



Complete Agenda

Democratic Services
Swyddfa'r Cyngor
CAERNARFON
Gwynedd
LL55 1SH

Meeting

GENERAL LICENSING COMMITTEE

Date and Time

10.00 am, MONDAY, 27TH JUNE, 2022

Location

Virtual Meeting

Contact Point

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(DISTRIBUTED Friday, 17 June 2022)

GENERAL LICENSING COMMITTEE

MEMBERSHIP (15)

Plaid Cymru (10)

Councillors

Alan Jones Evans
Gareth Tudor Jones
Edgar Wyn Owen
Rheinallt Puw
Huw Rowlands

Annwen Hughes
Linda Ann Jones
Gwynfor Owen
Arwyn Herald Roberts
Elfed Williams

Independent (5)

Councillors

Gareth Williams
Eryl Jones-Williams
John Brynmor Hughes

Angela Russell
Anwen J. Davies

Ex-officio Members

Chair and Vice-Chair of the Council

A G E N D A

1. ELECT CHAIR

To elect chair for 2022/2023

2. ELECT VICE CHAIR

To elect Vicechair for 2022 / 2023

3. APOLOGIES

To receive any apologies for absence.

4. DECLARATION OF PERSONAL INTEREST

To receive any declaration of personal interest.

5. URGENT ITEMS

To note any items that are a matter of urgency in the view of the Chairman for consideration.

6. MINUTES

4 - 6

The Chairman shall propose that the minutes of the meeting of this Committee, held on 6th December 2021 be signed as a true record.

7. GENERAL LICENSING SUB-COMMITTEE MINUTES

7 - 26

To submit, for information, minutes of the General Licensing Sub-committee meeting held on the following date –

- a) 22 April 22
- b) 10 March 22
- c) 25 Feb 22
- d) 25 Nov 21

Agenda Item 6

GENERAL LICENSING COMMITTEE 06-12-21

Present:

Councillors: Annwen Hughes (Chair), John Brynmor Hughes, Elin W Jones, Gareth Morris Jones, Eryl Jones-Williams, Dafydd Owen, Edgar Owen, Angela Russell, Elfed Williams and Gareth Williams

Officers:

Iwan G Evans (Head of Legal Services / Monitoring Officer), Gwenan M Roberts (Public Protection Manager) and Lowri Haf Evans (Democratic Services Officer)

1. APOLOGIES

Apologies were received from Councillor Roy Owen.

2. DECLARATION OF PERSONAL INTEREST

No declarations of personal interest were received from any members present.

3. URGENT ITEMS

None to note.

4. MINUTES OF THE PREVIOUS MEETING

The Chair signed the minutes of a meeting of this Committee, that took place on 13 September 2021, as a true record.

5. MINUTES OF THE CENTRAL LICENSING SUB-COMMITTEE

Accepted, for information, the minutes of the Sub-committees held on 5 October 2021 and 1 November 2021.

6. REGULATION OF SEX ESTABLISHMENTS – LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

Submitted - a report by the Head of Environment highlighting the need for the Licensing Authorities that wish to regulate sex establishments in their area, to adopt the provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Crime and Policing Act 2009.

The unanimous decision of this Committee (13 September 2021) was to recommend to the Full Council to adopt the powers and on 7 October 2021 the Full Council decided to approve the adoption of the regulatory system for sex establishments as follows

- To adopt, county-wide, the provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by the Crime and Policing Act 2009, to become operational no earlier than 1 December 2021.

- To instruct the Head of Legal Services to publish the statutory notices associated with the decision to adopt for two consecutive weeks, with the first no later than 28 days before the date when the decision to adopt comes into force.
- To delegate the matters of determining fees, setting standard conditions and a plan for processing applications to the General Licensing Committee.

In accordance with the Full Council's instruction and legal requirements it can be confirmed that a Statutory Notice had been published in the press associated with the decision to adopt, for two consecutive weeks, with the first appearing no later than 28 days before the date when the decision came into force.

It was explained that the Council considers each application for a licence on its own merits to ensure consistency, fairness and transparency. The Members were reminded that the Licensing Service and the General Licensing Committee over the years, have adopted many policies and general principles for the purpose of offering guidance in its consideration for licensing applications. Consequently, a policy document has been formulated for the approval of this Committee, which encompasses the processes adopted in relation to Sex Establishments. It was added that the Policy details the process of applying for a licence, renewal, variation and transfer of sex establishment licences in relation to a premises that operates within the Gwynedd Council area.

Reference was made to the licensing process together with the standard conditions and the fees to pay. It was highlighted that the legislation sets permissions to charge a fee for sex establishments' licences and that the Council has set a fee that is sufficient to recoup costs only. The aim is to revise the licensing fees yearly.

Thanks was given for the report.

Responses to questions raised in the discussion that followed:

In response to an observation regarding the need to consider a suitable location for any sex establishment, avoiding, for example, proximity to schools, it was noted that the policy was robust and comprehensive and gave consideration to every possible scenario.

In response to a suggestion to include the Local Health Board in the list of consultees (paragraph 4.3 of the report, 3.4 of the policy), this was considered as reasonable and it is possible to add the Health Board to the list if this is the Committee's wish.

In response to a question regarding the application form for a licence, it was noted that the application form is a standard form (such as the one for a property licence) and is consistent with the forms of other authorities.

In response to a question regarding how the fees compare to the fees of other counties, it was noted that Arfon Borough Council when adopting Schedule 3 had specified the highest possible fees under the statutory provisions of the Act. However, the Council fees were challenged and in accordance with the Court judgement the Council was forced to set fees to only recover costs. Consequently, it was explained that the fees recommended in the report reflect the costs of establishing a new system and the costs of processing applications only with the intention to review the fees yearly.

In response to a supplementary question regarding the fact that Gwynedd's fees appear comparatively lower than the fees of some other counties, it was noted that the fees have to reflect the current costs as a starting point based on the process. It was emphasised that it would be possible to review the fees annually if an assessment of a more detailed nature was needed or to add additional steps to the process.

