
CENTRAL LICENSING SUB-COMMITTEE 20.03.17

Present: **Councillors:** Tudor Owen (Chair), Angela Russell and R. H. Wyn Williams

Officers: Geraint Brython Edwards (Solicitor), Gwenan Mai Roberts (Licensing Manager), Cheryl Morgan (Licensing Officer - observing) and Lowri H. Evans (Member Support Officer).

1. **APOLOGIES**

Apologies were received from Cllr Siân W Hughes (Local Member), the Fire Authority, Richard and Christine Archbell and Rhodri and Vanessa Williams

2. **DECLARATION OF PERSONAL INTEREST**

None to note.

3. **URGENT ITEMS**

None to note

4. **APPLICATION FOR PREMISES LICENCE - Caffi Porthdinllaen, Morfa Nefyn**

The panel and the officers were introduced to everyone that was present and it was announced that everyone had up to 5 minutes to share their observations on the application.

On behalf of the premises: Mr James Munday (applicant) and Mrs Wena P Williams

Others invited: Mr Ian Williams (North Wales Police)

 Mr Peter Jones, Mrs Hazel Pielow, Mr T Gareth Gruffydd,
 Mr Idris Williams, Mrs Shan Gruffydd, Mr Tony Connelly,
 Mrs Dolwen Williams

a) **The report and recommendation of the Licensing Section**

Submitted – the report of the Licensing Manager giving details of the application for a premises licence for Caffi Porthdinllaen, Lôn Golff, Morfa Nefyn in relation to the supply of alcohol on and off the premises from midday until 11pm, every day, and to play recorded music on the premises. A provision to deliver food orders off the premises will be offered and ordering alcohol as part of the food order will be part of the offer. It was highlighted that the premises was currently used as a café that was open until late afternoon, with an outside area for customers.

Attention was drawn to the proposed hours in the report. It was noted that the Licensing Authority had sufficient evidence for the application to be submitted in accordance with the requirements of the Licensing Act 2003 and the relevant regulations.

Reference was made to measures recommended by the applicant to promote the licensing objectives along with the responses that were received during the consultation period.

It was noted that 20 letters / e-mails had been received, with 19 objecting to the application based on the licensing objectives. Attention was drawn to the objections received from the

Local Member, Nefyn Town Council, and local residents in the report. It was highlighted that some of the objections included concerns about the parking provision, parking problems along the narrow road as well as an increase in traffic. No response has been received from the Transportation Unit to these concerns.

In response to comments about anti-social incidents and noise concerns, it was noted that the Environmental Health and Safety Service had neither received formal complaints regarding this nor complaints on the impact of late night lighting and waste disposal. An Officer representing the Police noted that no anti-social incidents had been recorded by them.

- b) In considering the application, the following procedure was followed:
- Members of the Sub-committee and the applicant were given an opportunity to ask questions of the Licensing Manager.
 - The applicant was invited to expand on the application.
 - Consultees were given an opportunity to submit their observations.
 - The licensee, or his representative, was invited to respond to the observations.
 - Members of the Sub-committee were given an opportunity to ask questions of the licensee.
 - Members of the Sub-committee were given an opportunity to ask questions of the consultees.
- c) In expanding on the application, the applicant noted that he was happy with what had been submitted and reiterated the following observations:
- There was no intention of opening the café / restaurant any later than 9pm (specific events only)
 - There was no intention of running the café / restaurant as a public house - it was a restaurant with a family atmosphere
 - The intention in applying for a licence was to offer alcohol with food and for alcohol to be sold off premises with food orders only
 - He had held discussions with an Senior Environmental Health Officer and had agreed on six conditions that were recommended to control noise
 - There was no intention of having audio units outside the premises
 - A planning application had been submitted, which included seven parking spaces and a turning area - the application had not been approved, but the plan responded to national standards. (He also highlighted that he had access rights to boundary fields should there be a need to extend).
 - It was hoped that the Council would re-paint double yellow lines on the road
 - He had already discussed the food delivery system with a Police Officer
 - There was no intention of selling cheap wines and operate as a licensed shop
 - The premises, although it appeared to be a wooden hut, had been insulated to the same standard as a normal house - he would be happy for the Environmental Health Unit to monitor and check this
 - Only recorded music would be played at the premises
 - He had had a conversation with the Local Member to discuss her concerns regarding the application.

