

Licensing Sub- Committee Hearings

**Grand Jury Room, Town Hall
10 June 2011 at 10.00am**

The Licensing Sub-Committee hears and determines applications made under the Licensing Act 2003. This includes licensing the sale of alcohol and the provision of a variety of licensable activities such as recorded music, stage plays and the showing of films.

Information for Members of the Public

Access to information and meetings

You have the right to attend all meetings of the Council, its Committees and Cabinet. You also have the right to see the agenda, which is usually published 5 working days before the meeting, and minutes once they are published. Dates of the meetings are available at www.colchester.gov.uk or from Democratic Services.

Have Your Say!

The Council values contributions from members of the public. Under the Council's Have Your Say! policy you can ask questions or express a view to meetings with the exception of Standards Committee meetings.. If you wish to speak at a meeting or wish to find out more, please pick up the leaflet called "Have Your Say" at Council offices or at www.colchester.gov.uk .

Private Sessions

Occasionally meetings will need to discuss issues in private. This can only happen on a limited range of issues, which are set by law. When a committee does so, you will be asked to leave the meeting.

Mobile phones, pagers, cameras, audio recorders

Please ensure that all mobile phones and pagers are turned off before the meeting begins and note that photography or audio recording is not permitted.

Access

There is wheelchair access to the Town Hall from West Stockwell Street. There is an induction loop in all the meeting rooms. If you need help with reading or understanding this document please take it to Angel Court Council offices, High Street, Colchester or telephone (01206) 282222 or textphone (01206) 18001 followed by the full telephone number you wish to call, and we will try to provide a reading service, translation or other formats you may need.

Facilities

Toilets are located on the second floor of the Town Hall, access via the lift. A vending machine selling hot and cold drinks is located on the ground floor.

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www.colchester.gov.uk

Licensing Sub-Committee Hearing Procedure for Hearings under the Licensing Act 2003

- (1) All questions and statements will be directed through the Chairman.
- (2) The Chairman will at the beginning of the Hearing explain to the parties the procedure to be followed and shall consider any request made by a party for permission for another person to appear at the Hearing.
- (3) The Hearing shall take the form of a discussion led by the Council's representative.
- (4) Cross examination shall not be permitted unless the Sub-Committee considers that cross-examination is required for it to consider the representations, application or notice as the case may be.
- (5) The Chairman of the Sub-Committee may require any person attending the Hearing who in his opinion is behaving in a disruptive manner to leave the Hearing and may:
 - (a) refuse to permit that person to return, or
 - (b) permit him to return only on such conditions as the Sub-Committee may specify.

Provided that any such person may before the end of Hearing submit to the Council in writing any information which they would have been entitled to give orally had they not been required to leave.

- (6) A party who wishes to withdraw any representations they have made may do so:
 - (a) by giving notice to the Council no later than 24 hours before the day or first day on which the Hearing is to be held, or
 - (b) orally at the Hearing.
- (7) The Sub-Committee in considering any representations or notice made by a party may take into account documentary or other information produced by a party in support of their application, representations or notice (as applicable) either before the Hearing, or with the consent of all other parties, at the Hearing.
- (8) The Sub-Committee shall disregard any information given by a party or any person to whom permission to appear at the Hearing had been given which is not relevant to:
 - (a) their application, representations or notice(as applicable) or in the case of another person, the application representations or notice of the party representing their appearance, and
 - (b) the promotion of the licensing objectives or, in relation to a Hearing to consider a notice given by a chief officer of police, the crime prevention objective.
- (9) If a party has informed the Council that he does not intend to attend or be represented at a Hearing, the Sub-Committee may decide to proceed with the Hearing in his absence.
- (10) If a party has not informed the Council that he does not intend or be represented at a Hearing and fails to attend or be represented at a Hearing, the Sub-Committee may:
 - (a) where it considers it to be necessary in the public interest adjourn the Hearing to a specified date (notice being given forthwith to the parties concerned of the date, time and place to which the Hearing has been adjourned), or

(b) hold the Hearing in the party's absence

Where the Sub-Committee agrees to hold the Hearing in the absence of a party, the Sub-Committee shall consider at the Hearing the application, representations or notice made by that party.

The Council's case:-

(11) The Chairman will invite the Council's representative to summarise the report relating to the application under consideration.

The Applicant's case:-

(12) The Applicant and/or representative will begin with their opening remarks and present their case.

