

LICENSING SUB-COMMITTEE
24 SEPTEMBER 2020

Minutes of the remote meeting of the Licensing Sub Committee of Flintshire County Council held on Thursday, 24 September 2020.

PRESENT: Councillor Tony Sharps (Chairman)

Councillors Ron Davies and Adele Davies-Cooke

OFFICERS OF FLINTSHIRE COUNTY COUNCIL:

Solicitor (NF), Licensing Officer, Committee Officers, and Licensing Team Leader (as an observer)

The Applicant : Mr Yan Chan

Interested parties: Mrs P Harley, Mr & Mrs G Silcock

The Chairman introduced the Members of the Sub-Committee, the Solicitor, and the Council's Officers. He welcomed the applicant and outlined the procedure for the meeting.

1. DECLARATIONS OF INTEREST (INCLUDING WHIPPING DECLARATIONS)

None were received.

2. LICENSING ACT 2003 - APPLICATION FOR VARIATION OF A PREMISES LICENCE

The Licensing Officer presented the report to consider and determine an application for variation of a Premises Licence made under the Licensing Act 2003. The premises concerned was MPH Hotel Limited, Northop Road, Flint Mountain, Flintshire, CH6 5QG and the applicant was Mr Yan Chan.

3. THE APPLICATION

The Licensing Officer reported that the premises currently hold a Premises Licence for:

The supply of alcohol on and off the premises:

Monday to Saturday 10.00 a.m. – 23.00 p.m.

Sunday including Good Friday 12.00 noon – 22.30 p.m.

Christmas Day 12.00 noon – 15.00 pm and 19.00 – 23.30 pm

New Year's Eve – 24 hours

Monday to Sunday 10.00 a.m. to 01.00 a.m. (in the bar area only)

Live music, recorded music, dance (indoors only):

Monday to Saturday 11.00 a.m. – midnight

Sunday 12.00 noon – 23.30 p.m.

Late Night refreshment (indoors only):

Monday 23.00 pm – 05.00 am

Tuesday to Sunday 23.00 pm – midnight

The Variation application was to allow:

The supply of alcohol on and off the premises:

Monday to Sunday 10.00 – 01.00 (in all licensed areas)

New Year's Eve to remain as per existing licence

To remove the restriction on Christmas Day and Good Friday

To add recorded music in the front outside area:

Monday to Saturday 12.00 noon – 22.00 p.m.

Sunday 12.00 noon – 20.00 p.m.

To amend Late Night refreshment to:

Monday to Sunday 23.00 – 05.00

The Licensing Officer explained that a plan to identify the front outside area was shown as Appendix B1 of the report and a plan to identify the inside of the building shown as Appendix B2.

North Wales Police had made no objection to the application but asked for additional conditions in relation to CCTV, Challenge 25, and door supervisors. The applicant had agreed to these conditions being attached to the existing premises licence (Appendix C).

Representations to the Variation application were received from Flintshire County Council's Pollution Control section on 24 July 2020 and were shown at Appendix D. North Wales Fire and Rescue Service had confirmed that they would not be making any representations to the Licensing Authority regarding the application.

Two letters of representation from local residents had been received in objection to the variation application and were attached at Appendix F.

The Licensing Officer advised that for variation applications, applicants were required to submit an operating schedule detailing any additional steps they intended to take to promote the four licensing objectives. The steps that the applicant intended to take were set out in Appendix G.

The applicant had previously notified the licensing section of four Temporary Event Notices (TENs) which were to cover licensable activity in the outside area as indicated in Appendix B1. Three of the TENs had been considered at a hearing of the Licensing Sub-Committee on 31 July 2020, following objections made by Flintshire County Council's Pollution Control Officer. The TENs were approved after the applicant's voluntary suggestion to amend the end time of each of the TENs to 21.00 hours. The Chairman advised the applicant (though not a condition of the approval) that the Sub Committee wished him to continue to manage and maintain the premises to ensure that there would be no disturbance to local residents due to loud music emanating from the site.