Proposed and seconded to approve the recommendation subject to including the Local Health Board in paragraph 3.4 of the Policy (list of consultees).

RESOLVED

- **Approve the county-wide adoption of the Sex Establishments Licensing Policy Statement, which will set procedures and conditions in order to allow for the regulation of sex establishments via the licensing procedure; is effective from the 6 December 2021 subject to including the Local Health Board in paragraph 3.4 of the Policy (list of consultees).**
- **Approve setting the fee noted, which reflects the administration and processing of applications for sex establishment licences and approve an annual review of those fees.**

The meeting commenced at 10.00 and concluded at 10.30.

GENERAL LICENSING SUB-COMMITTEE 22-04-2022

Present:

Councillors: Councillor Annwen Hughes (Chair)
Councillors Edgar Owen and Elfed Williams

Officers: Iwan Evans (Head of Legal Services), Gwenan Mai Roberts (Licensing Manager) and Lowri Haf Evans (Democratic Services Officer)

1. APOLOGIES

None to note

2. DECLARATION OF PERSONAL INTEREST

No declarations of personal interest were received from any members present.

3. URGENT ITEMS

None to note

4. EXCLUSION OF PRESS AND PUBLIC

It was **RESOLVED** to exclude the press and public from the meeting during the discussion on the following items due to the likely disclosure of exempt information as defined in paragraphs 12 and 13, Part 4, Schedule 12A of the Local Government Act 1972. These paragraphs applied as the individuals in question were entitled to privacy and there was no overriding public interest that required the disclosure of personal information relating to those individuals, or their identities. Consequently, the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

5. APPLICATION FOR A HACKNEY / PRIVATE HIRE DRIVER'S LICENCE – Mr A

The Chair welcomed everyone to the meeting. He explained that the decision would be made in accordance with Gwynedd Council's licensing policy. It was noted that the purpose of the policy was to set guidelines for the criteria when considering the applicant's application, with the aim of protecting the public by ensuring that:

- The person is a fit and proper person
- The person does not pose a threat to the public
- The public are safeguarded from dishonest persons
- Children and young people are protected
- Vulnerable persons are protected
- The public have confidence in using licensed vehicles.

The Licensing Officer presented a written report on the application received from Mr A for a hackney/private hire vehicle driver's licence. The Sub-committee was requested to consider the application in accordance with the DBS record, the guidelines on criminal offences as well as the Driver and Vehicle Licensing Agency's report. The Licensing Authority recommended that the Sub-committee approved the application.

In response to a question from the Head of Legal Services to the Licensing Officer, it was confirmed that it was the individual's responsibility to present the DBS report to the Licensing Authority. It was also confirmed that consideration had not been given to the three points for speeding as they were not contrary to policy and not a reason to refuse the application.

In response to a question from the applicants' representative to the Licensing Officer regarding the application, it was confirmed that Premier Cars Company present a number of applications and are always ready to collaborate, are open and very aware of the arrangements

The applicant's representative was invited to expand on the application and provide information about the background of the offences and the applicant's personal circumstances. It was noted that the applicant's circumstances at the time were hard, but since then he had turned his life around by caring for his daughter and his father. It was added that the application form was completed by Premier Cars Office Manager and that there was no intention from the applicant to mislead the Sub-committee by not including the details regarding being banned from driving for 18 months in 2016. In accordance with Policy requirements, it was explained that a period of three years had elapsed since the ban and that there were no other offences to consider. The applicants wish was to return to work in order to support his daughter.

In response to a question from a Member of the Sub-committee in relation to completing the application form and that the 'wrong box' had been ticked, the applicant's representative noted that this was a mistake from the Office Manager and that there was no intent to trick the sub-committee. It was added that the application had been done in goodwill and that it was the company who made the application for a DBS form as a method of preparing for the hearing.

In response to a question from the Head of Legal Services, it was confirmed that it was the applicant who signed the form.

RESOLVED that the applicant was a fit and proper person to be issued with a hackney /private hire vehicle driver's licence from Gwynedd Council.

In reaching its decision, the Sub-committee considered the following:

- The requirements of 'Gwynedd Council's Licensing Policy for Hackney Carriages and Private Hire Vehicles'
- the applicant's application form
- the Licensing Department's report along with the DBS statement and the DVLA's report
- the applicant's representative's verbal representations
- The Driver and Vehicle Licensing Agency's guidelines

Specific consideration was given to the following matters:

In September 2016, the applicant was found guilty by Gwynedd Magistrates' Court of driving a car under the influence of alcohol contrary to the requirements of the Road Traffic Act 1988. The applicant received a driving ban for 18 months (which was reduced by 4 months if he completed the course), fined £260, ordered to pay costs of £85 and additional costs of £30.

Paragraph 2.2 of the Council's Policy was considered, which states that a person with a conviction for a serious offence need not be automatically barred from obtaining a licence, but he will be expected to have been free of any conviction for an appropriate period as stated in the Policy, and to show evidence that he is a fit and proper person to hold a licence. The onus was on the applicant to prove that he was a fit and proper person. Paragraph 2.3 states, for the purpose of the Policy, that 'other matters for consideration' include, amongst others, criminal /driving convictions

Paragraph 4.5 was considered which states that the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 2002 allows the Sub-committee to take into account all convictions recorded against an applicant, whether spent or otherwise, under the 1974 Act.

Paragraph 11.0 which addressed drink-driving offences, was considered. In paragraph 11.1, it was noted that a serious view would be taken of convictions for driving or being responsible for a vehicle under the influence of alcohol / drugs. Anyone who had been found guilty of offences relating to drink-driving was unlikely to receive a licence until they had been free from a conviction(s) for at least three years.

