

LICENSING SUB COMMITTEE B

26 SEPTEMBER 2018

PRESENT: Councillor H.I. Jones (Chair)

Councillors: P.M. Edwards and J.E. Williams

Also present as an observer: Councillors W.T. Evans and E. Williams.

Present as representatives of a Responsible Authority:-

A. Morgan, Environmental Health Practitioner;
Mr M. Price, Dyfed Powys Police Authority.

The following Officers were in attendance:

R. Edgecombe, Legal Services Manager;
A. Rees, Licensing Officer;
K. Smith, Licensing Officer;
J. Loader, Licensing Assistant (observer);
J. Owen, Democratic Services Officer.

Chamber, Spilman Street, Carmarthen – 10:00am - 1:30pm

1. DECLARATIONS OF PERSONAL INTEREST

There were no declarations of personal interest.

2. TEMPORARY EVENT NOTICE - DERWYDD MANSION, DERWYDD ROAD, AMMANFORD, CARMARTHENSHIRE, SA18 3LQ

The Sub Committee at its meeting on the 26th June 2018 resolved to defer the decision of the Temporary Event Notice to 31st July 2018 and 26th September 2018, in order to gather further evidence.

The Legal Services Manager briefed all present on the procedure for the meeting and advised the Sub Committee that an objection notice had been submitted by the Public Health Department of Carmarthenshire County Council in relation to a Temporary Event Notice which had been submitted by Mrs Maria Dallavalle of La Scala, 15 Bryn Mawr Avenue, Ammanford, SA18 2DA.

The Temporary Event Notices related to the sale by retail of alcohol, the provision of Regulated Entertainment and Late Night Refreshment, on the premises on the following day and hours:-

Saturday 3rd November 2018 - Great Hall, Derwydd Mansion.

- Supply of Alcohol, Regulated Entertainment and Late Night Refreshment 12:00-00:30.

The Legal Services Manager informed the Committee that the Public Health Department had objected to the Temporary Event Notice on the grounds of noise nuisance arising from previous events held at the premises.

The Licensing Officers circulated additional information from the applicant and the Environmental Health Services department. The Sub Committee considered the documents submitted including the additional information, and all relevant written representations received before the hearing from the parties.

The Sub Committee received an oral representation from the Environmental Health Practitioner:-

- The Environmental Health Practitioner expressed his disappointment to be here again today as it was hoped that this would have been resolved amicably.
- The Sub Committee was informed that the focus of evidence today would relate to indoor weddings. However, since the last meeting, the Environmental Health Practitioner highlighted to the Sub Committee that an Abatement Notice in respect of Noise Nuisance had been issued to Derwydd Mansion Events Limited on 21st September 2018.
- With reference to the Noise Management Plan (NMP) provided in the additional information, the Environmental Health Practitioner highlighted the key elements of the mitigation measures to the Sub Committee and that it was not clear if the plan was actually being implemented by the applicant.
- Following the last event held on 1st September 2018, Mrs Dallavalle had been requested to clarify what elements of the NMP had been done, Mrs Dallavalle, at the request of the Environmental Health Practitioner, provided clear Yes/No answers in respect of each specific point. The Environmental Health Practitioner highlighted that he had personally witnessed incidents in breach of the plan, contrary to responses provided by Mrs Dallavalle.
- Reference was made to a map provided in the additional information, which showed a plan of Derwydd Mansion and its surrounding area. The map displayed two different paths marked 'Path A' which was located on the West side of the property and travelled from the Car Park to the Marquee and 'Path B' from the Mansion to the Marquee which travelled on the East side of the property closest to the neighbouring properties. In order to minimise noise and disruption to the neighbours, the preferred route would be to utilise Path A. It was reported that following the monitoring carried out at the event on 1st September 2018 people were heard utilising Path B.
- At this point the Sub Committee was afforded the opportunity to listen to 5 audio recordings captured by Environmental Health Officers during the monitoring of noise levels at the event on 25th August 2018 between 13:57hrs and 00:01hrs. The audio recordings were taken from inside the bedroom of the neighbouring property and verified that engine noise could be heard from cars running idle, people singing, screaming and shouting, and vehicles travelling over loose chippings.

