
CENTRAL LICENSING SUB COMMITTEE 20/05/21

Present: **Councillors:** Annwen Hughes (Chair), Angela Russell and Gareth Williams

Officers: Geraint B Edwards (Solicitor), Gwenan M Roberts (Licensing Manager) and Lowri H Evans (Democracy Services Officer).

1. APOLOGIES

Apologies were received from Lis Williams (North Wales Police) and Carol Turner (neighbouring resident)

2. DECLARATION OF PERSONAL INTEREST

None to note.

3. URGENT ITEMS

None to note.

4. APPLICATION FOR A PREMISES LICENCE

Representing the premises:

Ms Heidi McKinnell (applicant)
Mr Dylan Evans (applicant's representative)

Others invited:

Neighbouring Residents:

Margot Jones
Martin Turtle
Mike Parry on behalf of Grahame and Les Oddy
Robert Kennedy
Einir Wyn - Community Council Clerk
Wyn Williams
Mark McClure

Local Member: Councillor Dewi Roberts

Public Protection Department: Moira Duell Parry (Environmental Health Officer)

The Chair welcomed everyone to the meeting. The Chair highlighted that all parties would be allowed up to 5 minutes to make their representations.

a) **The Licensing Department's Report**

Submitted – the report of the Licensing Manager giving details of the application for a premises licence for Black Sheep, 1 Lôn Pont Morgan, Abersoch. The application was made in relation to the sale of alcohol, provision of late night refreshments and recorded music, and all provided on and off the premises.

It was noted that the Licensing Authority Officers had sufficient evidence that the application had been submitted in accordance with the requirements of the Licensing Act 2003 and the relevant regulations. Reference was made to the measures that had been recommended by the applicant to promote the licensing objectives, and it was highlighted that these measures would be included on the licence.

Attention was drawn to the responses that had been received during the consultation period. It was noted that several objections had been received from nearby residents and concerns had been submitted from Llanengan Community Council and the Local Member.

The objections referred to each of the licensing objectives. It was suggested that crime and disorder matters derived from anti-social behaviour; an increase in litter and noise as a result of the proposed hours; the premises was near a busy road, lack of pavement and the lack of parking disregarded public safety.

It was reported that no agreement had been reached between the applicant and the Public Protection Department, in terms of a compromise to reduce the external use hours of the premises regarding recorded music and alcohol provision, in line with other similar premises in the village. It was highlighted that the applicant had amended the application to address concerns regarding use of the external area of the premises for customers, with alcohol and recorded music up to 21:00 rather than 23:00. However, the Department continued to object the application on the grounds that this was a residential area and similar businesses with outdoor areas had limited their hours in other parts of the village.

It was recommended that the Committee refused the application in accordance with what had been highlighted in the consultation, and in accordance with the requirements of the Licensing Act 2003.

In considering the application, the following procedure was followed:

- Members of the Sub-committee and the applicant were given the opportunity to ask questions of the Licensing Manager
- The Police were invited to expand on the application
- Members of the Sub-committee were given an opportunity to ask questions of the Police
- The licence holder, or their representative, was invited to respond to the observations
- Consultees were given an opportunity to present their observations
- Members of the Sub-committee were given an opportunity to ask questions of the licence holder and consultees

b) **Elaborating on the application, the applicant's representative noted:**

- That the building had been used as a restaurant in the past - this was a licence application for a location that had been granted a licence in the past
- Planning permission was not required to place 4 - 5 tables outside

- That the Crwst restaurant next door had a licence and tables outside - the applicant wanted the same thing
- It was intended to close the external area at 21:00
- An intention to have background music playing only - no live music
- That an application for a licence to sell alcohol was for the business as a restaurant and not as a public house
- The restaurant would employ local people
- Parking problems were common in Abersoch
- They were ready to cooperate with the community and relevant officers

In response to a question, it was confirmed that there was an intention to place 4 - 5 picnic tables outside the premises

- c) The consultees in attendance took the opportunity to expand on the observations they had submitted by letter.

Margot Jones and Martin Turtle

- The location of the restaurant was directly underneath their home
- They were very concerned about the impact of noise pollution - this would interrupt their usual enjoyment of being at home and in their garden
- The intended location of the outside seating area caused a concern - a potential for noise in the evenings and the early hours
- Caused distress to their health - thinking about living above the development was unbearable
- A reference to the restaurant in a magazine referred to it as a location for 'Alfresco Dining area with fire pit', and proposed a different name to what was on the licence
- The proposal was an over development of the site
- They were local people who wanted peace and quiet - they did not want more noise interrupting their lives

Mike Parry (on behalf of Grahame and Les Oddy)

- The proposal undermined the four licensing objectives
- The public needed to be protected
- Objectors had clearly voiced and listed their reasons for refusal
- Extending the provision to the outskirts of the village would move the centre-point of the village and disrupt quieter areas of the village

