

LICENSING SUB COMMITTEE B

Tuesday, 7 December 2021

PRESENT: Councillor A.S.J. McPherson (Chair)

Councillors:

W.T. Evans and P.M. Edwards

Also present as observers

Councillors M. Charles and S. Phillips

Present as a representative of a Responsible Authority:

E. Jones – Licensing Lead, Carmarthenshire County Council

A. Morgan – Pollution and Wellbeing Lead Officer, Carmarthenshire County Council

R. Edmunds – Business and Consumer Affairs Manager, Carmarthenshire County Council

D. Bizby – Dyfed Powys Police

The following Officers were in attendance:

R. Edgecombe, Legal Services Manager

A. Rees, Licensing Officer

S. Rees, Simultaneous Translator

E. Bryer, Democratic Services Officer

K. Thomas, Democratic Services Officer

Virtual Meeting - 10.00 am - 4.30 pm

1. DECLARATIONS OF PERSONAL INTEREST.

There were no declarations of personal interests.

2. 10.00 A.M. - APPLICATION FOR THE REVIEW OF A PREMISES LICENCE. POPLARS INN, 1 PONDSIDE, JOHNSTOWN, CARMARTHEN SA31 3HU.

The Legal Services Manager briefed all present on the procedure for the meeting, which had been convened to consider an application received from the Pollution and Wellbeing Lead Officer for Carmarthenshire County Council for a review of the Premises Licence for the Poplars Inn, 1 Pondside Johnstown, Carmarthen following receipt of numerous complaints regarding the operation of the premises in relation to noise, anti-social behaviour and crime and disorder.

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

Appendix A – The original Review Application

Appendix B – Licensing Authority Representations

Appendix C – Dyfed Powys Police Representations

Appendix D – Planning Services Representations

Appendix E – Trading Standards Representations

Appendix F – Other persons Representations.

In addition to the above, the following supplemental information had also been circulated to all parties in advance of the meeting that day:-

1. Supporting Evidence from the Pollution and Wellbeing Lead Officer
2. Premises Improvement Notice
3. Existing Premises Licence

The Pollution and Wellbeing Lead Officer presented to the Committee his report on the operation of the premises (Appendix A), together with the supplemental report cataloguing correspondence and complaints etc in relation thereto, which had resulted in the submission of the review application. He advised the Sub Committee that having regard to the review, he was of the opinion the attachment of the conditions numbered 1-6 within his representations would better promote the Licensing objectives of the Licensing Act 2003 subject to his amendment of condition 2.

All parties present were afforded the opportunity of questioning the Pollution and Wellbeing Lead Officer on his submission.

The Licensing Lead referred to his written representations, detailed in Appendix B to the report, detailing information regarding the review application and his response thereto including, having regard to the relevant sections of the Statutory Guidance and the Council's Local Licensing Policy. He advised that the Licensing Authority supported the review application and the six conditions, as amended, proposed by the Pollution and Wellbeing Lead Officer.

All parties present were afforded the opportunity of questioning the Licensing Lead on his submission.

The Police Authority representative referred to his written submission, as detailed within Appendix C to the report, and outlined the history of events and incidents reported to/recorded by the Police regarding the operation of the Poplars Inn. Having regard to the facts, the Police supported the review application and the suggested 6 conditions, as amended, to be added to the Premises Licence but subject also to the two additional suggested conditions within his representation being added to the licence relating to CCTV provision/coverage and alcohol sold for consumption in external areas being in polycarbonate, plastic or shatterproof glasses.

All parties present were afforded the opportunity of questioning the Police representative on his submission.