Paragraph 13.1 was considered, relating to minor traffic offences and refers mainly to offences that are not listed in paragraph 12.2 of the Policy with paragraph 13.1 defining 'minor traffic offences' as offences that incurred between 1 and 3 penalty points. Paragraph 13.2 was considered, which highlights that one conviction for a minor traffic offence can lead to refusing the application.

The Sub-committee determined that the September 2016 conviction was in relation to drink driving. They were content that the period of time noted in the Policy where applications should be refused due such offences had elapsed. The Sub-Committee noted that the one conviction from 2016 had also led to a driving ban until June 2018. With the licence reinstated in June 2018 and no evidence of further offences, the Sub-committee, in accordance with the policy, were satisfied that an appropriate period of time had elapsed.

In addition, the sub-committee found that the event in 2020 was related to a minor traffic offence. Having considered paragraph 13.2 of the Policy, the Sub-committee was of the opinion that this offence should not be grounds to refuse the application.

The error on the applicant's application form was considered which failed to include convictions disclosed in the DBS report on the application form. An explanation from the employer was received that this was an error on behalf of the company and was not done deliberately. The applicant was reminded, that by signing the form, he was taking responsibility for the content but the Sub-committee was ready to accept that it was a mistake signing the form without checking the content this time.

The Sub-committee accepted, although the applicant did not excuse the offence that his personal circumstances at the time were very difficult. They were also satisfied that his circumstances had changed since then and there was no evidence that the behaviour was typical of him.

Having weighed up the evidence and the information carefully, the Sub-committee determined in favour of approving the application and it was determined that the applicant was a fit and proper person to hold a hackney and private hire vehicle driver's licence. The applicant's representative was encouraged to ensure that applicants in the future check and take responsibility for their application forms.

The Solicitor reported that the decision would be confirmed formally by letter to the applicant.

The applicant's representative took the opportunity to thank the Licensing Department for their support during the pandemic - this had been very challenging time for everyone.

6. APPLICATION FOR A HACKNEY/PRIVATE HIRE DRIVER'S LICENCE - Mr B

The Chair welcomed everyone to the meeting. He explained that the decision would be made in accordance with Gwynedd Council's licensing policy. It was noted that the purpose of the policy was to set guidelines for the criteria when considering the applicant's application, with the aim of protecting the public by ensuring that:

- The person is a fit and proper person
- The person does not pose a threat to the public
- The public are safeguarded from dishonest persons
- Children and young people are protected
- Vulnerable persons are protected
- The public have confidence in using licensed vehicles

The Licensing Manager submitted the written report on the application received from Mr B for a hackney/private hire driver's licence. The Sub-committee was requested to consider the application in accordance with the DBS record, the guidelines on criminal offences as well as the Driver and Vehicle Licensing Agency's report. The Licensing Authority recommended that the Sub-committee should approve the application.

The applicant was invited to expand on the application and provide information about the endorsements on his driving licence and his personal circumstances. He made reference to the 6 points he received for not having car insurance and stated that he was providing food for a vulnerable individual during lockdown. He accepted that he should be aware that he had social use on the car and not business use. He noted that he enjoyed driving and that he understood and accepted the job requirements.

In response to a question from the Licensing Officer, the applicant noted that he had not received confirmation of his employment with 'Huw's Taxis' company but he had discussed work with local companies.

RESOLVED that the applicant was a fit and proper person to be issued with a hackney /private hire vehicle driver's licence from Gwynedd Council.

In reaching its decision, the Sub-committee considered the following:

- The requirements of 'Gwynedd Council's Licensing Policy for Hackney Carriages and Private Hire Vehicles'
- the applicant's application form
- the Licensing Department's report along with the DBS statement and the DVLA's report
- the applicant's verbal representations
- The Driver and Vehicle Licensing Agency's guidelines

Specific consideration was given to the following matters

In May 2020 the applicant received six penalty points for using a vehicle without insurance against third party risks as well as three penalty points for breaking the statutory speed limit on a public road in September 2020. As a result, he received nine penalty points on his driver's licence.

Paragraph 2.2 of the Council's Policy was considered, which states that a person with a conviction for a serious offence need not be automatically barred from obtaining a licence, but he will be expected to have been free of any conviction for an appropriate period as stated in the Policy, and to show evidence that he is a fit and proper person to hold a licence. The onus was on the applicant to prove that he was a fit and proper person. Paragraph 2.3 states, for the purpose of the Policy, that 'other matters for consideration' include, amongst others, criminal /driving convictions

Paragraph 4.5 was considered which states that the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 2002 allows the Sub-committee to take into account all convictions recorded against an applicant, whether spent or otherwise, under the 1974 Act.

Section 12 of the Policy relates to driving convictions, and paragraph 12.2 lists major traffic offences for the purposes of the Policy. Amongst the offences were IN10 (use of a vehicle uninsured against third party risks). Paragraph 12.3 states that an application will be refused if there is a conviction against the applicant and he/she has not been free of the conviction for at least six months.

Part 13 relates to minor traffic offences and refers mainly to offences that are not listed in paragraph 12.2 of the Policy with paragraph 13.1 defining 'minor traffic offences' as offences that incurred between 1 and 3 penalty points. Paragraph 13.2 was considered that states that when an applicant / licence holder has one conviction for a minor driving offence, or other matters to be considered associated with this, this would not usually lead to an application refusal or prevent / suspend a licence.

The Sub-committee concluded that the May 2020 conviction was a serious traffic offence. However, as the period of time noted in the Policy where applications should be refused as a result of such offences had elapsed and the offences had not affected the suitability of the applicant as a taxi driver, it was not grounds to refuse the application under paragraph 12.4. In addition, the September 2020 incident related to a minor traffic offence and having considered paragraph 13.2 of the Policy, the Sub-committee found that this offence also should not be grounds for refusal.

The Sub-committee determined in favour of approving the application and that the applicant was a fit and proper person to hold a hackney and private hire vehicle driver's licence.

The Solicitor reported that the decision would be confirmed formally by letter to the applicant.

