
CENTRAL LICENSING SUB-COMMITTEE, 05.06.13

Present: Councillor Peter Read (Chairman)
Councillors Huw Edwards and Ann Williams

Also present: Geraint B. Edwards (Solicitor), Gwenan M. Williams (Licensing Manager), Euron Thomas (Environmental Health Officer – for application number 2) and Gwyn Parry Williams (Members' Support and Scrutiny Officer).

1. APPLICATION TO VARY PREMISES LICENCE – STAR KEBAB, 323 HIGH STREET, BANGOR

Others invited to the Meeting:

Representing Star Kebab, 323 High Street, Bangor: Mr Mhemet Kabadayi (Licence holder) and Mr David Farley (Solicitor)

Representing the Police: Inspector Neil Thomas, Sergeant Bill Coppack and Mr Ian Williams (Licensing Co-ordinator, North Wales Police)

Submitted – the report of the Licensing Manager giving details of an application from Star Kebab, 323 High Street, Bangor to vary the premises licence to allow an extension of one extra hour, namely between 23.00 and 03.00 Sunday to Thursday and between 23.00 and 03.30 on Fridays and Saturdays, for the licensed activity of providing late night refreshments.

She noted that on 12 January 2012, this sub-committee had approved a review of the premises licence by North Wales Police on grounds of evidence of crime and disorder and antisocial behaviour by the premises' customers. As a result of the review, the hours of licensed activities on the premises had been reduced to the current hours, along with additional conditions in relation to the provision of CCTV and door supervisors.

On 29 November 2012, this sub-committee had considered Temporary Events Notices by the licence holder to allow a one hour extension to the licensed hours on 15 occasions during December 2012. The police had submitted evidence of crime and disorder and reported on criminal offences and lack of compliance with the premises' licence conditions. The Temporary Events Notices had been approved by the sub-committee.

It was reported, following the appropriate consultation period, that observations and objection to the application had been received from North Wales Police on grounds of continuing problems with the premises, and evidence that the licence holder had not complied with some of the licence conditions.

In considering the application, the following procedure was followed:-

- i. Members of the Sub-committee and the applicant were given an opportunity to ask questions of the Licensing Manager.
- ii The applicant was invited to expand on the application.
- iii The consultees were given an opportunity to support their observations.

- iv The licensee, or his representative, was invited to respond to the observations.
- v. Members of the Sub-committee were given an opportunity to ask questions of the licensee.
- vi. Members of the Sub-committee were given an opportunity to ask questions of the consultees.
- vii. The applicant or his representative was given an opportunity to summarise their case.

In support of the application, the solicitor representing the licence holder noted the following observations –

- The business had suffered recently which could cause the licence holder to go out of business in the near future.
- Following the review of the licence in January 2012 several changes had been made to the licence which included employing a door supervisor, which had improved the situation, and the CCTV system had also been upgraded.
- At the same meeting in January 2012, reference was made to the fact that reducing the hours of licensable activities was likely to promote the licensing objectives.
- If the hours on the current licence remained, it was anticipated that the premises would have to close. Permitting the extra hour, especially on Friday and Saturday nights, could create substantial income for the business, and there was demand for this after 02.30.
- The police had been asked to inspect the property in order to have their confirmation that the changes to the licence had been implemented.
- On quiet nights the premises were closed earlier therefore there was no need to employ a door supervisor.
- The application complied with the licensing objectives.
- Since this sub-committee's meeting in January 2012, only five incidents had taken place in relation to these premises, and three of these had been during the busy Christmas period.
- He acknowledged that the premises had opened later than the permitted hours on 15 and 16 September 2012, but this had been a misunderstanding on behalf of the licence holder.
- No complaints had been received from local residents.
- There was reference in the police's observations to an affray outside the premises, but this had not been associated with these premises.
- Generally, the relationship between the licence holder and the police had not been too good in the past.