(13) The Applicant's witnesses (if any) will give evidence in support of the Applicant's case.

(14) The Applicant and/or representative may question the Applicant's witness again to clarify any points which may have arisen.

Submissions from other parties (these will include Interested Parties, Ward Councillors (who are an interested party themselves or are acting in the capacity as a representative of an Interested Party) and representatives from Responsible Authorities:-

(15) Each party will present their case.

(16) Each party's witnesses (if any) will give evidence in support of the party's case.

(17) Each party and their witnesses may be questioned by the Chairman and members of the Sub-Committee.

(18) Each party may question their witness again to clarify any points which may have arisen.

(19) If the Applicant or the interested parties wish to question each other, questions may be directed through the Chairman.

(20) Closing Statements may be made by the Applicant and/or representative.

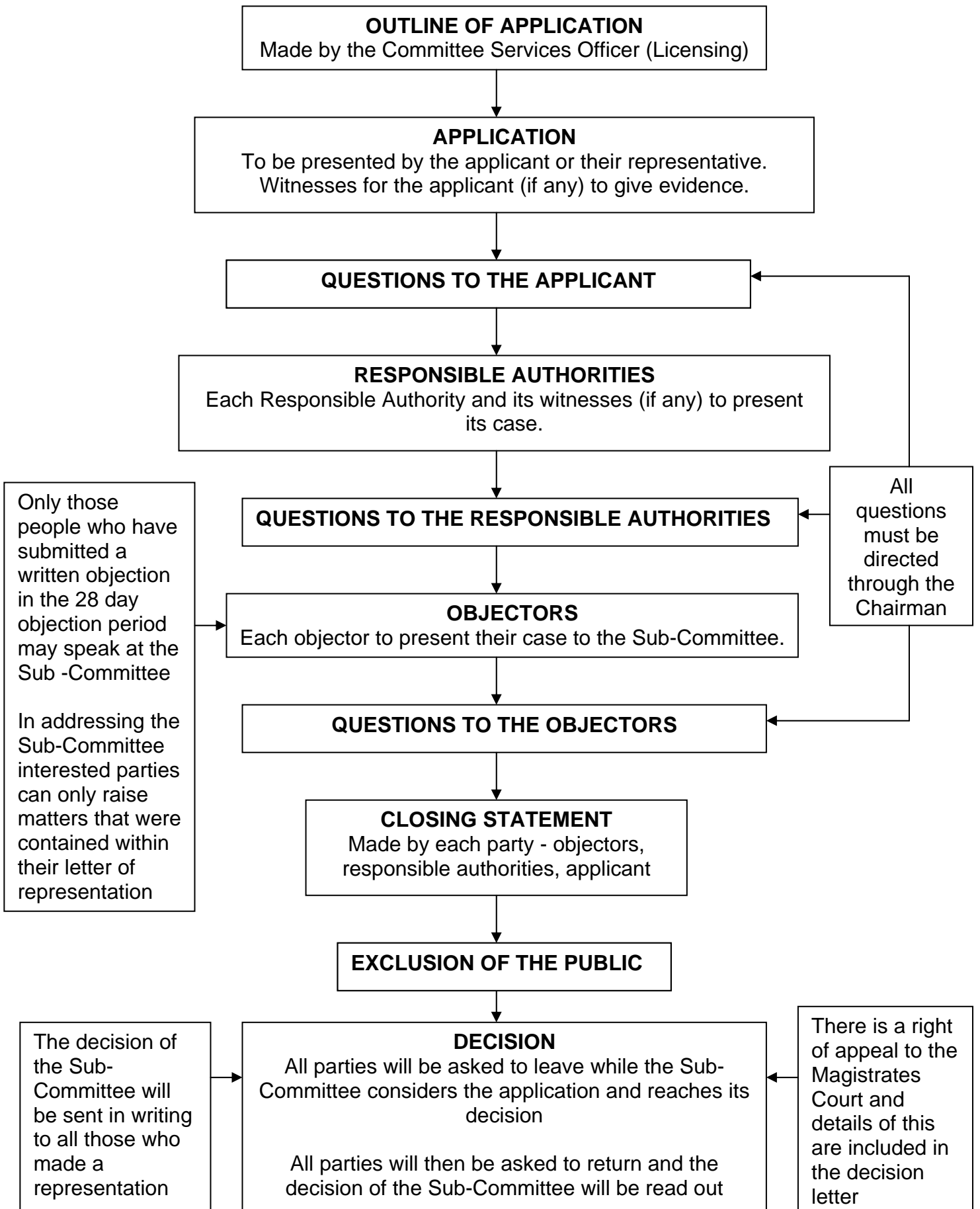
(21) The Chairman will ask the Legal Advisor whether there is anything else to be raised or settled before the proceedings are closed.