The meeting commenced at 13 :30 and concluded at 14:45

GENERAL LICENSING SUB-COMMITTEE 10-03-22

Present:

Councillors: Anwen Hughes (Chair), Gareth T Jones and Edgar Owen

Officers: Iwan Evans (Head of Legal Services), Gwenan Mai Roberts (Licensing Manager) and Lowri Haf Evans (Democracy Services Officer)

1. APOLOGIES

Apologies were received from Councillor Gethin Glyn Williams (Local Member), Mrs W Lawrence, Susan Wattis, Helen Charlton, Jenny Wilson, Salmon Williams, Cllr Judith Humphreys, Veronica Roberts, Wendy Cleaver, Carol Jones, Jan Clark, Norma Stockford, June Davies, Victor Perham, Tom Dobson and Marilyn Whitehouse (respondents)

2. DECLARATION OF PERSONAL INTEREST

None to note

3. URGENT ITEMS

Point of order:

The applicant outlined his concerns about the arrangements for the hearing, and that the Sub-committee should consider the following before proceeding with the hearing.

Perverting the course of justice
Legality of the process
Errors in the agenda
Interpretation of the law

He highlighted:

- that some of the responses suggested that the applicants had attempted to pervert the course of justice by contacting those who had objected to the application. The applicant strongly refuted this allegation and felt that these respondents were perverting the course of justice by making false allegations.
- the Council had included / published these libellous allegations, and in doing so, were condoning and supporting the statements. A request had been made for the Council to submit evidence to show how they had been persuaded that these statements were factually correct before publishing them
- Any response that was not in response to the recent letter from the Council checking that the respondent who was submitting the response still wished for that response to be considered, should be rejected. It was argued that these responses fell outside the law, although they continued to be part of the Sub-committee's agenda.
- Some respondents included some fake facts and comments about the company, and they challenged the Council as to why they had not researched into these fake observations before publishing the agenda. It was considered that the observations were misleading, and were likely to mislead the sub-committee's members when reaching a decision

Following legal advice from the Council's Head of Legal Services, it was noted that the application in question had been submitted prior to the Legislation being adopted by the Council. It was added that the powers were now in place, and that it was possible to proceed with the hearing, and for the sub-committee to consider the observations in reaching a decision.

4. APPLICATION FOR A SEX SHOP – EVA AMOUR, 6 ST ANNE'S SQUARE, BARMOUTH

Applicant: Mr David Powley and Mr Daniel Millar (on behalf of DD Trading (NW) Ltd)

Respondents: Mr and Mrs D Hooper, Mr Trevor Parry, Reverend Dawn Robinson, Cllr Rob Triggs (Barmouth Town Council), Cllr Katie Price (Barmouth Town Council) and Katie Pattison

The Chair welcomed everyone to the meeting. The Chair highlighted that each party had the right of up to five minutes to present their observations.

a) The Licensing Department's Report

Submitted – the report of the Licensing Manager detailing the application for a sex shop licence for Eva Amour, 6, St. Anne's Square, High Street, Barmouth.

It was explained that any individual who wished to run a Sex Establishment in accordance with the definition of the Local Government (Miscellaneous Provisions) Act 1982 required a sex establishment licence unless the appropriate authority had waived the requirement for a licence. As the Act's provisions had been fully adopted on 7 October 2021, no such business could operate within Gwynedd without a valid licence. However, as this business had applied for a licence in February 2021, prior to the licensing system being adopted throughout Gwynedd, the Council had no powers to prevent the business from opening at that time, and it was noted that the business had been trading since December 2021.

Reference was made to the process of regulating sex establishments and the licensing process, and highlighted that there were five mandatory reasons for refusing an application - if the applicant

- is under 18 years of age
- is for the time being disqualified from holding a sex establishment licence
- is not a corporate body and has not been resident in the UK for the previous six months preceding the date of the application
- is a company, which is not incorporated in the UK
- has had an application for the premises or renewal of a licence for the premises refused in the previous twelve months preceding the date of the application in respect of which the application was made, unless the refusal has been reversed on appeal

It was added, that none of the mandatory grounds for refusal applied in this case, but reference was made to the following discretionary grounds -

- If the applicant is unsuitable to hold the licence by reason of having been convicted of an offence
- If the business would be managed by or carried on for the benefit of a third party who would be refused a licence in their own right

- That the number of sex establishments in the relevant locality or this specific type is equal to or exceeds the number considered appropriate for the locality
- Inappropriate having regard to:
 - i. The character of the relevant locality - a matter for the members, based on the facts of the case. It was noted that the relevant locality did not have to be clearly defined, and the members could decide that the locality in this case referred to the area surrounding the property on/or near St. Anne's Square on the High Street in Barmouth.
 - ii. Use to which any premises in the vicinity are put, or
 - iii. Layout, character, condition or location of the premises

Attention was drawn to the responses that had been received during the consultation period. It was noted that 82 objections had been received during the initial consultation period, and 8 observations supporting the application. Amongst the representations from residents, objections were also received from the elders of Christ Church, Presbyterian Church of Wales, the Community Council, and local clergy. North Wales Police, North Wales Fire and Rescue service, the Council's Environmental Health and Trading Standards also made representations on the application and they had no objections to the application

Following discussions with the applicant, as 11 months had elapsed since the consultation was held on the application, it was decided to allow all the respondents to the application to reconsider their observations. A letter was sent on 28 January 2022 to all the original respondents, to enable them to have an opportunity to confirm, amend or withdraw their observations.

22 representations were received, 20 of which confirmed their objection to the application, and 5 submitted amended observations. One respondent had asked for his objection to be withdrawn, based on the fact that the shop window display would not be offensive as was originally feared. One respondent who supported the application had made observations on the process of determining the application.

It was recommended that the Sub-committee should refuse the application on the grounds that it was not in keeping with the character of the neighbouring area and that the proposed location of the property was close to a property that was attended by vulnerable children and adults.