The Business and Consumer Affairs Manager referred to his written representations, as detailed in Appendix E to the report, detailing the work undertaken by his officers in liaising with the licence holder on the premises' operation in compliance with the covid restrictions and to the serving of a Premises Improvement Notice on the 27th April 2021. Subsequent to the service of the Notice (which had expired on the 30th April, 2021) further non-compliance issues had arisen including, a brass band playing in the marquee in the car park, with body-worn camera footage being shown to the Sub Committee clearly indicating the increased noise levels. He advised that having regard to his representations, the Council's Trading Standards Section supported the review

application as appropriate and proportionate and the imposition of the suggested additional conditions to be applied to the premises licence

All parties present were afforded the opportunity of questioning the Business and Consumer Affairs Manager on his submission.

Councillor John referred to his written representations, as detailed in Appendix F to the report, detailing his views in support of his constituents' complaints regarding the adverse impact the operation of the Poplars Inn was having on their enjoyment and wellbeing. He advised that whilst the operation of the premises in a residential area, with a school to the front and play area to the rear had attracted complaints from time to time from both residents and the licence holder, those had increased significantly following the marquee's erection in the premises' car park, and decreased following its removal. He also referred to the residents' view that whilst the review application had been submitted, there seemed to be perceived lack of co-ordination between the relevant responsible authorities in addressing their complaints/concerns.

All parties present were afforded the opportunity of questioning Cllr John on his submission.

The Legal Services Manager referred to the provisions of Section 177A of the Licensing Act 2003 and the proposed suggested condition seeking the removal of the Live Music Entitlement under the Live Music Act 2003 for all outside areas. He sought clarification that should the entitlement be removed, the licence holder could still hold live events at the premises. The Licensing Lead confirmed that following licensing deregulation, live music could be played between the hours of 8.00 a.m. and 11.00 p.m. in pub beer gardens. Removal of that condition would still allow for the holding of live events but they would be subject to the Premises licence conditions. Events held outside of the premises i.e. in the car park would also require the granting of a Temporary Events Notice Application.

The Premises Holders Legal Representative addressed the Committee in support of her client and advised that he was passionate about his business and providing a service to the community. He had been pro-active since the relaxation of the Covid regulations and had contacted the Trading Standards on no fewer than 12 occasions for advice in relation thereto. Her client had already complied with a number of the requested conditions and had CCTV installed at the premises. However, he had concerns in relation to the proposed condition no 2 regarding the closure of windows and doors after 7.00 p.m. and the potential impact thereof on covid requirements for the circulation of fresh air into the premises. It was accepted that removal of the live music entitlement could impact on the business' profitability. However, the licence holder confirmed that live external events would probably total a number of 8 over the summer months, including bank holidays.

All parties present were afforded the opportunity of questioning the Premise Licence Holder's representative on her submission.

The Sub Committee thereupon

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

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.

FURTHER RESOLVED and having considered all the evidence before it, the Sub-Committee finds that the application should be dealt with as follows:-

1. The live music entitlement under the Live Music Act 2003 in respect of outside areas of the premises be removed and a statement added to the Premises Licence stating that Section 177A of the Licensing Act 2003 does not apply to the conditions on the licence and that the conditions on the licence be given renewed effect.
2. That the following changes be made to the conditions on the licence
 - (a) Annex 2, Section b, Condition 1 – is to be replaced by the new CCTV condition proposed by the Police in their written representations
 - (b) Annex 2, Section b – add an additional condition 24 'Alcohol to only be sold for consumption in the external areas in polycarbonate, plastic or shatterproof glasses.'
 - (c) Annex 2 Section b – add an additional condition 25 'Premises licence holder to take reasonable steps to try and ensure that patrons do not remove glasses and bottles from the premises'
 - (d) Annex 2, Section d, Condition 1 – be replaced by a new condition that 'Apart from access to and egress from any relevant room the doors and windows in any room where amplified music is being played shall remain closed from 9pm onwards'
 - (e) Annex 2, Section d – add new condition 5 'All doors at the premises to be fitted with self-closing mechanisms'
 - (f) Annex 2 Section d – remove existing conditions 5 to 9
 - (g) Annex 2, section d – add new condition 6 'No live music or recorded music shall be played in any outside location at the premises and no live music or recorded music shall be played from any other location at the premises or any adjoining premises for the purpose of entertaining persons within the external areas at the premises'
 - (h) Annex 2, section d - add new condition 7 'No televisions, radios, or other sound generating equipment to be used in any external area at the premises or from any other location at the premises or any adjoining premises for the purpose of entertaining persons within the external areas at the premises'