The consultees were invited to support any observations submitted by letter, and Sergeant Bill Coppack reported that the licence had been reviewed by this sub-committee in January 2012 where it had been decided to approve the review and vary the licence to include additional conditions suggested by the police. During that meeting the police had reported on 18 offences committed on or near the premises. He noted that the application to hand today was for an additional hour every day of the week, but there was no reference to employing a door supervisor. He referred to incidents associated with the premises which included offences such as violent assaults. The police did not consider these incidents, or the failure to comply with the request to provide CCTV footage, as insignificant. He noted that the premises had been trading for 10 years and that the current licence was until 02.00, Sunday to Thursday, and until 02.30 on Fridays and Saturdays. He had compared these premises with other similar premises in Bangor with respect to offences, and the offences associated with these premises were significantly higher. No residents, apart from the licence holder, lived in this part of the street i.e. it was a commercial area. He referred to the fact that the local member had supported the

police's observations when the application to review the licence had been considered by this sub-committee on 22 February 2013. He was disappointed that Bangor City Council had not submitted observations on the application. In relation to the CCTV system, he noted that the premises had not complied with the condition between 2005 and 2012, nor had they complied with requirements to employ a door supervisor. There was also non-compliance with conditions relating to litter, controlling queues and monitoring nearby streets. Since this sub-committee's meeting on 22 February 2013, it had been noticed that the premises continued to sell food after the closing time. However, he drew attention to the fact that only two incidents of crime and disorder had occurred in association with the premises between January and August 2012, and also two incidents to date in 2013.

Inspector Neil Thomas notified the sub-committee that the number of offences had increased substantially in the city centre during the past years. However, last year there had been a reduction of around 30% in offences in Bangor. In relation to the premises in question, he referred to the fact that many people congregated inside and outside the premises and caused trouble. Since August 2012, they had witnessed a reduction in the cases of antisocial behaviour etc. associated with the premises because the hours for licensable activities had been reduced. He noted that the police's strategic framework was to try and reduce offending. He was of the opinion that if this application for a variation was approved, there would be an increase in the number of offences associated with the premises, and that the application should be refused.

The police were keen to show further evidence of the incidents through a DVD, but the members of the sub-committee, the licence holder nor his solicitor had seen this evidence beforehand. The agreement of all the relevant parties was required for this. The licence holder's solicitor objected to showing the DVD, and consequently, it was agreed not to show it.

The relevant parties left the meeting and the application was discussed by the members of the Sub-committee, who considered all the evidence submitted and specifically addressed the principles of the act, namely –

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

Having considered all the evidence submitted, the members were of the opinion that the application should be approved for the following reasons –

a) That evidence had been heard from the police that 18 offences had occurred which were associated with the premises, and that there had been difficulties in terms of obtaining CCTV evidence, and non-compliance with conditions relating to litter, controlling queues and monitoring nearby streets.

b) That evidence had also been received that the premises had traded beyond its licensed hours on 15 and 16 September.

c) That evidence had been received that the premises did not comply with requirements in terms of having door supervisors.

ch) However, the sub-committee had received evidence that only two incidents of crime and disorder had occurred in relation to the premises between January and August 2012, and also two incidents to date in 2013.

d) The sub-committee noted that the premises during the period January to August 2012 had the same opening hours as those being requested in the application in question.

dd) The sub-committee had not received sufficient evidence that problems in respect of CCTV, door control and other historic problems continued to be problems in relation to the premises. In the circumstances, the sub-committee was not convinced that approving the application was likely to lead to the undermining of any of the licensing objectives, and that it would therefore promote these objectives.

RESOLVED to approve the variation to the licence of Star Kebab, 323 High Street, Bangor, as follows –

a) Approve the provision of late night refreshment (paragraph L) between 23.00 and 03.00 Sunday to Thursday and between 23.00 and 03.30 on Fridays and Saturdays.

The Solicitor reported that he would aim to send out a letter within five working days, informing the applicants of the Sub-committee's decision, and informing them of their right to appeal against the decision within 21 days of receiving that letter.