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

- Members of the Sub-committee were given the opportunity to ask questions to the Licensing Manager.
 - The applicant was given the opportunity to ask questions to the Licensing Manager.
 - The applicant was invited to expand on the application
 - Members of the Sub-committee were given an opportunity to ask questions to the applicant
 - Consultees were given an opportunity to support their written representations
 - Members of the Sub-committee were given an opportunity to ask questions of the consultees
 - The Licensing Manager and the applicant were given an opportunity to summarise their case
- b) The Sub-committee had no questions for the Licensing Manager.
- c) Questions from the applicant and the Licensing Manager's responses

<p>Was it reasonable for the applicant, in an e-mail to the Licensing Department, to request that the process should be re-commenced?</p> <p><i>It was confirmed that an e-mail requesting that the process should be re-commenced had been received, although it had been received after the applicant had seen the committee report and the recommendation.</i></p>
<p>Had the responses been considered fairly before publication?</p> <p><i>Every care had been taken in dealing with the responses. The Licensing Manager had no right to interpret which observations were appropriate - the Licensing Manager would ensure that all the observations were presented to the applicant for them to have an opportunity to see and respond to them, and for the Sub-committee to consider prior to reaching a decision.</i></p>
<p>Was the Council supporting fake observations and allowing their interpretation?</p> <p><i>The respondents had the right to submit their views / representations and there was no right to prevent observations in support or objections.</i></p>
<p>Was the Council at fault in commencing the consultation without adopting the Act and the statement on the regulation of sex establishments?</p> <p><i>The view was acknowledged, but it was noted that the Act allowed retrospective applications. The Head of Legal Services added, under schedule 3 of the 1982 Act, that an application could be submitted immediately</i></p>
<p>Was it fair to say that a significant percentage of the published responses were incorrect?</p> <p><i>No response</i></p>
<p>Why had no summary of the supporting responses been included in the report? The report focused on the objections - this was unfair given that over 400 agreed with the application</p> <p><i>All the observations had been considered by focusing on the observations made by respondents that were local to the community of Barmouth. Some supporting observations had been submitted from abroad. It was added that there was only a signature on the supporting petition, and no written observations. The nature of the observations was important, not the number received.</i></p>
<p>Should only the observations following the second consultation have been published?</p> <p><i>All the observations continued to be relevant. It was a matter for the Sub-committee to analyse the relevance of the observations to the application</i></p>
<p>Was the wording of the letter sent to the original respondents offering the opportunity to re-submit / re-consider their observations unfair?</p> <p><i>The letter had been sent under fair circumstances – all were given the opportunity to re-submit their observations.</i></p>
<p>Observations about the side door – how had this information been shared?</p>

<i>Reference to the side door had been included on the applicant's application form and the respondents had responded to this</i>
<p>What was 'sex tourism'?</p> <p><i>No observations</i></p>
<p>Why had the suggestion of offering support, counselling and information about sexual health been misinterpreted?</p> <p><i>Reference in the applicant's application form expressing this. Following a response from the applicant noting that it was their aim to offer this ('We aim' and 'We plan'), confirmation had been received about the meaning of the comment</i></p>
<p>Why was it considered that observations about the additional pressure on the post office were negative?</p> <p><i>No additional observations - these were observations from respondents</i></p>
<p>What was 'significant degree'?</p> <p><i>Interpreting this phrase was part of a wider discussion and was not to be discussed in discussing the application.</i></p>

The Manager added that regular discussions had taken place with the applicant, in an attempt to provide guidance.

- ch) Elaborating on the application, the applicant noted:
- There was considerable support for the new initiative, and some who had objected had now changed their minds
 - The shop was situated within a residential area, but everyone was now supportive and a significant number had signed a petition in support of the initiative.
 - There was a good relationship with the local public house - events were coordinated
 - There was a good relationship with other shops in the area
 - The reference to 'open space' referred to parks
 - Following a discussion with the Church – their objection did not now stand as the shop was open and obvious
 - A number were concerned about the 'unknown' - the shop had been presented tastefully
 - Other similar shops had been established near to Churches and had been able to co-exist without any concerns
 - No products were displayed in the shop window
 - All the Ann Summers shops across the country operated without a licence and had been located in busy areas
 - Community safety was important – it was intended to adhere to the rules and operate within the law
 - The information that had been misinterpreted / misunderstood had now disappeared
 - The majority of the customers were local
 - There were no 'Stag and Hens' events / celebrations held in Barmouth
 - The intention was to have a licenced shop

In response to a question regarding responsible and high standard management of this initiative without bringing the town into disrepute, the applicant noted his intention of presenting the shop tastefully. He added that positive feedback had been received about the presentation of the shop, and that it added value to the high street. He added that some people travelled specifically to visit the shop and then stayed in the town, thereby contributing to the local economy. They did not focus on cheap products.

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

Mrs Hooper

- Her previous observations stood, and she objected to the application
- Concern about the location of the shop - near the Church, a nursery and where families shopped
- The shop was unsuitable for a family holiday town
- The shop was within an area that was accessible for vulnerable people

Cllr Katie Price

- The Council had received a significant number of objections – far more than usual
- The Town Council objected specifically due to the location of the shop, with a pedestrian crossing in front of it; a busy place of worship opposite the shop that held services, weddings, funerals and youth meetings

Cllr Rob Triggs

- Supported the observations of Cllr Katie Price
- No personal observations, but an objection had been submitted in accordance with the representations made by local residents

In response to a question about the Town Council's vote on the matter, it was noted that the vote to refuse had been unanimous, and that no letters of support had been received.

