New Years Eve to the start of permitted hours on New Years Day (open from 10.00 on New Years Eve)

[N.B. Under existing permission the premises were permitted to provide films for indoor use only for the above times];

- (ii) there having been relevant representations submitted from Interested Parties and the Council's Planning and Pollution Control Sections relating to noise and disturbance issues (Appendix 1, 2 & 3 respectively attached to the report);
- (iii) mediation having not taken place due to the Applicant's request that the application be referred to the Licensing Sub Committee;
- (iii) the need to consider the application taking due account of the Council's Statement of Licensing Policy; Guidance issued by the Secretary of State; the representations submitted by the Interested Parties and Responsible Authorities and the information provided by the Applicant, and
- (iv) the options available to the committee when determining the application including measures to be considered as conditions of licence should members be minded to grant the variation application.

Denbighshire's Licensing Manager summarised the report for members highlighting that the current licensing arrangements in relation to the premises did not allow for any outdoor entertainment. Permission was being sought to allow the provision of both live and recorded music in the beer garden together with the provision of films and recorded music by way of screens/television screens outside the premises at various times during the week and for specific events during the year. The Licensing Manager drew members' attention to the representations received as a result of the requisite public notice of the application which primarily related to concerns of noise nuisance in the beer garden which the Interested Parties believed would intensify the problems currently being experienced leading to an unacceptable level of disturbance. Those concerns and the potential for public nuisance had been echoed by the Council's Pollution Control Section. Finally, members were asked to take into account the elements of Guidance issued under Section 182 of the Licensing Act together with the Council's Statement of Licensing Policy relating to public nuisance when considering the application.

APPLICANT'S SUBMISSION

The Applicant's representative, Ms. Karen Hughes from Flint Bishop and Barnett, Solicitors was in attendance at the meeting in support of the application. Ms. Hughes advised that unfortunately it had not been possible for the Applicant, Donna Kinik or her manager to attend today's hearing.

Ms. Hughes confirmed that planning permission had been approved for the alterations to the premises as detailed on the layout plan (previously circulated) to provide shelter for the beer garden. With regard to the licensable activities which had been applied for Ms. Hughes reported that:-

- To provide live music in the beer garden until midnight on New Years Eve – permission had been granted in previous years following submission of a Temporary Events Notice (TEN) for the annual event. Only the Police could object to a TEN if they considered that to grant the application would undermine the crime and prevention objective. It had been decided to add this element to the application to save the further expense and effort of applying annually for a TEN notice for New Years Eve but it was not considered a contentious issue in view of the previous consents given.

- To provide films and recorded music outside the premises – the Applicant proposed to situate a television outside the premises. There was a lack of clarity in the legislation as to whether a television showing music videos required licensing as the music element could be classed as incidental and it was not likely that the music provided by the Applicant would be advertised as the main attraction. However it was accepted that the broadcast of televised sporting events and advertisement of such would require licensing. It was also accepted that televised events late at night could be a cause for concern unless appropriate restrictions were imposed and Ms. Hughes suggested that permission be granted for this element and any conditions deemed necessary by the Licensing Sub Committee be attached to the licence.
- To provide live music in the beer garden – the brewery had been repeatedly asked to provide a risk assessment regarding the noise aspect which had not yet been received so no information could be provided as to how the Applicant planned to control the noise levels outside the premises.

In response to members' questions, Ms. Hughes advised that:-

- She anticipated tables and chairs would be provided in the beer garden but could give no indication as to the number of patrons to be accommodated in that area [the local residents present indicated that there was room for approximately 100 people in the beer garden area which could accommodate more people than the inside of the premises]
- Controls regarding noise limitations could be agreed with Pollution Control if imposed as a condition on the licence. However, without the Applicant or Brewery Manager present it was difficult to give an undertaking in that regard.
- Previous complaints regarding noise from speakers situated at the rear of the premises had been remedied.