The Environmental Health Practitioner stated that had the measures within the NMP been adhered to the noise would not have affected the neighbouring properties.

All parties were afforded the opportunity of questioning the Environment Health Officer on his representation and the evidence presented.

In response to a number of queries, the Environmental Health Practitioner stated that

- windows would often be open in the hot weather and a person was within their rights to have a window open during the monitoring period.
- the Abatement notice served, referred specifically to amplified music.
- had the measures within the NMP been implemented in full, the noise levels would have been within the required levels.

The Sub-Committee thereupon received evidence from neighbours of the property who supported the Environmental Health Services objections to due to the following:-

- The witnesses had moved to the neighbouring cottage for peace and quiet;
- the wedding events emitted loud music/people shouting which made it difficult to sleep;
- The events were an invasion on their lives and was having a detrimental effect on their health.

All parties were afforded the opportunity of questioning the witness on his representation.

- In response to a query, the witness stated that the problem was not related to one specific noise, it was the overall affect which included vehicles, people noise, music which was emanating from the area of the mansion from the start of the event to the early hours of the morning the next day.

Mr Nigel Williams, Derwydd Mansion's resident DJ/Sound Control who was in attendance behalf of Mrs Dallavalle thereupon addressed the concerns and issues raised and advised that:-

- his role was to help Mrs Dallavalle get the weddings right which was an ongoing process.
- in accordance with the NMP, the following measures would be introduced at future events:-
 - The speakers to be turned away from the nearest noise sensitive properties;
 - The control of the lower frequencies (63-125hz) to the lowest practical levels;
 - People and traffic control measures had been introduced.

- the next 2 booked weddings have requested live bands which have been agreed by Mrs Dallavalle as the weddings were booked 2 years in advance. Mr Williams acknowledged that it was difficult to keep noise levels down when live bands are playing and that they did take some mitigation measures to try and limit the noise disturbance.
- in order to move forward, they would probably refuse live bands in future and Mr Williams would take control of noise monitoring/controls.
- there had been issues with the installation of a temporary noise barrier (which was to be formed of hay bales) between the speakers and the receptor locations to a height of approx. 3m. The issues were that hay bales were expensive and not aesthetically pleasing at a wedding venue. In additions there were health and safety concerns regarding the construction of a hay bale barrier at the height of 3m.
- whilst there were 3 x security staff on duty at the event, it was recognised that more work needed to be done in order to prevent people utilising Path B. Mr Williams added that he would be suggesting to Mrs Dallavalle that it would be beneficial to close the access to Path B.

All parties were afforded the opportunity of questioning Mr Williams on his representation.

- Mr Williams was asked what his role was during the event. Mr Williams stated that he was the master of ceremonies in the day and that he helped out during the evening this included car park duties, security duties and the control of people.
- In response to a query, Mr Williams stated that Mrs Dallavalle was Applicant was at the venue for the last 2 events and was heavily involved in the running of them. Mr Williams added that he was as not always at front at mansion and that personally he would have recommended shutting off the front of the mansion.

The Sub-Committee thereupon

UNANIMOUSLY RESOLVED to retire into private session in order to receive legal advice pursuant to Paragraph 16 of Schedule 12A of the Local Government Act.

Following the adjournment, the sub-committee also had regard to relevant paragraphs of the Licensing Authority's Statement of Licensing policy and of Guidance issued by the DCMS and Home Office identified in the agenda item, and those to which it had been referred by the parties.

RESOLVED that, having considered all the evidence before it, the sub-committee finds that a Counter Notice should be issued.

REASONS

In coming to its decision, the sub-committee has made the following findings of fact;

1. Complaints by occupiers of a neighbouring property and noise monitoring exercises by Public Health services demonstrated that events at the premises had caused noise disturbance to the occupiers of that neighbouring property;
2. That the noise disturbance was caused both by music at the venue (particularly during outdoor events) and noise from patrons and their vehicles;
3. That this noise disturbance amount to a public nuisance in that it affects a section of the public;
4. That the applicant had engaged a noise consultant to develop a robust noise management plan which was subsequently agreed with public health services;
5. That the applicant failed to properly implement that plan at the last event at the premises;
6. That Environmental Health Department have issued an Abatement Notice under the Environmental Protection Act 1990 in respect of events at the premises.