Mr D Hooper

- Confirmed his objection, with an emphasis on the unsuitability of the location

Reverend Dawn Robinson

- Confirmed that her objection stood - was speaking on behalf of the Church
- Disagreed with the location of the shop

Katie Pattison

- Was a local parent and was supportive of the application
- Shared the same entrance to her home with the shop
- No moral reasons for objecting to the application
- There were more products that could cause offence in the Rock Shop!
- Here children had not commented when walking past on the way to school
- Had come to know the applicants well
- The shop should not be concealed
- She had sent an e-mail confirming her support

- dd) Taking advantage of the right to conclude their case, the Licensing Manager noted the following points

- The application had received much attention in the local community
- The local community had expressed strong feelings, which had been shared

- Attention was drawn to the requirements of the act and the policy
 - The location of the shop was the grounds for the recommendation for refusal – the site was unsuitable in relation to the character of the neighbouring area
- e) Taking advantage of the opportunity to conclude the case, the applicant noted the following points and also responded to the concerns highlighted by the respondents:
- Licensing the shop had been part of the plan from the outset
 - There had been great interest in the shop, which had gained support
 - Since opening, the shop had possibly gained more support
 - It was part of the community - employed local people
 - They lived at the premises
 - Assurance of security could be provided to the community
 - The licence was valid for 12 months – this was a good opportunity

The applicant, the respondents and the Licensing Manager withdrew from the meeting while the Sub-committee members discussed the application

In reaching its decision, the Sub-committee considered the applicant's application form along with written comments submitted by interested parties, the Licensing Officer's report recommending the refusal of the application and the verbal comments from each party present at the hearing.

All considerations were weighed up against the Local Government (Miscellaneous Provisions) Act 1982 that included a licensing plan to regulate sex establishments (sex shops and sex cinemas). Gwynedd Council adopted the Act and the Sex Establishments Licensing Policy Statement in a meeting of the full Council on 7 October 2021

RESOLVED: TO REFUSE THE APPLICATION ON THE GROUNDS THAT IT WAS NOT IN KEEPING WITH THE CHARACTER OF THE NEIGHBOURING AREA AND THAT THE PROPOSED LOCATION OF THE PROPERTY WAS CLOSE TO A PROPERTY THAT WAS ATTENDED BY VULNERABLE CHILDREN AND ADULTS.

Reasons:

The Sub-committee was satisfied that the grounds for refusing the application included in Schedule 3 paragraph 12(1) of the Act were not relevant to the application. Therefore, the application was considered under the discretionary provisions of Schedule 3 paragraph *3 of the Act.

The discretionary reasons were considered:

- a) The applicant was unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason
- b) If the licence was granted, renewed or transferred, the business would be managed by or carried on for the benefit of a third party who would be refused a licence in their own right.
- c) The number of sex establishments in the locality or of the particular kind in the locality at the time of submitting the application equalled or exceeded the number considered by the authority as being appropriate for the locality.
- d) Granting or renewing the licence would be inappropriate, with regard to -
 - i. The character of the relevant locality
 - ii. The use made of any premises in the vicinity; or
 - iii. The layout, character, condition or location of the premises, vehicle, vessel or stall in respect of the applicant.

A significant number of representations were received from members of the public objecting to a number of aspects and allegations relating to the proposal. Additionally, observations were received in support of the application and further information in support was submitted by the applicants. However, the Sub-committee only had the right to consider the information that was relevant to its decision under Schedule 3 of the Act for a licence for a Sex Establishment as a Sex Shop as defined by the Act.

As part of their presentation, a point of order was raised by the applicants regarding the period of time that had elapsed since the original consultation and the status of the responses received. This was specifically as over 12 months had elapsed since the original consultation and that the updating exercise by the Environment Department and the way in which the results had been dealt with was wrong and unfair. The Sub-committee was satisfied that paragraph 29 of Schedule 3 of the Act provided for a situation where an application was submitted prior to a Council adopting the regulatory system for Sex Establishments under the Act. The provision in paragraph 28 permitted a protected application in order to undertake an activity. Paragraph 10 of the Schedule also made it mandatory to display a public notice on the site on the date of submitting the application, inviting observations within 28 days. It was therefore inevitable that by opting to submit an application immediately, the applicants were initiating the process of seeking observations.

A further point of order was raised regarding the letter that had been sent by the Environment Department in January 2022 seeking an update from the respondents. It was noted that although 92 responses had been originally received, only 22 provided a further response. The applicants' concerns were also noted regarding the time that had elapsed since the original application and the hearing. It was noted that the Sub-committee was required to form a view based on the relevant evidence that had been submitted, and the number of objections in itself was not relevant to the decision. The Sub-committee was satisfied having heard the presentations and considered the information to hand that it was in a situation to reach a decision on the application for the following reasons:

Observations that were irrelevant to the considerations were disregarded. A number of objections alleged that there was a risk of wider activities taking place within the building, and that it would become a destination for 'sex tourism'. An application for a sex establishment (sex shop) was in question here, and the licence would not permit other activities. The Sub-committee was satisfied that these were not grounds for determining that the applicants would be unsuitable to receive a licence.

It was resolved that permitting a licence would be inappropriate having regard to:

- i. The character of the relevant locality;
- ii. the use made of any premises in the vicinity; or
- iii. The layout, character, condition or location of the premises, vehicle, vessel or stall in respect of the applicant.

The locality surrounding the site was described as a central point on Barmouth's main shopping street. The location near St. Anne's Square was an important central location in the town centre, within a busy shopping area, and St. Anne's Square was a location where people and families congregated and socialised, with outside seating provided in the vicinity of the property. It was located directly opposite a busy crossing, a market site and a charity shop, and directly opposite Christ Church, an active place of worship and a destination for youth groups in addition to religious services (including weddings and funerals on a regular basis). It was noted that the application requested the right to open on Sundays. It was noted that the Licensing Policy highlighted that proximity to

places of worship was a specific consideration when determining an application.

The Sub-committee was of the opinion that the building was prominent within the location, and was in contrast to the appearance of other neighbouring shops and properties, which meant that the nature of the establishment was obvious in the street.

The Solicitor reported that the decision would be confirmed formally. It was added that the applicant 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 receives the letter (or a copy of the letter) confirming the decision.