The Licensing Officer reported that during the application period a marquee had been erected in the outside area being considered as part of the variation. There is currently no planning permission for this structure. In addition during the Coronavirus pandemic the compliance team had occasion to speak

with the applicant on three separate occasions concerning gatherings, social distancing, and not following Welsh Government guidance in relation to gazebos and marquees. When the applicant was asked to provide his risk assessment which is mandatory under the coronavirus regulations he failed to do so.

3.1 Hearing and Determination of the Application

The Chairman advised that the Sub Committee would proceed to hear the application and take into consideration the Licensing Act 2003 – Section 182 Guidance for Licensing Authorities. He explained that he would allow Mr Yan Chan (the applicant) and Mrs. Harley (spokesperson for the interested parties) an equal amount of time to discuss their position.

The Chairman invited Mr Chan to put forward the reasons for submitting the Variation. Mr. Chan referred to the concerns which had been raised regarding the marquee in the outside area. He said he had made enquiries with the company which had supplied the marquee to determine if planning permission would be required. He said he had been told it would not as it was not a permanent fixture and was to be taken down in January. Mr Chan said it was to be used for indoor or outdoor dining and that there were two emergency exits and in good weather most of the sides were opened. He said social distancing rules were observed and people had to keep 2 metres apart and groups of more than 6 were not allowed to sit together.

Referring to the complaints about noise pollution which had been made by a neighbouring resident, Mr. Chan said he personally monitored the noise levels between both premises and he could not hear the music when he was close to the border of the neighbouring property but the background sound of adults and children was audible. Mr. Chan explained that a play area had been in existence on the premises for around 28 years. He said that the playing of music was stopped between 8.30 – 9.00 pm in the evenings.

Mr Chan said he understood that social gathering were not permitted under the Covid-19 rules. He apologised for his mistake in not removing an outside advertisement for a planned Halloween event and said the A-board and any advertising on social media had been removed. Only the names and contact details of people who had expressed an interest in the event had been noted and no payments from the public received.

Mr Chan confirmed that risk assessments had been undertaken. He explained that a 28 day track and trace system was in place, table service provided, and the wearing of protective face coverings enforced for staff and customers. In compliance with the new regulations temperature checks would also be carried out on customers entering the premises. CCTV was installed on the premises and an additional camera would be installed in the marquee.

In summing up Mr Chan commented on the challenges and rapidly changing situation around Covid-19. He said that the Mountain Park Hotel provided a valuable service to the local community and was an employer of local people

The Chairman thanked Mr Chan for presenting his case and invited Mrs Harley to put forward the representations on behalf of herself and Mr & Mrs Silcock (the other interested parties).

Mrs. Harley referred to the previous hearing to consider the application for Temporary Event Notices by Mr. Chan and the Committee's wish that he continued to manage and maintain the premises to ensure there would be no disturbance to local residents due to loud music emanating from the site. She said the noise levels had not reduced and continued to cause nuisance and distress to herself and the other interested parties. She continued there had been no prior notification or consultation with local residents regarding the intention to erect a marquee in the outside area of the premises which she said showed disregard for the impact on local residents. Mrs. Harley felt it also indicated disregard for the Local Authority's licensing and planning regulations, and the Government's legislation relating to Covid 19.

Mrs Harley said independent advice had been sought by the interested parties on the level of noise nuisance which had been confirmed as excessive. She cited further examples of dates and times when the high levels of noise and associated activity had been witnessed by Flintshire County Council's Pollutions Control Officer.

Mrs Harley commented that it was anticipated that during the next few months the use of the outside area would reduce and suggested this would provide an opportunity for the applicant to seek planning permission for the outside structure and improve the layout of the play area and play apparatus to mitigate the impact on the neighbouring properties.

The Chairman thanked Mrs Harley for putting forward the case on behalf of the interested parties.

The Chairman asked the Members of the Panel if they had any questions.

Councillor Adele Davies-Cooke asked the applicant if he would be able to move the children's play apparatus to another site in the outside area as requested by the interested parties. The applicant agreed to look at this. In response to a further question by Councillor Davies-Cooke concerning CCTV in the marquee the applicant confirmed that he would make the necessary arrangements to have a camera installed in the structure.