The Sub Committee has attached weight to the views of Environmental Protection Department.

The Sub Committee recognised that its decision must be based upon real evidence, and that concerns and fears about what might happen if a counter notice were not issued, where unsupported by such evidence, are not matters which they can properly take into account.

There was clear evidence that events at the premises cause a noise disturbance to the occupiers of a neighbouring property. There was clear evidence that during the last event the applicant had failed to properly implement the control measures proposed by her own noise consultant. The Sub Committee therefore had little faith in the ability of the applicant to manage events at the premises in such a way as to minimise any disturbance to the neighbours.

The Sub Committee noted that an Abatement Notice had been served upon the applicant. However this only related to music noise. As such the Sub Committee did not believe the Abatement Notice would provide an adequate safeguard in respect of this event.

The Sub Committee believed that the manner in which the applicant operated the premises undermined the licensing objective of preventing public nuisance. The applicant had been given several chances to demonstrate that she could operate the premises in a way which did not cause a nuisance and she had failed to do so.

As such the Sub Committee was satisfied that it was appropriate and proportionate to issue a counter notice in this case.

The Sub Committee would urge the applicant to fully implement the Noise Management Plan for any future events. Failure to do so may be taken into account when considering future temporary event notices.

[At this point, the Chair adjourned the meeting for 5 minutes to allow for a comfort break]

3. APPLICATION FOR THE VARIATION OF A PREMISES LICENCE - PELICAN INN, SYCAMORE STREET, NEWCASTLE EMLYN, SA38 9AP

The Legal Services Manager briefed all present on the procedure for the meeting and advised the Sub Committee that an application had been received from Mr Cefin Llewellyn Evans, for the grant of a variation of the premises licence in respect of the Pelican Inn, Sycamore street, Newcastle Emlyn, SA38 9AP as follows:-

- “The Provision of Late Night Refreshment Sunday to Thursday 23:00-00:00; Friday & Saturday 23:00-02:30.
- The Supply of Alcohol Friday & Saturday 10:00-02:00.
- Opening Hours Friday & Saturday 10:00-02:30.”

The Sub Committee noted that the following documentation was attached to the report:-

Appendix A – copy of the application and 2 letters of support;

Appendix B – copy of the existing premises licence;

Appendix C – representations submitted by the Licensing Authority;

Appendix D – representations submitted by Dyfed Powys Police Authority;

Appendix E – representations submitted by other persons.

The remaining Responsible Authorities had not made representations in respect of the application.

In addition to the above the Sub Committee received, with the consent of all parties, a Geo-Discoverer map of Sycamore Street and the surrounding area which had the premises of the Pelican Inn, supporters and objectors marked out.

The Sub Committee considered the documents submitted, and all relevant written representations received before the hearing from the parties.

The Dyfed-Powys Police Authority Representative referred to his representation, as detailed within Appendix D to the report and advised that:-

- subsequent thereto he had been in contact with the Newcastle Emlyn PCSO, the Neighbourhood Police Team Sergeant and the Licensing Officer from Cardigan for their views regarding the application. He had also met with the applicant and tenant at the premises in June to discuss the plans.
- as a consequence of the discussions and subsequent visit, he had on the 7th August, 2018 written to the applicant informing him that whilst there were no formal Police objections to the proposed variation, the Police, due to the later hours applied, believe it necessary and appropriate to promote the Licensing Objectives to include of a number of additional conditions as outlined in the letter (Appendix D appended to the report refers) to the premises licence should the Sub Committee be minded to grant the variation application.
- the applicant volunteered to include point 19 of the conditions “No Persons to be allowed entry or to re-enter the premises after midnight”.
- the Police were of the view that a Designated Premises Supervisor (DPS) with a personal licence must be in day to day control of the premises. Currently, the tenant did not have a personal licence and Mr Evans who was the current DPS holder could not be at the premises regularly. However, other persons working at the premises were personal licence holders.
- there was one other premises in the town that currently stayed open to 2am. The Police were content with the 2:00am licence as this would be fair and consistent with other licenced premises in the area and would help prevent migration.
- there was no history of crime and disorder at the premises. There had been 1 or 2 calls over the years but nothing that had caused concern.