Recent comments were presented and read by the Local Member as a result of this discussion.

The noise conditions that were recommended by the Senior Environmental Health Officer were read out by the Licensing Manager.

The consultees present at the meeting took advantage of the opportunity to elaborate on their objections to approve the licence and they reiterated the observations that had been submitted by letter.

- Noise levels would rise during special events
- The road past the café was narrow - concerns that there would be accidents
- The nearby fields needed to be drained before they could be used for parking
- Needed to ensure that the building complied with planning conditions, e.g. toilet provision
- Needed to ensure that customers would leave at 9:30pm without alcohol
- Concern that noise would carry from the decking area and outside toilets - the café boundary abutted residents' houses
- Too many places selling alcohol in the village
- Parking was a concern - it was a very dangerous area. Which measures would be taken?
- There was a need to be sensible when considering noise concerns

- ch) Letters received stating an objection to the application by David and Hayley Slater, John Wainwright, Christine Archbell, S. H. Hall, Virginia Kay, Jayne Burrell, Derek Hollinrake, Rogel Ellwood, Andy Spencer, and Wyn and Bethan Hughes, were acknowledged
- d) A representative from the Police noted that North Wales Police had no evidence that would enable the refusal of the application. Since the café had come into existence (2007), no complaint had been submitted. He noted that he had discussed the application with Mr Munday and that suggestions and conditions had been recommended. In terms of sending alcohol out with food, it was highlighted that it would be possible for the Police to implement a test purchase to ensure that Challenge 25 was being implemented. It was recommended that the residents present noise pollution complaints so that it would be possible to act on them.
- dd) In summarising his application, the applicant highlighted his willingness to work with the local community and the residents. He noted that he was attempting to improve and adapt the café as a restaurant. He reiterated that he would be willing to work with the Transportation Unit, and the Environmental Health Officer, should noise complaints be submitted.
- e) In considering the application, all the evidence submitted was considered, giving particular attention to the principles of the Licensing Act 2003
- Crime and Disorder
 - Public Safety
 - Preventing Public Nuisance
 - Protection of Children from Harm

RESOLVED to approve the application

1. Supply of alcohol will be permitted, to be consumed on and off the premises, from Monday to Sunday between 09:00 and 23:00.
2. Recorded music will be permitted inside only, Monday to Sunday, between 08:00 and 21:00.
3. Opening hours for the public are from Monday to Sunday, between 08:00 and 23:30.
4. The issues included in section M of the application were included as conditions on the licence.
5. To add a condition that CCTV clips are kept for at least 28 days and are available at the request of the Licensing Authority and the Police.
6. To add noise control conditions as suggested by the Environmental Health Officer and agreed

7. To add a condition that the policy for spreading customers at the end of a night is planned and adhered to
8. To add a condition that the Police are informed within 14 days prior to holding a late night party on the premises, i.e. after 21:00.

Specific consideration was given to the following comments and concerns:

Anti-social behaviour

The written comments of the local member, Councillor Siân Hughes, were considered, stating that there had been incidents of anti-social behaviour in the car park opposite to the premises in the past. Concern was also expressed regarding an increase in anti-social behaviour from Virginia Kay and Jayne Burrell.

Although the Sub-committee had accepted that there had been incidents of anti-social behaviour in the past and that it could be relevant to the licensing objective of preventing crime and disorder, no details were received regarding dates, numbers, length or the source of the incidents. With no information, it was not possible for the Sub-committee to come to a conclusion whether the historical problems were sufficiently serious that they represented a problem relating to crime and disorder that could be attributed to the premises, and it was not a basis on which to anticipate an increase in the problem should the licence be approved.

In accordance with the requirements of the Home Office, the Sub-committee had to consider the comments from the Police before coming to a conclusion whether a crime and disorder problem was likely to arise should the licence be approved. The Police confirmed that they did not oppose to the application as there was no history of anti-social behaviour involved with the premises that was sufficiently serious that it represented a crime and disorder problem. As a result, the Sub-committee was satisfied that the application was in accordance with the licensing objectives of preventing crime and disorder.

Noise problems

Concerns were expressed by a number of people that approving the licence would mean an increase in noise - the hut's unsuitable design for playing loud music, the noise of bottles, people and cars.

