

LICENSING SUB-COMMITTEE HEARINGS

9 APRIL 2009

Present :- Councillor Christopher Garnett (Chairman)
Councillors Helen Chuah and Laura Sykes

1. Membership

The Committee Services Officer (Licensing) advised that there were no changes to the membership.

2. Appointment of Chairman

RESOLVED that Councillor Garnett be appointed Chairman.

3. Declarations of Interest

There were no declarations of interest.

4. Applications under the Licensing Act 2003

The Head of Environmental and Protective Services submitted a report in relation to the following application for determination by the Sub-Committee, in accordance with the provisions of the Licensing Act 2003.

5. Candi, 21 Osborne Street, Colchester

The Sub-Committee considered an application for a new premises licence in respect of Candi, 21 Osborne Street, Colchester to permit-

- Supply of alcohol on the premises
- Provision of films, live music, recorded music, performances of dance, anything of a similar description, facilities for dancing, facilities for entertainment of a similar description
- Provision of late night refreshment

In Attendance

Applicants: Mr Pace

Responsible Authorities: Ms Parkin, Environmental Control, Mr Huntley, Planning, Environmental and Protective Services and Mr Aitchison, Divisional Police Licensing Officer, Essex Police

Officers: Mr Essex, Solicitor and Mr Harvey, Licensing Manager, Mrs White, Committee

Services Officer and Miss Tuthill, Committee Services Assistant

Mrs White, Committee Services Officer (Licensing), briefly introduced the application advising that representations had been received from a local resident and the St John's Green Conservation Association. Essex Police and Colchester Borough Council's Planning and Environmental Control teams had also submitted representations.

Mr Pace presented his application and informed the Sub-Committee that he had been in the trade for several years and was hoping to open a café bar in Colchester.

Ms Parkin presented the case on behalf of Environmental Control and recommended that the application be refused on the grounds that the building was unsuitable for the licensing activities applied for, was in close proximity of residential properties and was not sound-proof. Ms Parkin informed the Sub-Committee that the hours and activities applied for would create noise and disturbance to residents and that the building could not be made sound proof without extensive rebuilding work. Colchester Borough Council's Planning team had objected to the application on the grounds of public nuisance and was concerned about the impact that the application would have on the neighbouring amenity.

Mr Aitchison, on behalf of Essex Police, informed the Sub-Committee that he and colleagues had met with the applicant to discuss the application and Mr Pace had verbally agreed to reduce the hours sought on the application to 02.00 and had also agreed to the addition of conditions sought by the Police on the grant of the licence. The Licensing Authority had received written confirmation of the amendment in hours but had not received written confirmation that the conditions had been agreed. Following questions from the Police and the Chairman Mr Pace confirmed that he was happy to agree to the conditions sought by the Police.

Mr Oliver, a local resident expressed his concerns about the application and commented that he was already often disturbed late at night by premises that were the same distance away as Candi and that he did not want any increase in the levels of disruption he already experienced. Mrs Downie spoke on behalf of the St John's Green Conservation Association and highlighted its concerns concerning noise disturbance for residents in the area. In responding to these concerns Mr Pace stated that he did not believe that noise would be an issue. There were no doors or exits on the side of the premises which faced St John's Green and the rooms on this side would not be used for music activities. It was his view therefore that noise would not escape. The applicant also said that he had had cavity wall insulation fitted which would help to sound-proof the building.

When questioned, Mr Pace told the Sub-Committee that he hoped to have a smoking area to the front of the premises where people can take their drinks. The Licensing Manager urged Mr Pace to reconsider on the grounds of prevention of crime and disorder because bottles and glasses outside of the venue late at night could be potential weapons and therefore Mr Pace's proposal did not promote the licensing objective of the Prevention of Crime and Disorder and worse could have a negative impact on that objective and was also contrary to the guidance given in the Council's Statement of Licensing Policy. Essex Police and Environmental Control also strongly

objected to the proposal on the grounds of safety and public nuisance. Mr Aitchison asked the Sub-Committee to consider, if it were minded to grant the application, the imposition of a condition to restrict taking bottles and glasses outside. Mr Pace concluded by saying that the premises had been a bar in the past and could see no problems with the application but would be happy to abide by any conditions imposed by the Licensing Sub-Committee.

The Decision

RESOLVED that –

The Sub-Committee carefully considered the application and having regard to the relevant parts of Section 182 Guidance, the Council's Licensing Policy, the contents of the report, conditions agreed with Child Protection and the representations received and submissions made at the hearing, the Sub-Committee determined to grant the premises licence to permit–

- The provision of films, live and recorded music, performances of dance, anything of a similar description, provision of facilities for dancing and for entertainment of a similar description indoors for the following hours:-

10.00 to 00.00 Mondays to Saturdays inclusive
10.00 to 23.30 Sundays inclusive

- Supply of alcohol on the premises for the following hours:-

10.00 to 00.00 Mondays to Saturdays inclusive
10.00 to 23.30 Sundays

Non Standard Timings: An additional hour on Thursdays, Fridays, Saturdays, Sundays and Mondays of all bank holiday weekends.