Robert Kennedy

- There was no need for another restaurant in the village selling alcohol
- The size and proposal of the restaurant was unsuitable for the site
- The boundary of the premises was very close to residential homes
- Concern about noise pollution - the noise created a detrimental impact on the peace and quiet of sitting outside in the garden
- That opening hours until 21:00 were still late - a suggestion to shorten the opening hours to 18:00
- A suggestion to move the outside dining area to the front of the premises
- The proposal undermined the four licensing objectives
- It was likely that visitors would use the tables in the evenings to chat and drink after the closing times of local public houses - this would create additional noise problems
- Litter concerns

Einir Wyn (Community Council Clerk)

- Highlighted noise concerns
- Parking concerns - by using the parking area for dining, this would mean that scarce parking spaces would be lost
- No response had been received from the Council regarding the change of use
- There were 4 small tables placed outside the previous restaurant at the front of the building
- No objection to the restaurant - concerns about the sale of alcohol and late night music
- The four licensing objectives had to be considered

Wyn Williams

- That there were approximately 70 houses within a hundred yards of the site
- The area was historically recognised as a residential area
- An appeal for a nearby site licence had been refused as three of the licensing objectives had been undermined - did not want to return to a period of receiving complaints about crime and disorder, public safety and public nuisance
- That the provision extended outwards from the centre of the village
- That the tourism business was important and an increase had recently been seen in the number of families visiting the area - this was to be welcomed - families respected the environment and generated fewer complaints
- Needed to respect a residential area - this had to be considered
- There was a lack of respect for the Welsh language - why select the 'Black Sheep' name?
- In an emergency, how would the emergency services reach the Lifeboat site?
- The amendments did not respond to the concerns
- The site itself was dangerous - no pavement
- No double glazed windows in the building - noise pollution concerns
- Not enough police officers or security officers to keep an eye and keep order
- Encouraged the Sub-committee to accept the recommendation of the Licensing Officer

Mark McClure

- He lived near the site
- There had been improvements to the village but the proposed development would not be an improvement
- Since the nearby nightclub had closed, the area had quietened - noise pollution in the area would return with the development
- Why was an outside seating area required?
- The restaurant next door did not play music - therefore, why allow background music to affect the restaurant next door and neighbouring residents?
- The proposal was not suitable - no benefits
- Concern regarding the lack of parking spaces
- The proposal would cause a public nuisance to a residential area with many families
- A sufficient number of restaurants in the village - no need for more
- The property was on a dangerous site - people would gather on a busy road

Councillor Dewi Roberts (Local Member)

- An open discussion between the applicant and the officers would be beneficial
- Reiterated the concerns of neighbouring residents
- The site was unsuitable to sell alcohol - it was located on the outskirts of the village - a restaurant was acceptable but not a bar - this would encourage difficulties
- Disappointed that the Police had not highlighted traffic concerns
- No pavement - a dangerous location to cross the road
- The number of tables seemed excessive - 6 picnic tables would seat up to 24 individuals
- Suitability of the building needed to be questioned
- Supported the recommendation to refuse

Moira Duell Parry (Environmental Health Officer)

- The licensing objective of preventing public nuisance had been considered - the site was within a residential area - concerns had been highlighted about the external area
- Discussions had been held with the applicant - a request for more details in response to the concerns
- With Covid-19 restrictions, it had not been possible to visit the site and, therefore, no monitoring details had been implemented - a noise management plan would usually be identified as well as equipment suggestions and crowd control plan
- Voices would raise naturally with alcohol and likely to create disturbance
- Lack of clarification on the use of the development - this was likely to lead to complaints
- A request for the applicant to provide more evidence on how the proposal would be managed

Reference was made to the other observations received during the public consultation

ch) Taking advantage of the right to conclude their case, the applicant's representative noted the following points:

- They accepted the concerns of the neighbouring residents
- They were willing to consider a licence for inside the premises only
- Permission had not been granted for the contents of the magazine
- A 'bar and grill' was not the intention - it would be a café by day and a steakhouse by night
- Willing to consider closing at 18:00
- That the restaurant next door had an alcohol licence and picnic tables - why grant a licence to one and not the other?
- Covid-19 guidance allowed flexibility with outdoor dining
- That the applicant was a local person - already ran another restaurant in the village
- The Police had not stated any objections
- That compromising would be an option - possible to discuss the use of the external dining area
- There was an intention to close on Mondays and Tuesdays - the applicant had a young family and wanted to spend time with the family

The Licensing Manager reiterated that there were genuine concerns about the

external use of the site.

- d) The applicant, the consultees, the Licensing Manager and the Environment Officer withdrew from the meeting whilst the members of the Sub-committee discussed the application
- dd) In reaching its decision, the Sub-committee considered the application form, written comments submitted by interested parties, the Licensing Officer's report, and verbal comments from the applicant at the hearing. The Council's Licensing Policy and the Home Office guidelines were also considered. All considerations were weighed up against the licensing objectives under the Licensing Act 2003, namely:
 - i. Prevention of crime and disorder
 - ii. Prevention of public nuisance
 - iii. Ensuring public safety
 - iv. Protection of children from harm

RESOLVED to approve the amended application.

