

COLCHESTER BOROUGH COUNCIL

LICENSING SUB-COMMITTEE

1 April 2016

MINUTES OF PROCEEDINGS

At a meeting of the Licensing Sub-Committee held on 1 April 2016 at 10.00am in the Grand Jury Room, Colchester Borough Council, Town Hall, High Street, Colchester

Present: - Councillor Hazell
Councillor Lilley
Councillor Martin

1. Membership

RESOLVED that Councillor Lilley be appointed Chairman.

2. Declarations of Interest

There were no declarations of interest.

3. Licensing Application

The Head of Professional Services submitted a report in respect of the following application which had been made in accordance with the provisions of the Licensing Act 2003, for a new premises licence for -

- The Pavilion Restaurant, 20-21 Middleborough, Colchester

In Attendance

Mr A Afzalnia, applicant

Mr J Cannon, Counsel for the applicant

Mr J Ruder, Licensing, Food Safety Manager

Mrs S White, Licensing & Committee Co-Ordinator

Mr Weavers, Legal Services

Mrs S Harrington, Licensing Authority

Mrs S Riley, Environmental Protection

Mrs E Lowrie, Local resident

Mr J Baird-Murray, Local resident

Mr A Baines, Colchester Civic Society

Mr Ruder outlined the application which had been submitted to the Sub-Committee for determination on 26 February 2016. This meeting had been adjourned to enable all parties to give proper consideration to the additional information circulated at that meeting by the applicant.

Mr Cannon, Counsel for the applicant, presented the application and gave some background information on the company, Elysium Leisure Limited. The company had a portfolio of properties in Colchester and London of which the Pavilion Restaurant was a significant part and represented a substantial investment. Architects plans and an interior designer's concept for the premises were submitted together with menus from Mimosa. The concept was for an open plan kitchen and private dining room in addition to the large ground floor, external terrace and children's' play area. It was noted that the internal layout designs were not finalised plans for the premises but mood boards to convey the general feel of the offer to be provided.

Mr Cannon gave further information on the food offer for the Pavilion. It was intended to make a significant investment of £350,000 in the kitchen as they believed that only by doing so could they attract the best chefs which it was believed would ensure the success of the business. It was considered that the location of the premises was favourable with a large car park located next door and good potential for daytime trade. It would promote diversity in the town which was in line with the Council's licensing policy. Mention was made of the company's work with the Council's Community Safety Team on the polycarbonate drinkware initiative at the company's Qube bar and on the success of their restaurant Mimosa at Colchester Business Park which had won restaurant of the year at the Essex Food and Life Awards in 2015.

Mr Cannon referred to the current licence which was in existence for River Lodge and indicated that should this application be granted the current River Lodge licence would be surrendered. The decision on the surrender would however depend on the granting of the licence and the terms on which it was granted. Reference had been made in some of the objections to the noise nuisance that had occurred when Quilters had been in operation. This had been operated by a different company and a memo from Environmental Protection had been circulated which confirmed that there had been no complaints nor noise abatement notices served since October 2012. Mr Afzalnia confirmed that the premises had closed to the public in November 2015.

In relation to the representation made by the Licensing Authority, Mr Cannon referred the Sub-Committee to the Policy and to Part 9 which dealt with the Old Town Policy. It was his contention that the Pavilion was a category B premises, describing the premises as a café bar/wine bar with strong elements of a restaurant. With this in mind he did not believe that exceptional circumstances had to be demonstrated for the Council to depart from its Policy and grant the application as applied for. It was his view that the application should be judged against the measures set out in 9.9 and in this regard the applicant had addressed the measures in the amended operating schedule that had been submitted shortly before the hearing on 26 February 2016. Mr Cannon stated that the application had been prepared in the light of the Policy and as such he considered it to be a text book example of an application. In relation to concerns about crime and disorder, Mr Cannon referred to the lack of a representation from Essex Police which he considered indicated there were no concerns in relation to this licensing objective. It was further stated that the application was from an operator who operated a number of other premises in town without issue.

Mr Cannon then addressed the Sub-Committee on the points raised in the representation made by Environmental Protection. He considered that many of the concerns had been dealt with in the design of the premises and the proposed operating schedule. The request to stop the use of the outside area at 23.00 was rejected; the business model was for people to dine after 23.00 in that area. The issue of the need for the licence was a matter for the business to determine and they considered it was necessary to open until 03.00. It was intended to replicate the dining experience at Mimosa and if people were seated outside at 23.00 it would be very difficult to bring them in. Customers may wish to have a

cocktail after they finish their meal and the longer hours would give flexibility and enable people to linger and enjoy their night out. With regard to the issue of music, it was confirmed that there would be no speakers outside and inside the music would be at a background level designed to complement the dining experience.