Determination of the application by the Sub- Committee

(22) The Applicant and/or representative, Interested Parties, Ward Councillors, Responsible Authorities and the members of the public and the press will leave the room to allow the Sub-Committee to determine the application. During this process the Sub-Committee members may ask for legal advice from the Legal Advisor.

(23) The Applicant and/or representative, Interested Parties and Ward Councillors, Responsible Authorities and the members of the public and the press will be invited to return to the room when the Sub-Committee's determination will be announced. Written details of the determination and the grounds upon which it is based will be sent to all parties concerned in accordance with the Hearings Regulations.

The Licensing Sub-Committee Hearings Process



**COLCHESTER BOROUGH COUNCIL
LICENSING SUB-COMMITTEE HEARINGS
10 June 2011 at 10:00am**

Members

Councillors John Bouckley, Barrie Cook and Michael Lilley.
(Chairman and Deputy Chairman to be appointed at first meeting)

Substitute Members :

Agenda - Part A
(open to the public including the media)

Pages

1. Appointment of Chairman

To appoint a Chairman for the meeting.

2. Welcome and Announcements

(a) The Chairman to welcome members of the public and Councillors and to remind all speakers of the requirement for microphones to be used at all times.

(b) At the Chairman's discretion, to announce information on:

- action in the event of an emergency;
- mobile phones switched off or to silent;
- location of toilets;
- introduction of members of the meeting.

3. Declarations of Interest

The Chairman to invite Councillors to declare individually any personal interests they may have in the items on the agenda.

If the personal interest arises because of a Councillor's membership of or position of control or management on:

- any body to which the Councillor has been appointed or nominated by the Council; or
- another public body

then the interest need only be declared if the Councillor intends to speak on that item.

If a Councillor declares a personal interest they must also consider

whether they have a prejudicial interest. If they have a prejudicial interest they must leave the room for that item.

If a Councillor wishes to make representations on an item on which they have a prejudicial interest they may do so if members of the public are allowed to make representations. In such circumstances a Councillor must leave the room immediately once they have finished speaking.

An interest is considered to be prejudicial if a member of the public with knowledge of the relevant facts would reasonably regard it as so significant that it is likely to prejudice the Councillor's judgement of the public interest.

Councillors should consult paragraph 7 of the Meetings General Procedure Rules for further guidance.

4. Minutes

1 - 15

To confirm as a correct record the minutes of the meetings held on 19 November 2010, 26 November 2010, 17 December 2010 and 20 April 2011.

5. Application under the Licensing Act 2003

16 - 25

Elite
6 Queen Street
Colchester
Essex
CO1 2PJ

LICENSING SUB-COMMITTEE HEARINGS

19 NOVEMBER 2010

Present :- Councillor Barrie Cook (Chairman)
Councillors Nick Cope and Michael Lilley

1. Appointment of Chairman

RESOLVED that Councillor Cook be appointed Chairman.

2. Declarations of Interest

There were no declarations of interest.

3. Temporary Event Notice - 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.

a) Fashion Café, 2 St Botolph's Street, Colchester

The Sub-Committee considered an application for a temporary event notice in respect of the Fashion Café.

In Attendance:

Applicant: Mr Porter (Thompson Smith and Puxon) and Mr Aykut Adem (Personal Licence Holder)

Responsible Authorities: Inspector Butcher, Essex Police

Officers: Mr Harvey, Licensing Manager; Ms Tuthill, Committee Services Assistant (Licensing); Mrs White, Committee Services Officer (Licensing); Mr Weavers (Legal Services Manager & Monitoring Officer)

Mrs White, Committee Services Officer (Licensing) advised that an application had been received for a Temporary Event Notice to permit the supply of alcohol and the provision of regulated entertainment until 4.30am on 20 and 21 November 2010. The Police had objected to the application and therefore the matter was to be determined by the Licensing Sub-Committee.