RESPONSIBLE AUTHORITIES: PLANNING REPRESENTATIONS

Mr. Paul Mead, the Council's Acting Development Control and Compliance Manager referred to the written representations (Appendix 2) submitted by the Planning Department objecting to the proposed use of sound amplification equipment or loud speakers, live music or televisions operated within the covered area. The objection was based on the established planning condition which had been imposed by the Local Planning Authority (Ref: 03/2007/0088/PF) in May 2007 when allowing the use of the pitched roof free standing covered area. Whilst the premises was situated in Llangollen Town Centre there were still nearby residential properties and complaints regarding noise nuisance had been received from residents during consideration of the planning application. It had been considered that, having regard to the prevention of public nuisance in the area, the increase in noise would likely give rise to the potential for increased activity and disturbance to the detriment of the residential amenity of the area. Accordingly it had been deemed necessary and relevant to impose the following planning condition: "No sound amplification equipment or loud speakers, live music or televisions shall be operated within the covered areas hereby permitted other than in accordance with details to be approved in writing by the Local Planning Authority".

In closing the Acting Development Control and Compliance Manager advised that the Planning Department would likely refuse any proposals for siting any sound equipment based on the authority's existing adopted policies and the affects on neighbouring properties.

RESPONSIBLE AUTHORITIES: POLLUTION CONTROL REPRESENTATIONS

Mr. Andrew Lord, Senior Environmental Health Officer (Pollution Control) and Mr. Sean Awbery, Technical Officer/Pollution Control were in attendance in support of their written representations (Appendix 3) objecting to the application on the grounds of the potential for public nuisance.

The Technical Officer/Pollution Control reported upon five previous complaints which had been received by Pollution Control relating to noise nuisance emanating from a speaker positioned at the back courtyard area of the premises. The Council had successfully liaised with Donna Kinik, the Applicant to remedy that problem. The most recent complaint relating to the premises had been recorded on 28th April 2006.

The Senior Environmental Health Officer added that he was aware of an existing ongoing complaint which was being investigated initially by the Council's Licensing Section prior to being passed onto Pollution Control for noise monitoring. He referred to the difficulties of controlling noise levels outside the premises and his concerns regarding the potential for public nuisance arising from amplified music/television associated with outdoor activities. Reference was made to the current condition imposed on the Premises Licence that "noise and vibration shall not emanate from the premises so as to cause a nuisance to nearby properties" and the Senior Environmental Health Officer referred to the nearby properties and his reservations about how that condition would be complied with if live music, films or recorded music was permitted outside in the beer garden. Members were advised that, since the introduction of the no smoking ban inside licensed premises, there had been many incidents of loud and rowdy behaviour by patrons drinking outside premises. The Environmental Health Officer suggested that (a) the beer garden/smoking area should be closed to the public for consumption of alcohol after 11.00 p.m., and (b) that regular checks should be carried out after 11.00 p.m. to ensure that condition (a) was being complied with.

PUBLIC REPRESENTATIONS FROM INTERESTED PARTIES

There were four Interested Parties in attendance at the meeting in support of their written representations (Appendix 1) who indicated their intention to address the Sub Committee: Miss. M. Leeson, Mr. & Mrs. J. Mason and Mr. P. Crabbe.

Miss. M. Leeson from 5 Greenfield formally objected to the application on the grounds of public nuisance and detailed the existing problems already experienced by residents regarding noise nuisance with unacceptable noise levels as late as 2.45 a.m. Particular problems had been experienced during the warmer weather when Miss. Leeson advised that she had been unable to enjoy her garden because of yelling and swearing from patrons which could start from midday when lunches were served through to 12 midnight. She indicated that the premises had a history of noise nuisance and confirmed that she had raised a number of complaints regarding noise over the last few months. Concerns were also expressed that North Wales had a growing and increasing problem with alcohol related addictions and the provision of live and recorded music and the broadcast of music and sporting events may attract the wrong type of clientele to the venue. With regard to the actual beer garden Miss. Leeson advised that no sound absorbing materials had been used in its construction which was not open sided because plastic sheeting had been placed around the area, likely as a measure to conserve warmth for patrons at this time of year when outside the premises. [The Acting Development Control and Compliance Manager confirmed that he would arrange for an inspection of the site to ensure compliance with planning regulations and relevant legislation]