All parties present were afforded the opportunity of questioning Mr Price, Dyfed-Powys Police Authority representative on his submission.

- In response to a query, Mr Price confirmed the role of DPS and the necessary qualifications.
- In response to a query raised regarding the PCSO's working hours, Mr Price confirmed that PCSOs do not work after 10:00pm and therefore were not on duty at critical times. However, the PCSO was aware of what does go on.
- Mr Price explained that the licensed premises named the Bunch of Grapes was open to 2:00am and that there had been a number of issues regarding noise and anti-social behaviour problems. It was acknowledged that these issues were not as bad as a larger town would experience, but still significant for a small town such as Newcastle Emlyn.

In order to manage the issues, it had been necessary to put in place a management plan. In addition, the Police believe that having later opening hours at the Pelican Inn may help reduce issues.

- It was asked, how the Police would cope with having two premises with late closing times? Mr Price stated that two late closing premises in the town would help reduce migration and that the Police would adapt accordingly.
- In response to a question, Mr Price confirmed that the Bunch of Grapes do not have a condition regarding the closing of its doors to new customers. Therefore, customers were able to enter at any time until 2am.

The Sub-Committee thereupon received representations from an interested party objecting to the application for the variation of a premises licence on the grounds detailed in Appendix E to the report and stated that:

- she lives nearby to the Pelican Inn and assumed that they had licence to 1:00am.
- she has no objections with Monday to Friday as she was used to this whilst there were some problems with music noise she has adapted her life to manage it as she lives close by.
- she does particularly object to the late closing time of 2:30am as it was already a problem which she works around.
- taxis are an additional problem as they queue outside with their engines running idle causing noise disturbance. She often goes to bed late to avoid sleep being disturbed.
- life was already being disrupted by the current operation of the premises.
- current licence conditions were regularly breached.
- there was very little Police presence in the Town as it is.

All parties were afforded the opportunity of questioning the objector on her representation.

In response to a number of questions, the objector:

- stated that she had spoken to the taxi drivers late at night regarding leaving their engines running whilst some have co-operated, others have not. She is conscious that by challenging the taxi drivers, makes her a target for being the complainant. In addition, some of the taxis could be running in excess of 40min at a time;
- confirmed that she did not have double glazing as she lived in a grade 2 listed building;

- confirmed that the residents next door to the Pelican Inn had also complained to her about the noise but they had moved away as they were unable to cope with noise. In addition, the person who lived across the road had also complained about noise;
- accepts as she lives in a town, there would be noise and accepted the Pelican Inn was better than Bunch of Grapes;
- stated that whilst she would try and work around arranged late events she would not be able to accommodate if the opening time was extended to 2.30am;
- highlighted that she had previously called 101 on two occasions and got no response;
- she stated that she would be disturbed by noise most weekends, both on Friday and Saturday. Whilst she does not mind a degree of disturbance, she objects to unnecessary disturbance;
- she reported that the premises would regularly be open beyond licensing hours, which causes the problem with the taxis. This seemed to happen every weekend which was why she was surprised about the application as it was assumed open until 1am already;
- is concerned about the provision of late night refreshment particularly with later hours of the pub as there had been significant problems with late night takeaways within the Town;

The Licensing Officer confirmed to all parties present that the takeaway area of the premises would be covered by the varied licence and therefore could be open until 2:30am.

The Sub Committee thereupon received representations from the applicant for the grant of a premises licence detailed in Appendix A and addressed the concerns and issues raised.