The meeting commenced at 14:00 and concluded at 16:30

GENERAL LICENSING SUB-COMMITTEE 25-02-2022

Present:

Councillors: Councillor Annwen Hughes (Chair)
Councillors Eryl Jones-Williams and Edgar Owen

Officers: Siôn Huws (Senior Solicitor), Gwenan Mai Roberts (Licensing Manager)
and Lowri Haf Evans (Democratic Services Officer)

1. APOLOGIES

None to note

2. DECLARATION OF PERSONAL INTEREST

No declarations of personal interest were received from any members present.

3. URGENT ITEMS

None to note

4. EXCLUSION OF PRESS AND PUBLIC

RESOLVED to exclude the press and public from the meeting during the discussion on the following items due to the likely disclosure of exempt information as defined in paragraphs 12 and 13, Part 4, Schedule 12A of the Local Government Act 1972. These paragraphs applied as the individuals in question were entitled to privacy and there was no overriding public interest that required the disclosure of personal information relating to those individuals, or their identities. Consequently, the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

5. APPLICATION FOR A HACKNEY / PRIVATE HIRE DRIVER'S LICENCE – Mr A

The Chair welcomed everyone to the meeting. She explained that the decisions would be made in accordance with Gwynedd Council's licensing policy. It was noted that the purpose of the policy was to set guidelines for the criteria when considering the applicant's application, with the aim of protecting the public by ensuring that:

- The person is a fit and proper person
- The person does not pose a threat to the public
- The public are safeguarded from dishonest persons
- The safeguarding of children and young people
- The safeguarding of vulnerable persons
- The public have confidence in using licensed vehicles.

The Licensing Officer presented a written report on the application received from Mr A for a hackney/private hire vehicle driver's licence. The Sub-committee was requested to

consider the application according to the DBS record, the guidelines on criminal offences and relevant convictions. The Licensing Authority recommended that the Sub-committee should approve the application.

The applicant was invited to expand on his application and provide information about the background of the offence and his personal circumstances. Mr A noted that this was a single incident and was not a reflection of his character. His circumstances at the time were difficult, however, since then he had turned his life around and had attended college, had a job and was now trying to support his family.

RESOLVED that the applicant was a fit and proper person to be issued with a hackney/private hire vehicle driver's licence from Gwynedd Council.

In reaching its decision, the Sub-committee considered the following:

- The requirements of 'Gwynedd Council's Licensing Policy for Hackney Carriages and Private Hire Vehicles'
- the applicant's application form
- the Licensing Department's report and the DBS statement
- the applicant's verbal representations
- The Driver and Vehicle Licensing Agency's guidelines

Specific consideration was given to the following matters:

In January 2013, the applicant was found guilty by Conwy Youth Court of injuring/causing serious bodily harm contrary to the Offences Against the Person Act 1861. The applicant received a £100 fine, costs of £15 and a Referral Order for 12 months.

Paragraph 2.2 of the Council's Policy was considered, which states that a person with a conviction for a serious offence need not be automatically barred from obtaining a licence, but will be expected to have been free of any conviction for an appropriate period as stated in the Policy, and to show evidence that he/she is a fit and proper person to hold a licence. The onus was on the applicant to prove that he was a fit and proper person. Paragraph 2.4 states that when an applicant has a conviction(s) or there are other related matter(s) to be considered in connection with that, the Council cannot review the merits of the conviction or other matter.

Paragraph 4.5 was considered which states that the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 2002 allows the Sub-committee to take into account all convictions recorded against an applicant, whether spent or otherwise, under the 1974 Act.

Paragraph 6.0 of the Policy addresses violent offences. Paragraph 6.1 states that, since licensed drivers come into close contact regularly with the public, the sub-committee shall adopt a firm stance towards those who have offences involving violence. Paragraph 6.5 of the Policy states that an application for a licence will usually be refused if the applicant has a matter to be considered for common assault and/or criminal damage and/or an offence under the Public Order Act 1986 which happened less than three years before the date of application.

The Sub-committee concluded that the conviction in 2013 was a violence-related offence when the applicant was 17 years old. They were satisfied that the period of time noted in the Policy when applications should be refused due to such offences had elapsed.

The Sub-committee accepted, although the applicant did not excuse the offence, that his personal circumstances at the time were very difficult. They were also satisfied that his circumstances had changed since then and there was no evidence that this behaviour was characteristic of him. It was noted that they were pleased that the applicant had accepted full responsibility for the incident at the time, and accepted that he acknowledged the seriousness of the offence and he had been open and honest when discussing the application.

Having carefully weighed up the evidence and information, the Sub-committee was in favour of approving the application and it was determined that the applicant was a fit and proper person to hold a hackney and private hire vehicle driver's licence.

The Solicitor reported that the decision would be confirmed formally by letter to the applicant.

The meeting commenced at 10:00 and concluded at 10:25am.

GENERAL LICENSING SUB-COMMITTEE 25-11-21

Present:

Councillors: Councillor Annwen Hughes (Chair)
Councillors Gareth T M Jones and Dafydd Owen

Officers: Siôn Huws (Senior Solicitor), Gwenan Mai Roberts (Licensing Manager)
and Lowri Haf Evans (Democratic Services Officer)

1. APOLOGIES

None to note

2. DECLARATION OF PERSONAL INTEREST

No declarations of personal interest were received from any members present.

3. URGENT ITEMS

None to note

4. EXCLUSION OF PRESS AND PUBLIC

It was **RESOLVED** to exclude the press and public from the meeting during the discussion on the following items due to the likely disclosure of exempt information as defined in paragraphs 12 and 13, Part 4, Schedule 12A of the Local Government Act 1972. These paragraphs applied as the individuals in question were entitled to privacy and there was no overriding public interest that required the disclosure of personal information relating to those individuals, or their identities. Consequently, the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

5. APPLICATION FOR A HACKNEY / PRIVATE HIRE DRIVER'S LICENCE – Mr A

The Chair welcomed everyone to the meeting. She explained that the decisions would be made in accordance with Gwynedd Council's licensing policy. It was noted that the purpose of the policy was to set guidelines for the criteria when considering the applicant's application, with the aim of protecting the public by ensuring that:

- The person is a fit and proper person
- The person does not pose a threat to the public
- The public are safeguarded from dishonest persons
- Children and young people are protected
- Vulnerable persons are protected
- The public have confidence in using licensed vehicles.