Mr Porter, on behalf of the applicant, outlined the position with regard to the service of a Counter Notice under Section 105 (4) of the Licensing Act 2003 which had to be carried out 24 hours before the event took place. The timing of the meeting would not enable a Counter Notice to be served within the required timeframe and therefore the Sub-Committee could not make a valid decision in respect of the Temporary Event Notice. Having heard the evidence submitted on behalf of the applicant, Inspector

Butcher informed the Sub-Committee that the Police withdrew its objection to the Temporary Event Notice.

RESOLVED that the Temporary Event Notice be granted as applied for.

4. Close of Meeting

The meeting closed at 11.00.

LICENSING SUB-COMMITTEE HEARINGS

26 NOVEMBER 2010

Present :- Councillor Barrie Cook (Chairman)
Councillors Margaret Kimberley
Substitute Member :- Councillor Michael Lilley for Councillor Ann Quarrie

1. Membership

The Committee Services Officer (Licensing) advised that Councillor Lilley was in attendance for Councillor Quarrie.

2. Appointment of Chairman

RESOLVED that Councillor Cook be appointed Chairman.

3. Declarations of Interest

There were no declarations of interest.

4. Minutes

The minutes of the meeting held on 17 September 2010 were noted and confirmed as a correct record.

5. Application for a Review 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.

The public were excluded from the hearing for the following application in accordance with the provisions of Paragraph 14(2) of the Licensing Act 2003 (Hearings) Regulations 2005.

a) Johnson's Premier Newsagents, 103 London Road, Colchester

The Sub-Committee considered an application for the review of a premises licence in respect of Johnson's Premier Newsagents in relation to the following licensing objectives -

- Prevention of crime and disorder

- Protection of children from harm

In Attendance

Applicants: Mr Porter (Thompson, Smith and Puxon) and Mr Ramesh Patel (Designated Premises Supervisor and Personal Licence Holder) and Mr Hamesh Patel (Shop Manager).

Responsible Authority: Mr Appleby, Essex Police Licensing Officer and Ms Scholefield, Essex Police

Officers: Mr Harvey, Licensing Manager; Ms Tuthill, Committee Services Assistant (Licensing); Mrs White, Committee Services Officer (Licensing); Mr Weavers (Legal Services Manager & Monitoring Officer)

Ms Tuthill, Committee Services Assistant (Licensing), briefly introduced the application made by Essex Police to review the premises licence of Johnson's Premier Newsagents, 103 London Road, Colchester. The review had been sought on the grounds of the prevention of crime and disorder and the protection of children from harm.

Mr Appleby addressed the Sub-Committee on behalf of Essex Police and explained that since the premises had been licensed to sell alcohol, three failed test purchases by Trading Standards had taken place which had resulted in alcohol being sold to underage customers. These incidents had occurred in 2006, 2007 and the most recent had taken place on 28 August 2010. Mr Appleby stated that because of the period of time during which these failed test purchases had taken place, he believed that the addition of some proposed measurable and proportionate conditions would address the Police's concerns. Mr Appleby then provided all those in attendance with a copy of the Police's proposed conditions.

In responding to the comments made by Essex Police, Mr Porter informed the Sub-Committee that the premises is a family-run convenience store and that these instances of selling alcohol to underage customers were not typical. The Sub-Committee were then presented with sixteen letters from local families whose children had been refused alcohol in the shop. Mr Porter explained that on 28 August 2010 when the last failed test purchase occurred, Mr Ramesh Patel had been managing the store and that at the time of the sale, he had been taking a phone call from abroad regarding a sick relative and was therefore distracted. The Licensing Sub-Committee was also informed that the premises operates the Challenge 25 scheme and has an incident book to record refused sales. Mr Porter also explained that since August, staff had attended and passed a course run by Trading Standards. Mr Porter concluded by saying that his client would be happy to agree to the conditions proposed by Essex Police.

In response to a question posed by Mr Harvey, Mr Hamesh Patel confirmed that there was only one point of sale in the store.

The Decision

That the reasons for the review brought by Essex Police be upheld and the conditions set out below be applied to the Premises Licence:

1. No member of staff shall operate or speak on any telephone or similar apparatus whilst dealing with customers in relation to the sale of age-restricted products.
2. A formal "Challenge 25" Scheme shall be adopted, of which any person who appears to be under the age of 25 shall have to establish that they are over the age of 18 years by an approved ID (passport, full driving licence, or other photo ID formally approved by Essex Trading Standards). This scheme shall be of the type approved by Essex Trading Standards.
3. The Licence Holder/DPS will keep a refusal/incident book to record all refusals or persons challenged for ID relating to the sale of alcohol. This record will be produced to the Police or Licensing Authority for inspection on request.