REASONS

In coming to its decision, the Sub-Committee made the following findings;

1. The premises had been a source of nuisance to members of the public living in the vicinity
2. The nuisance had been public in nature
3. The public nuisance had related to music noise, noise from patrons at and outside the premises, the parking of vehicles and littering.
4. Patrons of the premises have also engaged in fighting, criminal damage, public urination and threatening behaviour

5. The management of the premises has on occasion failed to promote the licensing objectives
6. Efforts by responsible authorities to resolve matters with the premises licence holder informally have been unsuccessful.

The Sub Committee has attached weight to the views of the responsible authorities. In particular, it notes that all the responsible authorities that have attended the hearing support the review application and the various control measures requested.

The Sub Committee recognises that its decision must be based upon real evidence, and that concerns and fears about what might happen, where unsupported by such evidence, are not matters which it can properly take into account.

In this case the Sub Committee is satisfied that there is real evidence before it that the operation of the premises has caused nuisance to local residents and that this nuisance is of such a nature, duration, extent and effect as to amount to a public rather than private nuisance. The Sub Committee finds the evidence of the responsible authorities to be credible and compelling. Officers have directly witnessed the matters complained of and their evidence corroborates the complaints from local residents and the noise recordings.

The Sub Committee recognises that the course of action proposed by the applicant may have a negative effect on the operation of the premises. However, it considers that such impact should be relatively limited as the licence holder can still legitimately hold live music events at the premises. It therefore has sought to balance the impact on the premises from taking the proposed action against the impact experienced by local residents from the operation of the premises.

The Sub Committee considers that it has the following options available to it under the Licensing Act to promote the licensing objectives

- Revoke the licence
- Suspend the licence
- Remove the Designated Premises Supervisor
- Add additional licence conditions
- Remove the operation of the Live Music exemption
- Remove licensable activities from the licence
- Take no action

The Sub Committee considers that the first 2 options, whilst effective in promoting the licensing objectives, would be a disproportionate response to the issues identified. As regards the third option, the Sub Committee considers that this would not assist in promoting the licensing objectives. Similarly, to take no action and leave matters entirely unchanged would do nothing to promote the licensing objectives.

The Sub Committee has considered whether it would be appropriate to remove licensable activities or limit the times which they are permitted. (in particular the provision of live music) from the licence. Given that the main issues have arisen

with events in external areas (which are not in fact part of the licensed area) the Sub Committee considers that to remove live music entirely from the licence would have a disproportionate effect on the viability of the business.

This leaves the Sub Committee with the fourth and fifth options.

Turning to the removal of the Live Music exemption, the Sub Committee considers that this is an appropriate and proportionate way to promote the prevention of public nuisance objective as on the evidence presented it is the holding of live music events in external areas of the premises which have been the main source of public nuisance. In coming to this view the Sub Committee notes that the removing of this exemption does not prevent the holding of live music events in the licensed area at the premises. The premises licence expressly authorises the provision of live music in the licensed area of the premises and the application does not seek to remove this. The removal of the exemption does however

- Remove the ability of the licence holder to hold live music events in external areas without (a) varying the existing premises licence or (b) submitting a Temporary Event Notice
- Ensure that any conditions on the premises licence relating to live music will have effect.

Based on the evidence presented to it the Sub Committee does not consider that this will have a disproportionate in effect on the business and will do much to promote the licensing objectives.

The Sub Committee notes that the premises licence holder can submit (and indeed has in the past submitted) temporary event notices to allow live music events to take place at the premises. Currently this is limited to 15 occasions a year, each occasion lasting for up to 168 hours (7 days) subject to a maximum of 21 days duration in total. This is to be increased next year to 20 occasions a year with a maximum of 26 days duration in total.