The Licensing Officer presented a written report on the application received from Mr A for a hackney/private hire vehicle driver's licence. The Sub-committee was requested to consider the application according to the DBS record, the guidelines on criminal offences and relevant convictions. The Licensing Authority had recommended that the Sub-committee should refuse the application.

In response to the applicant's observation that the conviction had surpassed the period noted in the policy, the Licensing Manager noted the rights of the Sub-Committee to consider every conviction on the DBS record. Although the applicant's frustration was accepted it was added that the Council's Policy was to consider every conviction in order to provide a clear and comprehensive picture of the background. The Sub-committee's priority was the public's safety and by weighing up all the evidence it was possible to determine whether the applicant was a fit and proper person for the post.

The applicant was invited to expand on his application and provide information about the background of the offences and his personal circumstances. He noted that he was remorseful, and had improved his behaviour, and following the incident in 2018 he had learnt a lesson by calling the Police and keeping a record of every incident in a diary. He noted that he had driven buses for 27 years and that the complaint wasn't regarding his attitude or his driving.

RESOLVED that the applicant was a fit and proper person to be issued with a hackney/private hire vehicle driver's licence from Gwynedd Council.

In reaching its decision, the Sub-committee considered the following:

- The requirements of 'Gwynedd Council's Licensing Policy for Hackney Carriages and Private Hire Vehicles'
- the applicant's application form
- the Licensing Department's report and the DBS statement
- the applicant's verbal representations
- The Driver and Vehicle Licensing Agency's guidelines

Specific consideration was given to the following matters:

In October 2010, the applicant was found guilty by Gwynedd Magistrates Court of using threatening, aggressive/insulting language, or behaving with the intention of causing distress or harassment, contrary to the Public Order Act 1986. He was fined £200, ordered to pay costs of £85 and additional costs of £15.

In November 2018, the applicant was found guilty by North West Wales Magistrates Court of using threatening, aggressive/insulting language likely to cause harassment, alarm or distress contrary to the Public Order Act 1986. He was fined £100, ordered to pay costs of £85 and additional costs of £30

Paragraph 2.2 of the Council's Policy was considered, which states that a person with a conviction for a serious offence need not be automatically barred from obtaining a licence, but he will be expected to have been free of any conviction for an appropriate period as stated in the Policy, and to show evidence that he is a fit and proper person to hold a licence. The onus was on the applicant to prove that he was a fit and proper person. Paragraph 2.4 states that when an applicant has a conviction(s) or there are other related

matter(s) to be considered in connection with that, the Council cannot review the merits of the conviction or other matter.

Paragraph 4.5 was considered which states that the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 2002 allows the Sub-committee to take into account all convictions recorded against an applicant, whether spent or otherwise, under the 1974 Act.

Paragraph 6.0 of the Policy addresses violent offences. Paragraph 6.1 states that, since licensed drivers come into close contact regularly with the public, the sub-committee shall adopt a firm stance towards those who have offences involving violence. Paragraph 6.5 of the Policy states that an application for a licence will usually be refused if the applicant has a matter to be considered for common assault and/or criminal damage and/or an offence under the Public Order Act 1986 which happened less than three years before the date of application.

Paragraph 16.1 of the Policy deals with repeat offences. Firstly, it must be ensured that the convictions satisfy the policy guidelines individually, but that they together create a history of repeat offending that indicates a lack of respect for the welfare and property of others. The Policy states that ten years must have elapsed since the most recent conviction.

The Sub-committee concluded that the convictions in 2010 and 2018 were violence-related offences. They were content that the period of time noted in the Policy where applications should be refused due such offences has passed in the case of both matters. However, as there was a 'pattern' of re-offending the matter was considered under paragraph 16.1. Under this paragraph the policy states that the application should be refused if a period of 10 years hasn't passed since the last conviction. As such a period of time had not elapsed, the sub-committee considered if there were any reasons and evidence presented to persuade them differently.

The nature of the re-offending pattern was considered and the applicant's explanation and evidence regarding the background of the offences and personal circumstances. The offence in 2010 had happened 11 years ago and was related to a specific family incident. However, the offence in 2018 was a cause of concern for the Sub-committee due to the situation that arose while the applicant was driving a public bus and therefore very relevant in the context of an application for a hackney / private hire driver's licence. The Sub-committee highlighted that very difficult situations would arise from time to time where it would be essential to avoid losing one's temper and to not respond if provoked. The Sub-Committee gave consideration to the circumstances of the incident that lead to the conviction and came to the decision that the behaviour was unacceptable. Despite this, the behaviour was only relatively serious and no physical violence had taken place.

The Sub-Committee received a declaration from the applicant stating he had learnt his lesson following the incident and he now phoned the Police when a similar situation arose and he kept a record of every incident in a diary. It was also considered that the applicant has driven buses for years and that no complaints have been presented to his employer regarding his driving or behaviour.

Having weighed-up the evidence and the information carefully, the Sub-committee decided that the nature of re-offending and the evidence of what had happened since the

last conviction justified deviating from the Policy. Consequently, the Sub-committee was in favour of approving the application and it was determined that the applicant was a fit and proper person to hold a hackney and private hire vehicle driver's licence. The applicant was reminded that if a similar incident occurred again then the licensing authority would have to consider taking appropriate measures under those specific circumstances, and the measures may include removal of the licence.

The Solicitor reported that the decision would be confirmed formally by letter to the applicant.

The meeting commenced at 14:30 and concluded at 15:30