
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