On the evidence presented by Mr. Howell this is sufficient to enable him to hold enough events in external areas to ensure the viability of the business.

In relation to the changes to the licence conditions, the Sub Committee considers these are appropriate to promote the prevention of crime and disorder and prevention of public nuisance licensing objectives. In particular, given the impact of holding music and other events in outside areas of the premises on local residents, the Sub Committee is satisfied that the new conditions 6 and 7 in Annex 2 section d of the licence are appropriate and proportionate. In coming to this decision the committee again has taken into account that this does not affect the ability of the premises licence holder to hold live music events within the indoor licensed area or to submit temporary event notices seeking authorisation to hold such events outside the licensed area.

The Sub Committee has however recognised the valid point made by Miss Walton, counsel for the premises licence holder, in relation to Annex 2, Section d, Condition 1. It therefore considers that the requirement to keep doors and windows closed should only apply after 9pm when amplified music is being played. After this time, the licence holder will have either to use unamplified music or implement alternative COVID safety measures. The Sub Committee considers this represents a reasonable balance between the competing interests of the business and local residents.

3. 2.00 P.M. - APPLICATION FOR THE VARIATION OF A PREMISES LICENCE, CLOCKWORK TAVERN, UNIT 9, EASTGATE, LLANELLI SA15 3YF

The Legal Services Manager briefed all present on the procedure for the meeting which had been convened to consider an application received from Scarlets Regional Limited for the variation of the Premises Licence in respect of the Clockwork Tavern, Unit 9 Eastgate, Llanelli. The variation sought to allow:

Recorded Music: Friday & Saturday 08:00 – 02:00

Sale of Alcohol: Friday & Saturday 08:00 – 02:30

Bank Holiday Sundays, Christmas Eve, Boxing Day, New Years Eve, & New Years day if days fall on other days than Fridays and Saturdays – sale of alcohol to be allowed until 2.30 a.m.

Anything of a similar description to Live Music, Recorded Music or Performances of Dance Friday & Saturday 08:00 – 02:00

Opening Hours:- Friday and Saturday 08:00 – 03:00

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

Appendix A – Copy of the Variation application

Appendix B – Licensing Authority Representations

Appendix C – Pollution and Wellbeing Team Representations

Appendix D – Dyfed Powys Police Representations

Appendix E – Other persons representations

Appendix F – Current Licence

In addition, the following supplemental information had been circulated to all parties in advance of the meeting:-

Applicant supporting evidence
Risk Assessment

The Licensing Lead referred to his written report, as detailed in Appendix B, and advised that subsequent to the receipt of the representations in Appendices B-E, the applicant had amended the application to allow:-

Recorded music Friday & Saturday 08:00 – 01:00 (as existing)

Sale of Alcohol Friday & Saturday 08:00 – 02:00

Opening Hours Friday & Saturday 08:00 – 02:30

The above amendment was detailed within Appendix G to the report and the remaining Responsible Authorities had not made any representation thereon.

The Licensing Lead, having regard to the points raised within his report and to the observations of the other responsible authorities / other persons, stated that if the

variation application were to be granted he considered the additional conditions proposed by the Police should be added to the premises Licence.

All parties were afforded the opportunity of questioning the Licensing Authority representative on the representations made.

The Pollution and Wellbeing Lead referred to his written representations, as detailed in Appendix C, and advised that following submission of the amended application to retain the playing of recorded music at the premises on Friday and Saturday, as existing, he had no objection to the amended application. However, if the variation were to be granted, he requested the Sub Committee to consider the inclusion of an additional 11 conditions, as read out in the meeting

All parties were afforded the opportunity of questioning the Pollution and Wellbeing Lead on the representations made.