2. APPLICATION TO REVIEW A PREMISES LICENCE – REHAB, STATION SQUARE, PWLLHELI

Others invited to the Meeting:

Applicant: Mr Ian Williams (Licensing Co-ordinator, North Wales Police)

Others representing the Police: Mr Eifion Jones (Police Community Support Officer)

Representing Rehab, Station Square, Pwllheli: Mr Colin Leadbetter (Licence holder)

Representing the objectors: Mr John Rees Jones

Apology: Inspector Mark Armstrong

Submitted – the report of the Licensing Manager giving details of an application from North Wales Police to review the premises licence of Rehab, Station Square, Pwllheli, following the premises' failure on three occasions in alcohol test purchases during test purchase campaigns held by the police between May and October 2012. The police had also received several complaints of music late at night from members of the public during this period. The application was made due to evidence that the licensing objectives of protecting children from harm and preventing public nuisance were being undermined.

In relation to protecting children from harm, she noted that girls aged 15 and 16 had managed to purchase alcohol from the premises on three occasions between May and October 2012 as part of the police's test purchase campaign. On the three occasions, the individuals had not been asked for their age or for proof of age by means of an ID card. In accordance with the police's enforcement policy, following the first test purchase failure, a 'stage 2' meeting was held with the licence holder where action points were agreed upon. Seven weeks later, the premises failed another test purchase, and as this was the second occasion within three months, the licence holder agreed to accept a Notice of Closure from the police, and consequently, the premises were closed for 72 hours on 16 August 2012. On 6 October 2012, alcohol was once again sold to an underage person during a test purchase campaign. On 12 February 2013, the licence holder appeared before the Magistrates' Court in Caernarfon where he was found guilty of selling alcohol repeatedly to people under the age of 18. He received a conditional discharge for 12 months and he was ordered to pay £85 in costs and a £15 victim surcharge.

With regard to preventing public nuisance, it was noted in the police's evidence that six calls had been received from members of the public between May 2012 and March 2013 due to the sound of loud music late at night. Music was permitted on the premises until 01:00 daily with a closing time of 02:00 daily. Every noise complaint received by the police referred to music being played after the hours permitted on the licence – between 01.08 and as late as 05.11 in one instance.

The police requested that the sub-committee considered using its powers to suspend the premises licence for a period of no longer than three months due to the licence holder's failure time after time to put measures in place to protect children from harm because of the repeated instances of selling alcohol to individuals under 18 years of age. It was suggested that suspending the licence for six weeks would be an adequate period.

It was reported, following the appropriate consultation period, that no observations had been received from the local member, Pwllheli Town Council or the Fire and Rescue Service. Observations had been received from a nearby resident supporting the review and referring to persistent problems that had affected him constantly since 2009. The resident complained of the sound of loud music and antisocial behaviour and noted that the premises' customers drank on the street despite the location being a Designated Public Place where the consumption of alcohol was not permitted. The complainant had brought his complaint to the Council's Public Protection Department. A letter and a report were also received from the Public Protection Officer, who also supported the review. Evidence was submitted by him of continual noise problems as a result of loud music late at night, which supported the comments of the police. Incidents of noise problems reported between July 2012 and the present day were elaborated upon. It was noted that the Council's Public Protection Officer, the Licensing Officer and the Police had held discussions during this period with the licence holder to seek a solution to the noise problem. Evidence had been gathered through noise monitoring equipment, and the neighbouring resident was advised to keep a record of the occasions when the noise was loud late at night. Despite several discussions and an agreement with the licence holder to reduce the noise to a level agreed to be acceptable, it was noted that the noise problems continued to the present day. The police's application to suspend the licence for a period was supported.

She drew members' attention to a letter received the day before from the licence holder's solicitor giving observations on the application. The Council's Solicitor noted that the letter had been received late and that the regulations in relation to licensing hearings noted that the relevant parties should agree whether or not to consider it. The Council's Licensing Co-ordinator was disappointed that this letter had been submitted late, and did not agree with some of the comments in it. However, the relevant parties agreed that it should be considered as part of the evidence.

In considering the application, the following procedure was followed:-

- i. The applicant was invited to expand on the application.
- ii) Members of the sub-committee were invited to ask questions of the applicant.
- iii) The licensee, or his representative, was invited to respond to the observations.
- iv) Members of the Sub-committee were given an opportunity to ask questions of the licensee.
- v) The applicant and licensee, or his representative, were given an opportunity to summarise their case.