Councillor Hazell questioned the applicant on the nature of the application which she considered lacked clarity in terms of the type of venue it was intended to provide and appeared to attempt to cover all possibilities in one application. The parallel to Mimosa was understood but given the very different locations of the two premises it was considered that this was of limited relevance. The polycarbonate drinking vessels trial was welcomed for the wider safety benefits for patrons of Qube but given the proposed operating model of the Pavilion, as outlined by Mr Cannon, there again seemed to be little direct relevance to the application in front of the Sub-Committee. Mr Cannon responded that it was not a restaurant but a premises that fell into category B of the Policy and furthermore that the operation of the polycarbonate trial indicated the type of operator Elysium Leisure Ltd was.

Mr Afzlania addressed the Sub-Committee on the issue of dancing at the premises and confirmed that there was no intention to turn it into a dancing venue. He suggested that if members were concerned, a last entry restriction could be placed on the licence to stop people migrating from the town to his premises. He had no wish to encourage this type of clientele and only hoped to keep exiting diners in the premises longer by offering longer hours. In response to questioning about the nature of the venue should the initial proposals not be successful, Mr Afzlania responded that the premises would not be turned into a nightclub; its location made it unsuitable for such a venture.

Mrs Harrington addressed the Sub-Committee on the representation made by the Licensing Authority. The application submitted was contrary to the Council's Licensing Policy and therefore undermined the licensing objectives. Whilst the applicant had referenced the Old Town Policy, there appeared to have been no regard paid to the matrix on page 17 of the Policy which set out what was broadly acceptable. The description in the application was for a restaurant bar and at a site meeting Mr Afzlania had stated that it was intended to provide a restaurant; with this in mind therefore the Licensing Authority's principle concern was that the terminal hour requested did not reflect its use as a restaurant. Mrs Harrington then addressed the Sub-Committee on the concern of the licensing authority that the operating practises of the company at their other venues cast doubt on the applicant's intentions to operate this premises as a restaurant. Qube's planning consent was for a restaurant and Hudson's licence had been granted predicated on the grounds that it was to be run as a food led establishment and both premises had been run as High Volume Vertical drinking establishments which had required enforcement intervention.

Mr Cannon objected to the introduction of this evidence which had not been declared to the applicant in advance of the hearing. Mrs Harrington responded that Mr Afzlania was well aware of all the actions that had been taken and the information was not new. Mr Cannon requested that the advice of the Council's legal advisor be sought on whether this information should be heard. Mr Weavers advised that the information should be considered and the Sub-Committee should attach appropriate weight to it in reaching its decision.

Mrs Riley addressed the Sub-Committee on the representation made by Environmental Protection and sought clarification on the location of the children's play area which, whilst mentioned in the operating schedule of the application, was not indicated on the plan submitted with the application. Mrs Riley stated that she believed that the noise inside the premises could be controlled and that the main concern was the use of the outside area; noise from this location could only be controlled by restricting access to the area. The

problems of noise nuisance from Quilters, which had necessitated the serving of a noise abatement notice, demonstrated that it was a noise sensitive location. It was noted that it was intended to operate in a similar fashion to Mimosa but the location was quite different and there was potential for patrons to walk to the premises which increased the possibility for noise nuisance. Mrs Riley explained that the later the premises was open the quieter would be the background noise levels. The accepted night hours guidance from the World Health Organisation were 23.00 to 07.00. Environmental Protection considered that the licence should not be granted at a cost to local residents.

Mrs Riley sought clarification on the outside accessible bar, the first floor dining room with balcony and on the conditions such as a noise limiter which appeared inconsistent with the stated intention of opening as a restaurant. She also questioned the comparison with Hudson in relation to lighting the premises. The Pavilion was located in a very different environment to Hudson and lighting similar to that at Hudsons would be unacceptable. The application sought regulated entertainments outside until 3am and the addition of a children's play area would almost certainly increase noise problems at the venue. In summarising the position of Environmental Protection Mrs Riley concluded that the application could result in statutory noise nuisance and requested that the outside area, including the balcony, be closed by 23.00 and the children's play area by 20.00.