- The provision of late night refreshment indoors and outdoors for the following hours:-

23.00 to 00.00 Mondays to Saturdays inclusive
23.00 to 23.30 Sundays

- The premises to be open for the following hours:-

10.00 to 00.30 Mondays to Saturdays inclusive
10.00 to 00.00 Sundays

Reason for the Determination

The Sub-Committee gave full consideration to the representation from Environmental Control that the building was unsuitable for the activities applied for after the permitted hours due to its structure and layout. It was not satisfied that measures had been or could be taken to address these concerns. The Sub-Committee had regard to the concerns expressed by the residents in relation to noise nuisance and the close

proximity of the premises to residential properties of the objectors.

The Sub-Committee also noted the existence of the review procedure under the Licensing Act 2003.

Conditions imposed by the Sub-Committee at the Hearing –

- No live or amplified music to be played in the open air (including temporary structures such as marquees and tents).
- No music or speech shall be relayed via external speakers
- A designated premises supervisor will assess the impact of any noisy activities on any noise sensitive premises at the start of the activity/entertainment and periodically throughout the activity/entertainment to ensure levels of noise have not increased. A record shall be kept and any noisy incidents logged.
- A defined designated smoking area to be established within the curtilage of the premises.

Conditions agreed with Responsible Authorities –
Conditions agreed with Child Protection (13/03/2009):

- Children under the age of 16 years will be accompanied by an adult after the time of 21:00 hours.

Conditions agreed with Essex Police at the Hearing

- CCTV High Digital Quality to be retained and maintained in good order for 31 day period and handed to Police Officers investigating incidents upon request.
- Substantial food and non intoxicating beverages (including drinking water) will be available at all times the Premises are open in accordance with the Council's Statement of Licensing Policy in respect of Café/Bars/Wine Bars.
- No bottles or glasses to be taken off the premises.
- Toughened glasses only to be used.
- Challenge 21 Proof of age Scheme operated at all times.

Conditions offered by the Applicant on the Operating Schedule –

- Fully trained bar staff
- Fully trained security
- Professionally installed CCTV throughout
- A one in ten drug search policy
- There are two minicab offices within 50 metres of venue

- Will follow all recommended inspection/service intervals for all electrical and gas systems on the premises.
- Smoke detectors and fire services
- Toilets available for public use
- Ample parking in close proximity
- We will be taking part in the Challenge 21 scheme
- Soft drinks available

Mandatory Conditions -

Mandatory conditions where licence authorises supply of alcohol

1) Where a premises authorises the supply of alcohol, the licence must include the following conditions.

2) The first condition is that no sale of alcohol may be made under the premises licence-

a) at a time when there is no designated premises supervisor in the respect of the premises licence, or

b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.

3) The second condition is that every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

Mandatory condition: exhibition of films

1) Where a premises licence authorises the exhibition of films, the licence must include a condition requiring the admission of children to the exhibition of any film to be restricted in accordance with this section.

2) Where the film classification body is specified in the licence, unless subsection (3) (b) applies, admission of children must be restricted in accordance with any recommendation made by that body.

3) Where-

a) the film classification body is not specified in the licence, or

b) the relevant licensing authority had notified the holder of the licence that this subsection applies to the film in question,

admission of children must be restricted in accordance with any recommendation made by that licensing authority.

4) In this section-

“children” means persons aged under 18; and
“film classification body” means the person or persons designated as the authority under section 4 of the Video Recordings Act 1984 (c.39) (authority to determine suitability of video works for classification).

Mandatory condition: door supervision

1) Where a premises licence includes a condition that at specified times one or more individuals must be at the premises to carry out a security activity, the licence must include a condition that each such individual must be licensed by the Security Industry Authority.

2) But nothing in subsection (1) requires such a condition to be imposed-

a) in respect of premises within paragraph 8(3) (a) of Schedule 2 to the Private Security Industry Act 2001 (c.12) (premises with premises licences authorising plays or films),
or

b) in respect of premises in relation to-

i. any occasion mentioned in paragraph 8(3) (b) or (c) of that Schedule (premises being used exclusively by club with club premises certificate, under a temporary event notice authorising plays or films or under a gaming licence), or

ii. any occasion within paragraph 8(3) (d) of that Schedule (occasions prescribed by regulations under that Act).

3) For the purposes of this section-

a) “security activity” means an activity to which paragraph 2(1) (a) of that Schedule applies, and

b) paragraph 8(5) of that Schedule (interpretation of references to an occasion) applies as it applies in relation to paragraph 8 of that Schedule.

6. Close of Meeting

The meeting closed at 12.25.