Mrs. J. Mason from 1 Greenfield Cottages submitted her objections to the application based on noise nuisance and disturbance. She felt that the variation would lead to a huge increase in noise in a residential area with families and the beer garden would, in effect, be a public house without walls. Members were advised that Mrs. Mason

was unable to open the windows in her house, sit out in the garden, or hold a normal conversation because of the noise levels emanating from the premises. She added that there had been a lot of trouble at the premises involving the Police and the granting of the application would likely escalate the problems already experienced. Mr. Mason stressed that the premises needed to be effectively policed and monitored if the application was granted to ensure the likely problems would be addressed. He reported upon a drug raid at the premises a few months previously and stated that the type of clientele at the premises created much noise and disturbance.

Mr. P. Crabbe addressed the committee in support of his objections based on noise nuisance. In addition to the noise associated with music and television broadcasts Mr. Crabbe was also concerned about the noise created by the patrons in the beer garden whose behaviour could not be controlled or limited by conditions.

For clarification purposes, and at the request of the Chair, the location of the residents premises in relation to the Bull Inn were highlighted on the map. Mrs. Mason advised that it was unfortunate that Mrs. Cook, who lived closest to the premises and had experienced many problems and submitted numerous complaints, was currently away and could not be present at today's hearing in support of her written submission. Mrs. Mason also advised that the previous owners of the other premises adjacent to the Bull Inn had moved largely due to the noise nuisance and that premises was now owned by the licensee.

The Interested Parties responded to questions from the Chair regarding the length of time that noise nuisance had been experienced and the number of complaints they had submitted as follows:-

- Mr. Mason advised that noise problems had been experienced for many years and he had contacted the Police on approximately four occasions during that time but they had not attended on all those occasions.
- Miss. Leeson indicated that she had experienced noise problems since she moved into her property approximately fourteen months previously and she had raised complaints with the Environmental Health Department.

APPLICANT'S FINAL STATEMENT

Ms. Karen Hughes reminded members that conditions could be imposed when granting the licence to address any issues of concern. She referred to the introduction of the no smoking legislation which had forced many patrons outside licensed premises, hence the need for an open structure outside the main building. With regard to the resident's comments concerning plastic sheeting, Ms. Hughes advised that she would be looking into the matter to ensure compliance with the relevant legislation.

ADJOURNMENT TO CONSIDER THE APPLICATION

At this juncture (10.30 a.m.) the Licensing Sub Committee adjourned to consider the application.

DECISION AND REASONS FOR THE DECISION

***RESOLVED** that the application for Variation of the Premises Licence be refused in its entirety.*

The Chair conveyed the Sub Committee's decision to the Applicant's Representative and all other interested parties at the meeting and verbally reported upon the reasons for the decision as follows:-

1. The Licensing Sub Committee had given consideration to paragraph 7.2 of the Statement of Licensing Policy, specifically the location of the licensed premises, the type of entertainment proposed, the hours of operation, the capacity of the premises and the character of the area and proximity to local residents.
2. The granting of the Variation as applied for would have an adverse effect upon the lives of local residents in terms of nuisance and disturbance.
3. The Committee heard today that there had been a history of nuisance at the premises, particularly in relation to noise levels. Whilst it was accepted that some of the issues had been addressed, the Applicant's representative had not provided suitable reassurances to the Committee that any additional noise arising from the proposed entertainment could be sufficiently controlled.
4. The Applicant's representative had provided little reassurance to the Committee as to how the noise levels which would emanate from the proposed activities would be controlled to such a degree as to have no impact upon local residents.
5. The Pollution Control Officers present had given little comfort to the Committee as to how any noise emanating from the outdoor area could be controlled successfully by the Premises Licence Holder.

The Interested Parties were reminded that they could seek to apply to the Licensing Authority to bring a Review of the Premises Licence.

The parties were also advised that they may appeal this decision to the Magistrates Court within 21 days.

The meeting concluded at 11.20 a.m.