Mr Baird-Murray addressed the Sub-Committee and drew its attention to the Pavilion's close proximity to local residents and to the statement in the Policy that required premises to be suitable to the area in which they were located. Mr Baird-Murray did not consider the proposed offering for the Pavilion to be remotely suitable to the area in which it was located. Mrs Lowrie then addressed the Sub-Committee on the points made in her letter of representation referring to the experience of Quilters which lead her to consider that the application was unsuitable for the location, being in an historic and essentially tranquil area. Mr Baines addressed the Sub-Committee on behalf of the Colchester Civic Society. It had objected on the grounds that the application was in contravention of the licensing policy and therefore undermined the licensing objectives. Mr Baines considered that it was a catch all application with hours considerably in excess of those recommended as acceptable in the Policy.

Mr Cannon summed up on behalf of the applicant stating that it was Elysium Leisure Limited's desire to provide something different in the town which was consistent with the aims stated in the Council's Licensing Policy. The application had been made by an operator who managed well run premises in the town centre with which there had been no problems. The application had been designed to take into account the Policy and in the event that there were problems they could be dealt with using the review process. The premises fell squarely within Category B and given this it should be judged against the measures set out in Paragraph 9.9 which the conditions had been designed to match.

The Committee considered Mr Cannon's submission in relation to point three of the Licensing Authority's representation on the operating practices of Elysium Leisure Limited and determined to attach no weight to this element of the evidence in the light of the failure to disclose information in advance of the hearing. The Sub-Committee noted that issues in relation to need, parking and property values which had been raised by objectors were not matters that could be considered under the Licensing Act 2003.

RESOLVED to permit -

- the provision of films, performance of live and recorded music, performances of dance indoors Mondays to Sundays from 07.00 to 00.00
- the provision of late night refreshment on and off the premises Mondays to Sundays from 23.00 to 00.00
- the supply of alcohol on and off the premises Mondays to Sundays from 07.00 to 00.00
- the premises to be open for Mondays to Sundays from 07.00 to 00.00

The licence is granted subject to the following conditions –

Pavilion Operating Schedule

General

1. All staff shall be trained on the relevant obligations and offences under the Licensing Act and the promotion of the Licensing objectives, such training to include (but not limited to)

- Relevant age restrictions
- Recognising signs of drunkenness
- How to refuse service
- Overcrowding
- Premises duty of care
- Drugs awareness
- Company policies and reporting procedures
- Action to be taken in the event of an emergency, including the preservation of a crime scene and reporting the incident to the emergency services
- The conditions in force under the licence

2. Documented records of training completed must be kept for each member of staff. Training shall be regularly refreshed and at no greater than 12 month intervals. Training records shall be made available for inspection upon request by a police officer or an authorised officer of Colchester Borough Council.

Prevention of Crime and Disorder

3. All emergency exits will be alarmed when the premises are open to the public so that staff are immediately notified of unauthorised opening and tampering.

4. All private area and cellars/storage rooms must be kept locked and secured whilst the premises is open to the public.

5. The premises must install and maintain a comprehensive digital colour CCTV system. All public areas of the licensed premises, including all public entry and exit points, and the street environment will be covered, enabling facial identification of every person entering in any light condition. The CCTV cameras must continually record while the premises is open to the public and recording must be kept available and unedited for a minimum of 31 days with the date and time stamping. A staff member who is conversant with the operation of

the CCTV system must be present on the premises at all times when they are open to the public and must be able to produce/download/burn CCTV images upon request by a police officer or an authorised officer of the licensing authority. Any footage must be in a format that can be played back on a standard personal computer or standard DVD player. Where the recording is on a removable medium (i.e. compact disc, flash card etc.) a secure storage system to store those recording mediums must be provided.

6. The designated queuing area must be enclosed within appropriate barriers to ensure that the footway is kept clear.

7. Any queue to enter the premises that forms outside the premises must be kept orderly and supervised by licensed door supervisors to ensure that there is no public nuisance or obstruction to the public highway.

8. The premises licence holder must ensure that the provision of door supervisors at the premises is appropriate to ensure the safe control of the premises, and must review this on a regular basis and upon request from Essex Policy or the Licensing Authority

9. All staff engaged at the premises for the purposes of supervising or controlling queues or customers must wear high-visibility jackets, vests or armbands.

10. A log (which may be electronically recorded) must be kept at the premises and made available on request to the police or an authorised officer of the Licensing Authority; such log to include (but not limited to) the following matters and all pertinent details:

- all crimes reported to the venue, or by the venue to the police
- all ejections of patrons
- any complaints received
- any incidents of disorder
- any accidents
- seizures of drugs, offensive weapons, fraudulent ID or other items
- any faults in the CCTV system, searching equipment or scanning equipment
- any refusal of the sale of alcohol
- any visit by a relevant authority or emergency service
- the times on duty, names and the licence numbers of all licensed door supervisors employed by the premises.
- the capacity of the premises
- admission refusal
- drug abuse

All recorded matters must be investigated in a thorough manner and in collaboration with the relevant authorities where necessary.