Representing the police, Mr Ian Williams, Licensing Co-ordinator for the Police, noted that the basis for their application to review the premises licence was the fact that it had failed three consecutive test purchases, and that the licence holder had also been prosecuted for persistently selling alcohol to children, which undermined the licensing objective of protecting

children from harm. Several calls had also been received relating to noise coming from the premises late at night, which undermined the licensing objective of preventing public nuisance.

He expanded on the three test purchases carried out on 19 May, 7 June and 6 October 2012. He noted that the application for a review had been deferred until the court case had been held. He referred to six calls received between May 2012 and March 2013 relating to noise coming from the premises, with the times varying from 01.08 to 05.11. The premises' current licence permitted music until 01.00 every day of the week, with the premises to close to the public at 02.00 every day of the week. It was now understood that the premises currently opened between Thursday and Saturday nights. The Environmental Health Department's attention had been drawn to the noise complaints, and a meeting had been held with the licence holder at the end of August 2012 in an effort to address these complaints. He noted that the police's request was that the sub-committee exercised its powers to suspend the premises licence for a period of no longer than three months, but observed that a period of six weeks would be sufficient in this case.

In relation to the letter by the licence holder's solicitor, he noted that its content had been discussed with the Police's Legal Department, where it had been clarified that the sub-committee should consider this application separately to the court judgement.

With regard to preventing public nuisance, complaints had been received from the only person who lives nearby, and it was difficult to apprehend whether the noise had affected or was likely to affect other people. The solicitor claimed that the licence holder was not acting as the licence holder at the times when there had been loud music after the premises had closed. Only on one occasion when the police visited the premises following receipt of a complaint had the licence holder revealed that he was holding a private party. The solicitor also claimed that there was no additional evidence to confirm the complaints. He noted that the recording by the Public Protection Service of noise emanating from the premises had been disclosed to the licence holder at the meeting in August 2012. Although difficult to prove, the police did not accept that members of the public were not present at the premises after the closing time. He was not happy with the suggestion in the letter that the application had been submitted intentionally so that the licence holder lost out on the Wakestock Festival weekend. The application had been submitted in March 2013, and therefore following the statutory 28 day consultation period in which observations could be received, the hearing could have been held at the beginning of May 2013, but because of unavoidable circumstances, it had not been possible to conduct the hearing until today. Should the sub-committee have been held at the beginning of May 2013, and the sub-committee had decided at that time to suspend the licence for six weeks, that period of time would have lapsed by the Wakestock Festival in July. He was also of the opinion that the threat of an appeal should not be an obstruction to the sub-committee. If the decision went against the licence holder and that he appealed, he was of the opinion that the case should not be brought before the District Judge Shaw as he had listened to the original case. The premises had last been inspected in March 2013, and at the time the licence holder had passed the test purchase.

The Police's Licensing Co-ordinator noted that the Fire and Rescue Service had visited the premises the day before and had submitted observations on the application. In the absence of an officer from the service, the co-ordinator was willing to submit the observations. The solicitor stressed that the observations had not been received within the statutory 28 day period for receiving observations, and that the agreement of the relevant parties was required on whether or not they should be considered. The relevant parties agreed that the observations should be considered as follows –

- a) The Fire Risk Assessment was not suitable or sufficient.
- b) No Fire Safety Policy or Fire Evacuation Plan.
- c) The licence holder's knowledge of fire safety awareness and legislation was very poor. It would be a recommendation that he undertakes further training.

ch) The ground floor bar level ceiling was covered in a non-fire resistant drape material – this would increase surface spread of flames and put members of the public at risk in the event of a fire. It also covered the fire detection and emergency lighting systems. The licence holder had confirmed that he would take it down.

d) The premises' fire alarm system did not work and there was no evidence of any service records. This put members of the public at risk. This was a serious breach of the order and it was suggested that it was repaired immediately.

dd) When asked if the licence holder could repair the system before opening on Thursday, he had said that he was financially unable to get it repaired and that he would prefer to close down until he had got it repaired. He would draft a letter to give to the Fire Service.

