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## CENTRAL LICENSING SUB COMMITTEE 9/02/16

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**Present:**

**Councillors :** Eryl Jones-Williams (Chair), Annwen Hughes and Annwen Daniels

**Officers:** Geraint Brython Edwards (Solicitor), Sheryl Le Bon Jones (Licensing Manager), Heilyn Williams (Licensing Officer) and Lowri H Evans (Member Support and Scrutiny Officer)

**1. APOLOGIES**

None to note

**2. DECLARATION OF PERSONAL INTEREST**

None to note.

**3. URGENT ITEMS**

None to note.

**4. APPLICATION FOR A PREMISES LICENCE**

**MOTOR FUEL LTD, CONVENIENCE STORE, PORTHMADOG FILLING STATION, PORTHMADOG**

The panel and the officers were introduced to everyone present. It was announced that everyone had up to 10 minutes to share their observations on the application.

**On behalf of the premises:** Mr Chris Mitchener (Licensing Solutions agent on behalf of Motor Fuel Ltd).

**Others in attendance:** Councillor Jason Humphreys (Local Member Porthmadog East), Councillor Selwyn Griffiths (on behalf of Porthmadog Town Council)

**The report and recommendation of the Licensing Section.**

- a) Submitted – the report of the Licensing Manager giving details of the application for a premises licence for 'Convenience Store' Porthmadog Filling Station. It was highlighted that the application was one for a single-storey convenience store to be located on the forecourt of the existing garage with the intention of selling alcohol to be consumed off premises and the provision of late-night refreshments on the premises. It was noted that the applicant had included appropriate steps to promote the four licensing objectives as part of the application.

In the report, reference was made to the relevant legal information: Paragraph

5.21 of the Revised Guidelines (March 2015) published under Section 182 of the Licensing Act 2003 where it is noted that Section 176 of the Licensing Act 2003 prohibits the sale or supply of alcohol from premises that is used primarily as a garage, or is part of premises that is used primarily as a garage. It was emphasised that a premises was used primarily as a garage if it was used for one or more of the following

- the retailing of petrol
- the retailing of derv
- the sale of motor vehicles
- the maintenance of motor vehicles

It was emphasised that it was a matter for the licensing authority to decide, based on the licensing objectives, whether it would be appropriate for the premises to hold a licence. Attention was drawn to the operating schedule and the plan submitted with the application along with additional information.

Following a consultation period, it was noted that no observations had been received from the Environmental Health Service nor the Fire and Rescue Service and that North Wales Police did not oppose the application. Two objections to the application had been received from the Local Member and Porthmadog Town Council.

- b) In considering the application, the following procedure was followed:-
- Members of the Sub-committee and the applicant were given an opportunity to ask questions of the Licensing Manager.
  - The applicant was invited to expand on the application.
  - Consultees were given an opportunity to submit their observations
  - The licensee, or his representative, was invited to respond to the observations.
  - Members of the Sub-committee were given an opportunity to ask questions of the licensee.
  - Members of the Sub-committee were given an opportunity to ask questions of the consultees.
- c) In elaborating on the application, the agent noted on behalf of the applicant that he was happy with what had been submitted and corroborated the following observations:
- The intention was to sell alcohol between 6:00am and 23:00pm - reasonable hours
  - No observations / objections had been submitted by the Police, local residents or any other responsible authority
  - There was no relation between drink-driving and selling alcohol on a garage forecourt
  - 'Need' was not a Licensing Act matter
  - No evidence had been submitted with the suggestion of placing labels on alcohol bottles - no responsible authority had requested this
  - There had been no evidence to suggest that the sale of alcohol from the shop would contribute to crime and disorder
  - Transport matters were not part of the application
  - That alcohol would be sold responsibly - the staff would receive appropriate training
  - Waste bins would be installed on the forecourt
  - The garage did not exist on selling fuel alone - had to invest in a convenience store
  - A new CCTV system would be installed on the site - if the application

were approved, the number of cameras would increase.

- Could not give consideration to 'what could happen' - had to consider the evidence before them.

In response to a question, it was noted that the shop would close voluntarily at 23:00pm with a service window to sell goods after that. This would ensure safety and protect and safeguard the staff.

In response to an observation made by the Licensing Manager in terms of proving that the core use of the premises was as a shop, the agent noted that the business had already increased by 10% by introducing new products, with the intention of further investment to make the site look like a retail site.

ch) Taking advantage of the right to speak, the Local Member made the following comments:

- He would appreciate the collaboration of the premises to support the bottle labelling scheme (as an indication of responsibility)
- Suggestion to synchronise the hours for the sale of alcohol with nearby premises
- He did not accept the analysis of the flow of customers predicted (a document that had been presented with the application) as the seasonal element had not been considered when estimating the figures
- Concern that the site was near popular areas where late night drinking occurred - it was predicted that the garage would be an attraction
- Concerns already existed regarding traffic - another reason to visit the shop would be likely to maximise issues
- Historically a garage had been at the site - it should not be referred to as a 'convenience store'