Public Safety

11. The designated premises supervisor shall ensure that tables are cleared of all bottles and glasses on a regular basis during trading hours to avoid an accumulation of glassware.

12. The number of persons permitted in the premises at any one time including staff shall not exceed risk assessed capacity. The premises licence holder shall ensure a suitable

method of counting the number of people present during licensable activities is in place and the results are securely recorded in a logbook for a period of at least 12 months.

Prevention of Public Nuisance

13. The dispersal of customers from the premises must be managed in accordance with the following –

- Notices must be prominently displayed at all exits requesting patrons and staff to respect the needs of local residents and to leave the premises and the area quietly.
- A period where music volume is reduced, lighting increased and alcohol sales cease.

14. Regular dialogue must be maintained with neighbours and a direct telephone number for the manager of the premises shall be publicly available at all times the premises is open. This telephone number is to be made available to residents in the vicinity.

15. No unauthorised advertisement of any kind (including placard, poster, sticker, flyer, picture, letter, sign or other mark) shall be inscribed or affixed upon the surface of the highway, or upon any building, structure, works, street furniture, tree, or any other property, or distributed to the public, that advertises or promotes the establishment, its premises, or any of its events, facilities, goods or services.

16. No waste or recyclable materials, shall be moved, removed or placed in outside areas between 18.00 and 08.00 the following morning. Waste or recyclable materials must not be collected on a Sunday.

17. The premises licence holder or their nominated representative to attend the local Pubwatch (or meetings of any similar alternative scheme).

18. No drinks will be served on the riverfront terrace after 23.00.

Protection of Children from Harm

19. No person under the age of 18 years will be permitted to enter or remain on the premises unless accompanied by an adult at all times.

20. Only children that are accompanied by an adult may use the children's play area.

21. The Challenge 25 Scheme must be operated to ensure that any person who appears to be under the age of 25 must provide documented proof that he/she is over 18 years of age. Proof of age shall only comprise a passport, photo card driving licence, an EU/EEA national ID card or similar document, an HM Forces warrant card, or a card bearing the PASS hologram.

Environmental Protection Conditions

1. The outside area, which includes the balcony situated on the first floor of the premises, must not be used by customers after the hours of 23.00.

2. All external doors & windows opening onto the terrace must be kept closed after 23.00 other than for access and egress.

3. A noise limiting device shall be installed, fitted and maintained in such a manner as to control all sources of amplified music at the premises. The noise limiter should be calibrated annually. The noise limiting device shall be connected to all permanent music

and public address equipment and all available mains power sockets within the area of the stage/music. Once set such a device should be inaccessible to the licensee or staff.

Note – The use of noise limiters does not necessarily solve or prevent noise nuisance. To be wholly effective they must be used in conjunction with other measures and structural attenuation, and need regular calibration/checking by the owner or operator. Maintenance records must be kept for 12 months.

Conditions offered by the Applicant at the hearing

1. No live or amplified music to be played in the outside area, which includes the balcony of the premises.
2. No external speakers to be sited in the outside area.
3. The children's' play area must be closed by 20.00 every day

Conditions imposed by the Committee

1. External lighting at the premises must be designed in such a way as to ensure no nuisance is caused to neighbouring premises. The external lighting must be turned off when the outside area is closed.
2. All outside tables and chairs must be rendered unusable when the outside area is closed.

Reason for the determination

In arriving at the decision the Sub-Committee considered each point very carefully. It noted the representations and the evidence presented by the applicant and objectors under the Licensing Act 2003 and had regard to the Section 182 Guidance and to its own Licensing Policy.

The Sub-Committee found that the premises was located within a mixed commercial/residential area and from the presentation made by the applicant determined the premises to be a restaurant/wine bar.

The Sub-Committee had regard to the submissions of Environmental Protection in relation to public nuisance. It noted that there had been problems in the area but these related to a previous operator. However from the evidence submitted it found the premises to be in a noise sensitive location. It therefore gave particular consideration to the use of the outside area.

The Sub-Committee attached limited weight to the evidence submitted by the applicant in relation to Mimosa as this premises was situated within a commercial area whilst the application under consideration related to a premises located in a mixed commercial/residential area with a proposed external area of a significant size and with river frontage.

The Sub-Committee found the conditions offered by the applicant in the operating schedule were those to be expected of a well-run establishment but did not find that they demonstrated exceptional circumstances for the Sub-Committee to deviate from its Policy.