The Sub-committee accepted that the noise concerns were appropriate ones and they could, in principle, be relevant to the licensing objective of preventing public nuisance.

However, the Sub-committee was of the opinion that the comments were hypothetical and there was no basis to past evidence that the noise problems were tantamount to public nuisance. It was highlighted that, if the noise problems were tantamount to public nuisance, the Sub-committee would have expected Environmental Health to have received complaints.

The Sub-committee were advised by the Solicitor on what was considered to be a public nuisance under law. (Public nuisance was not tantamount to inconvenience. Public nuisance was defined as what happens as a result of an act that was not permitted by law or a failure to complete a legal duty, "...if the effect of the act or omission is to endanger the life, health, property or comfort of the public, or to obstruct the public in the exercise or enjoyment of rights common to all Her Majesty's subjects." Reference was made to the case of the National Coal Board v Thorne [1976] 1 WLR 543: A public nuisance [is] an act or omission which materially affects the material comfort and quality of life..." Reference was also made to R v Rimmington [2005] UKHL 63 about the "...requirement of common injury", i.e. that a substantial proportion of the public must be affected. It not enough that harm has been caused to specific individuals.

In these circumstances, the Sub-committee was not satisfied with the quality of the evidence that the noise problem deriving from the premises reached the legal definition of "public nuisance".

Light pollution

The local member and Mrs Burrell submitted concern that approving the application would lead to light pollution.

It was acknowledged that light pollution could be relevant to the objective of preventing public nuisance. However, no evidence was received that additional lights would have a serious impact or have a likely impact on public health.

Waste problem

The local member submitted concern that approving the application would produce more waste.

As with noise and lighting, it was acknowledged that waste could be relevant to the objective of preventing public nuisance. However, without any evidence to hand of the likely levels of waste that would be produced should the licence be approved, the Sub-committee was in no situation to consider that refusing the licence would create further waste problems.

Traffic / parking

Comments and concerns were submitted by the Town Council, the local member, Mr and Mrs Gruffydd, Mr Wainwright, Mrs Archbell, Mrs Burrell, Derek Hollinrake, Hazel Pielow and Andy Spencer that approving the licence would lead to an increase in traffic and a need for parking that would pose a risk to public safety.

It was accepted that these concerns were relevant to the licensing objective of protecting public safety. However, the Sub-committee was not convinced that there was evidence of a significant increase in traffic to or from the premises as a result of approving the licence. It was noted that no comments were submitted by the Police or Gwynedd council Highways Department expressing concern for road safety. As a result, the Sub-committee was satisfied that the application would not cause harm to public safety.

Protection of children from harm

Mrs Burrell presented comments expressing concern that changing the premises from being a family-oriented café to a premise that sold alcohol would be harmful to children. The Sub-committee did not agree with this statement as it was very common by now for public houses and other licensed places to be open for families, including children. The Sub-committee was satisfied that the applicant intended to take appropriate steps that would safeguard children from any harm, e.g. prevent under-age drinking through the 'Challenge 25' policy.

Irrelevant matters - Some comments / concerns were disregarded on the grounds that they were irrelevant to the licensing objectives.

Various concerns were raised regarding the building's planning status. It was noted that the original permission for the café had been earmarked for an individual; with a condition that the building be demolished and restored for agricultural use when the individual vacated the building. It was also noted that the proposed opening times were longer than the seasonal hours, from April to October, which had been approved in the planning permission. It was also

noted that the toilet was outside the main building. It was highlighted that these were planning matters and therefore irrelevant to the licensing objectives.

The comment that there was sufficient provision of licensed activities in the area was also disregarded. It was highlighted that the Licensing Act 2003 noted that local provision was not a relevant consideration under alcohol and entertainment licensing law. Concern was expressed that approving the licence would lead to a reduction in the prices of nearby property - this was not a relevant matter to any of the licensing objectives and the comment was disregarded.

The Sub-committee was satisfied that the application was in accordance with the licensing objectives and it was resolved to approve the licence.

It was noted that the licence was approved under the Licensing Act 2003 and the applicant would need to make an application to amend the planning permission for the premises in order to use it outside the hours approved under planning conditions.

The meeting commenced at 10.40am and concluded at 1.00pm