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## CENTRAL LICENSING SUB COMMITTEE 4/03/16

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**PRESENT:**

**Councillors:** W Tudor Owen (Chair), Ann Williams and John Wyn Williams

**Officers:** Geraint Brython Edwards (Solicitor), Sheryl Le Bon Jones (Licensing Manager) 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 TO VARY A PREMISES LICENCE**

**1. APPLICATION TO VARY A PREMISES LICENCE – THE OLD MARKET HALL, PALACE STREET, CAERNARFON**

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

**On behalf of the premises:** Mr David Williams (applicant) and Mr Edward Grant (Capita PLC – the applicant's agent)

**Others in attendance:** Corrina Favento, Mandy Mathews and Cliff Roberts (nearby residents); Moira Duell-Parri (Environmental Health Officer)

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

- a) Submitted – the report of the Licensing Manager providing details of the application to vary a premises licence for The Old Market Hall, Palace Street, Caernarfon. It was highlighted that the application form noted that the nature of the establishment had changed since the business opened in July 2014 and that the premises had held several events under the Temporary Event Notice procedure. The nature of the proposed variation was to extend the licensable activities to include all kinds of regulated entertainment, to extend the hours for the sale of alcohol and to provide late night refreshments. Reference was made to the table that detailed the variation. It was noted that

the applicant had included the appropriate steps to promote the four licensing objectives as part of the application.

Following a consultation period, it was noted that the Fire and Rescue Service had no observations on the application. North Wales Police and the Environmental Health Service did not object to the application, but they had proposed specific conditions to be imposed on the licence. It was reported that the Licensing Authority had received confirmation from the applicant that he accepted these conditions and wished to impose them on the licence. Three objections to the application had been received from local residents based on the licensing objective of Preventing Public Nuisance. One objector had suggested that the notice of the application had not been displayed in an obvious place, but the Licensing Authority was satisfied that the notice met the relevant regulations. One letter of support had also been received from Caernarfon Town Council.

In response to a question regarding the opening times of nearby establishments, the Licensing Manager noted that the licensing hours of nearby establishments varied, with a range of alcohol sales until 1am; playing music until 1am and closing hours up to 2am.

- 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, on behalf of the applicant, noted that he was happy with what had been submitted and reiterated the following observations:
- The property was managed responsibly
  - The intention was to minimise any concerns from local residents and they accepted the objectors' observations and concerns
  - The business offered hospitality and entertainment
  - The premises closed to the public at 12:30am and that everyone left via the Palace Street doors
  - Sound insulation had already been installed
  - CCTV had been installed (at the Police's request) with the Police's cooperation.
  - It was intended to collaborate with a local registered company to provide door supervisors
  - Capita would provide additional training
  - Challenge 21 and Challenge 25 would be supported
  - The applicant was willing to collaborate with the Licensing Department

In response to a question it was noted that one noise complaint had been submitted and had since been solved by installing sound insulation and as a

result the complaint had been withdrawn. It was reiterated that the applicant had adhered to the licensing objectives and had completed the one-year probationary period.

In response to a question regarding the entrance / exit to Hole in the Wall Street, it was confirmed that these doors were only used as a fire exit, with three entrances / exits to Palace Street.

- ch) A letter received from Rita and Brian Geary that objected to the application was acknowledged
- d) Taking advantage of the right to speak, Mandy Matthews, a local resident who lived opposite the premises, noted that she objected to application based on noise. She had no objection to the development and she supported the enterprise by a local person. She confirmed that she had not made an official complaint about noise and she had no evidence that all of the noise was coming from the premises in question. It was also noted that she had agreed to a mediation meeting.

It was highlighted that the noise, during specific events, affected her way of life, as she got up early in the morning to go to work. It was added that the noise of live bands at night was too loud - the noise carried through the doors of the premises' toilets and through windows above the building. Reference was made to one occasion where the noise had continued until 00:40am, but she had not complained to the Police or the applicant. It was noted that they did not have double glazed windows on their property and therefore the impact of the noise was louder. She requested assurance that there would be no unnecessary noise and suggested playing music until 11:45pm in accordance with nearby premises.

- (dd) In response to the observation about a mediation meeting, the Licensing Manager noted that a request for a mediation meeting had been issued to all parties once the applicant had received the conditions of the Police and Environmental Health. It was highlighted that EVERY party had not been satisfied with a mediation meeting and therefore a decision was made to progress with a hearing.
- e) A letter received from Mr Harry Matthews that objected to the application was acknowledged.
- f) A letter of support received from Caernarfon Town Council was acknowledged.
- ff) Corrina Faventa, the owner of a restaurant adjoining the premises was given the opportunity to share her observations, although she had not submitted written observations within the consultation period. The Chair noted that Ms Faventa had direct contact with the premises. The applicant and the agent had no objection to this.