The licence was given as follows:

- 1. Opening hours:**
 - **Sunday-Saturday 09:00-23:30**
 - **Final hour 00:30 on New Year's Eve**
 - **Outside seating area to close at 21:00 every day**
- 2. Recorded music (indoors only):**
 - **Sunday-Saturday 09:00-23:00**
 - **Final hour 00:00 on New Year's Eve**
- 3. Supply of alcohol (to be consumed on and off the premises):**
 - **Sunday-Saturday 09:00-23:00**
 - **Final hour 00:00 on New Year's Eve**
- 4. Incorporate the matters prescribed in the Schedule of Actions (Section M) of the application as conditions on the licence.**

All parties were thanked for making representations on the application.

The Sub-committee gave due consideration to all the representations.

The Sub-committee disregarded observations that were submitted on the basis that they were not relevant to the licensing objectives, e.g. arguments that there was no need for a licensed premises for the hours requested or at all, or a lack of relevant planning permission. These matters are not premises licence application considerations.

Specific consideration was given to the following:

9 responses were received from members of the public and neighbouring residents objecting to the application, referring to the four licensing objectives. Concerns were expressed that granting the licence would likely lead to an increase in anti-social behaviour, litter, noise, public safety problems (lack of pavement and lack of parking spaces). These concerns were reiterated by the

Local Member and the Community Council.

Also, observations were received from the Council's Public Protection Unit noting an attempt to find a compromise with the applicant to address concerns regarding use of the external area for customers. It was considered that these discussions had encouraged the applicant to submit an amended application to address concerns regarding use of the external area of the premises for customers, with alcohol and music up to 21:00 rather than 23:00. Since amending the application, the Unit continued to object to the application on the grounds that the site was located within a residential area and that similar businesses with outdoor areas had limited their hours in other parts of the village.

It was noted that the Police noted that they did not object to the application.

The Sub-committee highlighted that it accepted that concerns expressed regarding the application were genuine. However, the Sub-committee was of the opinion that insufficient evidence was submitted to prove that these problems were likely should the licence be granted, and that it would be contrary to the licensing objectives.

Concern was expressed that there would be an increase in anti-social behaviour. However, no evidence was submitted to support the allegation beyond general allegations about drinking that could be attributed to any licensed premises. No reasons or evidence why these specific premises were likely to cause anti-social behaviour problems were submitted. No consideration was given to the fact that the premises had operated as a licensed premises with different owners without specific problems in terms of anti-social behaviour. It appeared that the observations were submitted on the grounds of speculation and not on evidence - this is not legal grounds for making a decision - according to the High Court in R (on the application of Daniel Thwaites Plc) v Wirral Borough Magistrates Court [2008] EWHC 838 (Admin).

No objection was received from the Police: It was considered that if an increase in crime was likely, the Police would have highlighted this. Under the circumstances, the Sub-committee was not persuaded that granting the licence would undermine the objective of preventing crime and disorder.

In the context of litter and noise concerns, should the licence be granted, the observations were considered as common concerns based again on speculation without the submission of robust evidence. Consideration was not given to past use of the site as a licensed premises and the lack of history of litter and noise concerns associated with the site. As there was no evidence to support the allegations, there was no basis to accept that granting the licence would cause public nuisance problems.

When considering road safety concerns, lack of pavement for pedestrians and the lack of on-site parking spaces, the concerns were considered in the context of the licensing objective of public safety. However, neither the Highways Department nor the Police submitted observations on these matters. It was highlighted that it is unacceptable to accept that everyone would drive to the location, bearing in mind that it is within walking distance of a number of holiday sites in the village. As a result of lack of observations from experts in the field, the Sub-committee had was not persuaded that granting the licence was likely to undermine public safety.

The concerns submitted about child safety were also general concerns, based on

speculation without robust evidence. Therefore, the Sub-committee was of the opinion that the application did not undermine the licensing objective of protecting children from harm.

The Sub-committee was astounded that some parties had recommended to refuse the application in its entirety. While everyone has the right to an opinion, the Sub-committee expected that official recommendations would be based on an accurate understanding of licensing rules - there is no rule that states that licensed premises cannot open in a residential area. An assessment of the evidence against the licensing objectives should be presented when making recommendations. The Sub-committee was also of the opinion that the recommendation to refuse the application was heavy-handed, which is contrary to the framework and 'light touch' spirit of the Licensing Act.

Under the circumstances, the Sub-committee was satisfied that the amended application is in accordance with the four licensing objectives. The application was approved.

The Solicitor reported that the decision would be confirmed formally by letter to everyone who was present. He added that all parties to the application had the right to submit an appeal to Caernarfon Magistrates' Court against the Sub-committee's decision. Any such appeal should be lodged by giving notice of appeal to the Chief Executive, Llandudno Magistrates' Court, Llandudno within 21 days of the date that the appellant received the letter (or a copy of the letter) confirming the decision.

The meeting commenced at 2.00 pm and concluded at 3.50 pm

CHAIRMAN