The Police representative referred to his written representations, as detailed in Appendix D, detailing the past history of anti-social behaviour in the area and to their concerns that any later opening of the premises in question could lead to a return of late night drunken activities. Whilst not objecting to the variation, the police requested the 16 suggested conditions detailed within their representation be added to the premises Licence to promote the Licensing Objectives.

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

Representations were received from other interested objecting to the variation on a number of grounds. Those included, noise nuisance from music played at the premises, anti-social from patrons including noise nuisance, fighting and brawling in the street, urinating and vomiting on the street, alleged discrepancies between the application and risk assessment, door supervisor start times and the impact on adjoining businesses such as the Travel Lodge. The area was supposed to be a family friendly area and the opening of a nightclub at the premises would be contrary to the original ethos behind its development. They were also concerned that increasing the premises' drinking hours could see the above experiences of anti-social behaviour increasing

All parties were afforded the opportunity of questioning the representatives on their representations.

The Designated Premises Supervisor/Manager in response to the complaints received, advised the Sub Committee he was unaware of residents' concerns until after the submission of the variation application. He confirmed that following representations from the Police and Environmental Health, a number of measures had been introduced to mitigate any impact on the residents from the operation of the Clockwork Tavern. He also advised that the application was not, and will never be, a means of creating a nightclub. The Clockwork Tavern was a live venue and entertainment centre and aimed to attract clientele over 21 not attending nightclubs.

All parties were afforded the opportunity of questioning the Designated Premises Supervisor on the representations made.

The representative for the leaseholders of the Clockwork Tavern outlined the terms of the lease to the premises licence holder and confirmed that should any activity be undertaken contrary to the licence, the lease would be revoked. She urged an ethos of communication and requested the public to raise any concerns on the premises' operation with her

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

The Sub Committee thereupon

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

FURTHER RESOLVED, that having considered all the evidence before it, the Sub Committee finds that the Variation Application for the Clockwork Tavern, be refused

REASONS

In coming to its decision, the Sub-Committee has made the following findings;

1. The premises was first licenced in 2011. The current licence was granted in 2012. This was on the basis of a terminal hour of 1am on Fridays and Saturdays and that the premises would be a food orientated business.
2. There has been no previous history of enforcement activity in relation to the premises save for the issue of a COVID Premises improvement notice in 2020
3. Complaints have been received from local residents and businesses about music and patron noise from the premises
4. Residents have witnessed considerable anti-social behaviour on the part of patrons of the premises.
5. Past police experience of late night venues at this and other locations in Llanelli is that they have become a focus for alcohol related crime and disorder and public nuisance.
6. Applicant has reduced the requested hours to 1am for regulated entertainment, 2am for sale of alcohol and 3am venue closure.
7. The premises is close to an area identified in the Council's statement of licensing policy as a hotspot for alcohol related crime and disorder

The Sub Committee has attached weight to the views of the responsible authorities and in particular notes that none of them are recommending that the application be refused.

The Sub Committee recognises 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.

In this case the Sub Committee is satisfied that there is real evidence upon which it can base its decision. In particular, it finds the evidence provided by local residents and businesses as to the impact of this premises to be credible and compelling. Furthermore, it considers that this evidence is corroborated by the evidence provided by the Police and Public Health services.

The Sub Committee also attaches weight to the views of the police that , based on their professional experience, to grant the application would be likely to increase the amount of alcohol related crime and disorder and public nuisance associated with the premises.

The Sub Committee has considered whether these issues could be adequately addressed by adopting a robust set of control measures and licence conditions. However, on the evidence put before it the committee is not satisfied that the licence conditions put forward are sufficient to address the issues identified and believes that they would not be adequate to promote the licensing objectives.

As such, the Sub Committee is satisfied that to grant the application, even subject to the proposed licence conditions, would undermine the licencing objectives of preventing crime and disorder and preventing public nuisance. As such the Sub Committee considers that refusing the application is an appropriate way of promoting those objectives and a proportionate response to the issues identified.

CHAIR

DATE