Councillor Ron Davies emphasised the importance of ensuring customers and staff vacated the premises by the stipulated time following last orders/closing. Councillor Davies asked the applicant to explain the impact on his business if music was not provided. Mr Chan explained that the music was necessary to create a relaxing social atmosphere for customers and emphasised that it was background music and the hotel was a family orientated business. In response to the further concerns raised by the Chairman about the type of music played the applicant reiterated that the music played could be described as 'easy listening' and relaxing.

The Chairman invited the Solicitor to ask questions. The Solicitor questioned Mr. Chan about the variation to add recorded music in the front

outside area and to explain the need to provide music until 22.00 pm. Mr Chan said he would be agreeable to amending the end time from 22.00 hours to 20.00 hours to encourage customers to leave the premises by the stipulated time. In response to the further questions from the Solicitor the applicant provided explanation of his request to remove the restrictions on Christmas Day and Good Friday and clarified the hours required. The Solicitor also questioned the applicant on the reason to amend the premises licence in respect of late night refreshment. Mr Chan explained the request was to enable refreshments to be served to hotel guests.

In response to the Solicitor the applicant confirmed he had no objections to the additional conditions requested by North Wales Police in relation to CCTV, Challenge 25 and Door Supervisors. He explained that he would make enquiries about installing CCTV in the marquee following the hearing.

When asked the applicant confirmed that he regularly monitored noise levels between the premises and neighbouring properties and noted dates and times. He acknowledged that activity and noise levels had increased during August due to the Government's 'eat out to help out' scheme, however, business had become less busy in September.

The Solicitor asked the applicant if he had followed up the request made by the Chairman at the previous hearing on the TENs to continue to manage and maintain the premises to ensure there would be no disturbance to local residents due to loud music emanating from the site. The applicant reiterated that the type of music was relaxing and 'easy listening' and was not usually played after 20.00 pm.

In response to the further questions raised by the Solicitor concerning compliance with Covid-19 guidance, Mr Chan confirmed that he had taken the appropriate measures regarding signage to enforce social distancing on the premises. Mr. Chan also confirmed that risk assessments had been undertaken and could be provided on request. Referring to the marquee in the outside area the Solicitor asked Mr Chan to explain his understanding of the position regarding the need for planning permission. Mr Chan reiterated that he had made enquiries with the company which had supplied the marquee and had been told that as it was not a permanent fixture (in place for less than 12 months) planning permission would not be required. Mr. Chan confirmed that the marquee was to be taken down in January.

The Chairman asked Mrs Harley if she had any further questions to raise on behalf of the interested parties. Mrs Harley asked for further information on the use of CCTV, the level and type of background music played, and the use of storage containers on site.

The applicant was asked by the Chairman if he had any further questions or comments to raise. Mr Chan invited Mrs Harley and the interested parties to meet with him to discuss the type of music to be played and any further matters of concern they had. He said he wanted to build a positive relationship to mutual benefit with his neighbouring residents and the local community. Mrs Harley thanked Mr Chan for his invitation.

When the Chairman was satisfied that all relevant questions had been asked and there was nothing further to add he advised that the Panel would adjourn to make a decision and all other participants would be put into a virtual lobby until a decision was made.

Following a short adjournment the Chairman welcomed the participants back to the meeting and the meeting was reconvened.

3.2 Decision

The Chairman advised Mr. Chan, the Applicant that having carefully considered the representations and evidence, and taking steps so as to promote the Licensing Objectives, the Licensing Sub Committee had determined, pursuant to S.35 of the Licensing Act 2003 to vary the premises licence by modifying it as follows:

- the supply of alcohol on and off the premises:
Monday to Sunday 10:00 – 01:00 (in all licensed areas)
- New Year's Eve to remain as existing licence
- remove the restrictions on Christmas Day and Good Friday
- to add recorded music in the front outside area:
Monday to Sunday 12:00 – 20:00
- to amend Late Night Refreshment:
Monday to Sunday 23:00 – 05:00

The Chairman advised Mr. Chan (though not a condition of the approval) that the Sub Committee wished him to continue to monitor the noise level in the children's play area to avoid any disturbance to local residents.

RESOLVED:

That the application for a variation of a Premises Licence be approved subject to the modifications as stated above.

(The meeting started at 10.00 am and ended at 12.01 pm)

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Chair