The applicant:

- confirmed that the tenant had previously operated the takeaway, however no longer does so;
- confirmed that he was currently the premises DPS and works full time elsewhere however, he does visit often. There were 2 members of staff at pub with personal licences and that there was always one on duty during pub opening times;
- stated that should the application for the variation of premises licence be granted, then the tenant would also become a personal licence holder and apply to be a DPS;

- has 30 years' experience of the trade and is confident in the correct running of a pub. The Pelican Inn is a friendly pub within the town and that he was just looking for an even playing field;
- believed that variation would ease pressure on the Police;
- stated that there are 5 pubs in the town and that he would be adapting to the change in drinking patterns in which people choose to go out much later than before;
- suggested that perhaps a policy could be introduced to encourage taxi drives to switch off their engines;
- stated that he was happy to comply with police conditions.

All parties were afforded the opportunity of questioning the applicant on the representations made.

In response to a number of questions, the applicant:

- stated that several Temporary Event Notices (TENS) had been used to test the waters and that he was not aware any problems or issues as a result;
- stated that he was not always at the premises late at night on weekends but was available if needed;
- stated that whilst he had previously run the pub, Mr Giles was currently the tenant of the premises and manages his own business day to day. In addition, a Tenancy Agreement allowed him to take action if Licencing Laws were breached.

The Sub Committee thereupon received representations from Mr Giles, the tenant of the Pelican Inn:

Mr Giles informed the Sub Committee that:

- there were 3 waiting points for taxis in the area, with one just outside the Pelican. As this was a waiting point it did not necessarily mean that the taxi was picking up there, it was likely that they were just waiting for calls to go elsewhere particularly if they were there for 40 minutes;
- a sign had been put up to inform people not to knock on door after 11:00pm. Unfortunately, people knock on the door when pub is shut whilst he is cleaning up which he was unable to stop from occurring;
- there was no intention to be open until 2:00am, but he would like the option to be able to shut door at 12:00am in order to provide an opportunity for customers to stay longer should they wish to. From his experience people leave the pub gradually and not at the same time.

The Sub-Committee thereupon

UNANIMOUSLY RESOLVED to retire into private session in order to receive legal advice pursuant to Paragraph 16 of Schedule 12A of the Local Government Act.

Following the adjournment, the sub-committee also had regard to relevant paragraphs of the Licensing Authority's Statement of Licensing policy and of Guidance issued by the DCMS and Home Office identified in the agenda item, and those to which it had been referred by the parties.

RESOLVED that, having considered all the evidence before it, the sub Committee found that the application should be granted, subject to the licence conditions 1-19 proposed by the Police and accepted by the applicant.

REASONS

In coming to its decision, the Sub Committee had made the following findings of fact;

1. The premises was located in close proximity to a number of residential properties.
2. That on occasion the premises has operated beyond its designated opening hours, although there is no evidence that licensable activities were carried on during these periods.
3. That the applicant was not in day to day control of the premises.
4. Under the terms of the tenancy agreement the applicant had power to force his tenant to comply with any licence conditions that are imposed.

The Sub Committee had attached weight to the views of the responsible authorities.

The Sub Committee recognised that its decision must be based upon real evidence, and that concerns and fears about what might happen if a licence were granted, where unsupported by such evidence, are not matters which they can properly take into account.

The Sub Committee found the evidence of the complainant to be credible and compelling and accepted that they have been disturbed on numerous occasions in the early hours of the morning by patrons leaving the premises and taxis waiting to collect them.

The Sub Committee noted the views of the Police that the additional licence conditions proposed by them were sufficient to promote the licensing objectives. The Sub Committee also noted the police evidence that the variation would actually help matters in the town.

The Sub Committee accepted the police evidence that conditions proposed by the Police were sufficient to promote the licensing objectives if properly implemented. The Sub Committee was satisfied that the day to day management of the premises was sufficiently robust to ensure that they are. Even the objector accepts that Mr Giles was a good licensee.

As such the Sub Committee was satisfied that it was appropriate to grant the application subject to the agreed conditions in order to promote the licensing objectives of preventing crime and disorder and that such a step is a proportionate one given the issues identified.

CHAIR

DATE