It was noted that Ms Faventa had made an official complaint to the Environmental Health Department regarding noise one night in November 2015. She highlighted that a number of customers in the restaurant had complained about the noise and that some had left. The observations were shared with the applicant and although he had not been able to postpone the entertainment on the night, he made improvements to the premises to reduce noise. The complaint was withdrawn. As the restaurant had been closed

during the winter, there was no evidence that the improvements had been successful.

- g) Taking advantage of the right to speak, Moira Ann Duell-Parri, the Environmental Health Officer, noted that the department had received two complaints and one of those had been withdrawn. The premises of the other complainant had been visited on 22 February 2016. It was reported that no noise could be heard on the night, but it was noted that the double-glazed windows had been closed and perhaps it would be different in the Summer (with the windows open). It was reported that light could be seen from the Old Market Hall which revealed that the noise insulation was not effective. The officer's willingness to advise the applicant on how to improve the situation was highlighted. It was also reported that the details about the noise insulation work had not been confirmed.

In response to the observation, the Chair noted that the applicant had agreed to the Environmental Health Department's conditions and the applicant was encouraged to collaborate with the officer to improve the situation.

- ng) A letter received from North Wales Police was acknowledged and attention was drawn to the conditions listed in the letter
- i) In summarising his application, the agent, on behalf of the applicant, noted that he accepted the observations and accepted the conditions of the Police and Environmental Health. He confirmed their willingness to collaborate with neighbours and the community and would continue with their investment to try to improve the premises as the business developed. He was thankful for the support and the advice was welcomed. It was confirmed that there was no pattern to the noise and it was not constant. A request was made for the wording, 'fire risk assessment', to be removed from the premises licence as it was addressed by separate Legislation.

The applicant detailed on his willingness to collaborate and listen to his neighbours' observations. He would also be willing to collaborate with the Environmental Health Officer and was open to ideas to reduce noise.

## **DECISION**

**Following consideration of the application and those observations that were relevant to the principles of the Licensing Act 2003, the Subcommittee decided to approve the application. The licence was varied as follows:**

- 1. Supply of alcohol will be permitted, on and off the premises, from Monday to Sunday, between 09:00 and 00:00.**
- 2. Licensable activities A, B, C, D, E, F, G and H from the licensing application form will be permitted from Monday to Sunday, between 09:00 and 00:00.**
- 3. The provision of late night refreshments will be permitted, from Monday to Sunday between 23:00 and 00:00.**
- 4. The opening hours of the premises are Monday to Sunday, between 08:00 and 00:30.**
- 5. Add the noise management conditions recommended by the Environmental Health Unit to the licence.**
- 6. Add the CCTV conditions recommended by the Police to the licence.**
- 7. Remove the "fire risk assessment" condition from the licence.**

In making its decision, the Sub-committee took the following matters into consideration:

1. That the applicant is willing for the conditions recommended by Environmental Health and the Police to be added to the licence.
2. That the applicant has asked for the fire risk assessment condition to be removed from the current licence as the fire requirements were met by separate legislation, and therefore the condition was unnecessary.
3. The relevant observations of the parties who had submitted observations in advance, along with the observation of the owner of Stones Bistro, Hole in the Wall Street, were taken into consideration, provided that the observations were relevant to one or more of the licensing objectives.
4. Specifically, the observations made by Mr and Mrs Geary, Ms Mandy Matthews and Mr Harry Matthews raising concerns about noise emanating from the premises during events, were considered. Although the Sub-committee accepted that noise could be relevant to the licensing objective of preventing public nuisance, the Sub-committee was not convinced, based on the evidence received, that there was a noise problem with this premises that could be described as a public nuisance. No evidence was received of the dates of the events, the level of noise during those events, the number of noise events, nor how many people were affected. Only two complaints were submitted to the Environmental Health Unit (and one had been withdrawn) and the Sub-committee did not consider that to be sufficient evidence of public nuisance.
5. The Sub-committee was advised on what was considered to be a public nuisance under law. The Sub-committee made reference to the case of the National Coal Board v Thorne [1976] 1 WLR 543: "*a public nuisance [is] an act or omission which materially affects the material comfort and quality of life...*" The members also made reference to R v Rimmington [2005] UKHL 63 about the "*requirement of common injury*", i.e. a substantial proportion of the public must be affected. It is not enough that harm has been caused to specific individuals.
6. In these circumstances, the Sub-committee was not satisfied that the noise problem deriving from the premises should be considered - as a legal matter - as a public nuisance.

The Sub-committee was satisfied that the application was in accordance with the licensing objectives.

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

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

The meeting commenced at 10.15 am and concluded at 12.00 pm

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**CHAIRMAN**