e) There were no service records for the premises' emergency lighting but there was evidence of function testing. When asked to test them during the inspection, they did work. It would be beneficial to have a maintained emergency lighting above the fire door in the ground floor bar area. This would be a recommendation in the report.

f) No detection or emergency lighting on the first or second floor levels of private accommodation, which put the licence holder at serious risk as the relevant person under the Order. This would need to be discussed with the line manager.

ff) The fire exit route in the bar area on the ground floor was partly restricted with the position of chairs and some clutter had been found outside the fire exit door. This put members of the public at risk.

g) The kitchen fire door caught on the rebate and the kitchen back door was broken and hung on one hinge.

ng) The public could gain access to the bottle washing area etc. due to lack of door security and the public could potentially access the rear flat roof area. This put them at risk of falling from a height.

The Fire and Rescue Service therefore had serious concerns about poor fire safety control on these premises. It was understood that the licence holder had sent a letter to the Fire and Rescue Service confirming that the business would close from 4 June 2013 until all the fire safety requirements had been completed.

In response to some of the above points, the licence holder noted the following observations –

- On some occasions when the police had been called, the bar had closed when some of the problems had arisen.
- The only time when the noise had been loud during business opening hours was when special nights had been hosted, and a noise monitoring system had been installed in the objector's property at those times. Following a meeting with the Environmental Health Officer, these nights had been suspended.
- He apologised to the objector for causing problems to him.

The Environmental Health Officer expanded on the instances of noise problems between July 2012 and the present day. He noted that since preparing the report, a further noise monitoring form had been received from the complainant, stating that the noise problems had persisted from the premises since the end of April until 26 May 2013. Given that there was a history of loud entertainment noise being created by these premises and that a new complaint regarding entertainment noise had been received, together with the evidence from the police, their application to review the licence and to suspend the licence for a period of time was supported. In relation to the letter received from the licence holder's solicitor, and in particular the reference in it to the sound of loud music after the licensed hours, the officer was of the opinion that this interpretation was incorrect, as it had been noticed that the noise was loud during the licensed hours as well. He also noted that the solicitor had given a legal opinion on public nuisance and noted that public nuisance was one of the cornerstones of licensing. Public nuisance was defined as law.

The objector present took advantage of the opportunity to endorse the observations noted by letter and specifically referred to the following points –

- He lived next door to the premises and problems had resulted from it for around four years, with noise from loud music, a large number of people drinking in the street and the mess being left on the pavement.
- A noise monitoring system had been installed in the property in September 2012 by the Public Protection Department, and the noise had been monitored on several occasions.

The relevant parties left the meeting and the application was discussed by the members of the Sub-committee, who considered all the evidence submitted and specifically addressed the principles of the act, namely –

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

Having considered all the evidence submitted, the members were of the opinion that the review should be approved for the following reasons –

- a) The sub-committee had heard evidence that the premises had failed three consecutive test purchases, namely on 19 May, 7 July and 6 October 2012. These breaches were considered to be very serious matters given that the licence holder had been issued a warning after the first two breaches, and that there was no evidence that the “Challenge 25” policy was being implemented. Although the sub-committee acknowledged that a successful test purchase had taken place in March 2013, significant concern was expressed regarding the breaches in 2012, and it was noted that those breaches had led to a conviction in the Magistrates’ Court.
- b) The failed test purchase was completely contrary to the licensing objective of safeguarding children from harm.
- c) The building had substantial deficiencies in terms of fire safety, which also undermined the licensing objective of public safety.
- ch) The sub-committee did not know based on the evidence received whether the incidents of noise relating to the premises classified as public nuisance as a matter of law.
- d) However, the sub-committee was satisfied that undermining the licensing objectives of protecting children from harm and public safety justified the suspension of the licence for a period of six weeks.

RESOLVED

- a) To approve the review and suspend the licence for a period of six weeks.**
- b) That the licence holder installs noise monitoring equipment on the premises.**

The Solicitor reported that he would aim to send a letter within five working days, informing the applicants of the Sub-committee’s decision, and informing them of their right to appeal against the decision within 21 days of receiving that letter.

The meeting commenced at 11.00am and concluded at 3.45pm.