In response, the Licensing Manager noted that consuming alcohol was not a licensable activity and it would be difficult to evidence that the alcohol bought on the site would be consumed in nearby locations.

d) Taking advantage of the right to speak, Councillor Selwyn Griffiths made the following observations on behalf of Porthmadog Town Council:

- The main priority of the site was fuel - it was strongly argued that it was a garage selling fuel and not a convenience store
- Disappointing that the seasonal aspect had not been considered in the analysis of customer flow
- Needed to ensure detailed legal observations when considering the core use of the premises.
- Selling alcohol on the site would be likely to bring back past problems

dd) In summarising his application, the agent noted on the applicant's behalf that the facts and evidence presented on the day should be considered and if any concerns arose or were highlighted then there would be a right to review the licence. Should problems arise, it would be possible to collaborate with the support of the Town Council and the Police. It was noted that it would be possible to consider labelling bottles for a short period - again, with the support of the Town Council and the Police.

## DECISION

The Sub-committee came to a decision after considering the application and those observations what were relevant to the principles of the Licensing Act 2003

- Crime and Disorder
- Public Safety
- Preventing Public Nuisance
- Protection of Children from Harm

along with the Guidance of the Home Office.

Firstly, the Sub-committee had to decide whether it was legal for the site to sell alcohol, recalling the restriction under section 176 of the Licensing Act 2003 and the fact that petrol and diesel was sold on the site. Following consideration of the applicant's marketing report along with paragraphs 5.21 and 5.23 of the Guidance, the Sub-committee came to the conclusion that the premises would be used as a garage to some extent but would also be used to a larger extent as a convenience store. As a result, the committee was of the opinion that the premises would not primarily be used as a garage.

In these circumstances, the Sub-committee was satisfied that the application did not contradict section 176 of the Act and that it was legal for the premises to sell alcohol.

In discussing the merits of the application, the applicant's observations were considered along with the observations of the local member, Councillor Jason Humphreys, regarding the prevention of crime and disorder, public safety and the protection of children from harm. Specifically, the local member presented evidence that serious traffic problems were caused by vehicles queuing for fuel on and around the site, which caused traffic congestion and a risk of accidents. The member suggested that extending the range of services on the site would be likely to worsen these problems.

While such evidence was useful and could be relevant to the three objectives raised, disappointment was expressed that evidence of specific events had not been received, including the dates of events, what had happened, and what the outcome had been, etc. This was not a criticism of the member, perhaps he did not have that level of information in his possession, but without this additional information, it was impossible for the Sub-committee to objectively measure the sum and substance of any problems that already existed with the premises that were relevant to the licensing objectives. As a result, the weight that could be given to these observations was minimal.

The Sub-committee highlighted that the Police and the Fire Service did not object to the application. If there were a problem under the licensing objectives, the Sub-committee would have expected observations from these responsible authorities and in considering paragraph 9.2 of the Guidance, the Sub-committee would have expected observations from the Police especially, in relation to any crime and disorder issues. This lack of observations suggested that there were no problems associated with the premises.

The Sub-committee disregarded some observations on the basis that they were not relevant to the licensing objectives, including the following:

1. The observations of the local member opposing the application's use of the description "convenience store" when the premises in his opinion had not been referred to as that before. The description of the premises was a matter for the applicant to decide. Of course, when there is a change in the business direction of a premises, as had happened in this application, the use of a new term to describe a premises should not be surprising.
2. The local member's observations had asked for consistency with the hours for the sale of alcohol with nearby premises. The relevant criterion under the Act was not consistency of hours with other places but whether the application was compatible with the licensing objectives?
3. The Town Council's observations opposing the application on the basis that they considered it to be unwise to sell alcohol where there were drivers. With due respect, the fact that a shop was easy for drivers to get to was not a good enough reason to refuse an alcohol licence for this shop. It is easy enough in this day and age for drivers to go to a shop, park in the car park, and buy alcohol. The supermarkets in the town, including Tesco, were an example of this. Porthmadog Town Council should know that convenient access for motorists is an important aspect of what makes a business sustainable in this day and age.
4. The Town Council's comments that there was no need for another site in the town to sell alcohol. Since 2005, "need" had not been relevant to applications for a premises licence.
5. The observations of the local member and the Town Council requesting a bottle-labelling condition. The Sub-committee could see no justification for introducing additional conditions on a licence when there was no evidence of a problem in the first place that justified taking such a step. In the Sub-committee's view, setting a condition on a premises where there was no reason to doubt that the standard required conditions (e.g. operating Challenge 25) were sufficient to tackle any risk of under-age drinking was putting the cart before the horse.

In the circumstances, and from weighing and measuring the evidence presented, the Sub-committee was satisfied that there were no problems relating to the premises that were relevant to the licensing objectives and therefore the licence should be approved in line with the application.

The Solicitor reported that the decision would be confirmed formally by a letter sent to everyone present. He also notified that they had the right to appeal the decision within 21 days of receiving the letter.

The meeting commenced at 2.15 pm and concluded at 4.00 pm

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CHAIRMAN