Considerations

The review had been sought by Essex Police following three sales of age restricted products to a person under 18 years of age the final sale being made on 28 August 2010. The review request had been supported by the Trading Standards although it was noted that they were not in attendance.

A representation had also been received from the Children's Safeguarding Service but they were also not in attendance.

Additional paperwork was circulated relating to the conditions proposed by Essex Police and Trading Standards and agreed by the applicant. Sixteen letters from parents of children refused sales of age restricted products were also submitted as well as further information relating to the defendant's case.

Reasons for the Determination

The Sub-Committee had given due weight to the evidence presented by the Police and Trading Standards and had regard to the conditions agreed between the parties to support the licensing objectives of the protection of children from harm and the prevention of crime and disorder.

The Sub-Committee considered the agreed conditions as a necessary and proportionate response to the breaches of the licence conditions committed and the evidence presented to it by all parties.

6. Close of Meeting

The meeting closed at 11.20

LICENSING SUB-COMMITTEE HEARINGS

17 DECEMBER 2010

Present :- Councillor Barrie Cook (Chairman)
Councillors Mary Blandon and John Bouckley

1. Appointment of Chairman

RESOLVED that Councillor Cook be appointed Chairman.

2. Declarations of Interest

There were no declarations of interest.

3. Application 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.

The What Bar, 7 Queen Street, Colchester

The Sub-Committee considered an application for a variation of a premises licence in respect of The What Bar to permit –

- The provision of live music, recorded music, performance of dance, other music or dance entertainment, facilities for making music, facilities for dancing, other facilities for music and dance indoors and late night refreshment.
- Non-standard timings in respect of Opening Hours on New Year's Eve

In Attendance

Applicant: Mr West (21st Century Licensing), Mr Douglas Archell (Applicant and Licence Holder), Mr Bob Archell (Management) and Mr Raymond Gray (witness and local resident)

Responsible Authorities: Mrs Parkin, Environmental Control

Officers: Mr Harvey, Licensing Manager; Ms Tuthill, Committee Services Assistant (Licensing); Mrs White, Committee Services Officer (Licensing); Mr Wilkins (Principal Lawyer) and Mr Samuel (Legal Executive)

Mrs White, Committee Services Officer (Licensing), briefly introduced the application and advising that a representation had been received from Environmental Control.

Mr West presented the application to the Licensing Sub-Committee and sought permission from the Chairman to hear a witness on the applicant's behalf and to consider four letters in support of the application. There were no objections from any of

the parties present to these being heard and after hearing further information about the witness and letters of support, the Chairman on balance decided to allow the witness and letters. Mr West then proceeded to serve a brochure of information relating to the application and premises, on all those present at the Hearing.

Mr West explained to the Sub-Committee that his client was applying for late night refreshment and to increase the regulated entertainment and that they were not seeking to alter the supply of alcohol, opening hours or exhibition of films. The applicant's representative also stated that no objections had been made in relation to this application by Planning, the Police or any person living or working within the vicinity of the premises. The applicant's representative read aloud extracts from the Section 162 Guidance which he believed embraced the application.

In reference to the representation that had been submitted by Environmental Control, Mr West believed that this had been based on noise complaints caused by historic mismanagement and went on to explain the ways in which the applicant had tried to address Environmental Control's concerns about noise. These included the removal of the disc jockey stand, relocating the music stage to the rear of the building which was built in 1988, not Grade II Listed and was better insulated against noise outbreak. The size of the stage meant that it had a limited capacity and would not be able to cater for bands of more than four people. Mr Douglas Archell explained that he would like the premises to become a music bar for local bands to play jazz and rhythm and blues and that he did not want it to be a nightclub. The applicant also explained that following some music tests which had taken place at the premises, the cellar had proved to be a particular problem. To overcome this, the cellar ceiling had been insulated as well as two air vents. In order to address historic complaints about noise escaping when patrons exited the premises to smoke, an entrance lobby had been created and the fire exit door would only be used in the event of a fire.

Mr Bob Archell explained that once the management team had seen Environmental Control's objection to the application, they had sought architectural advice on reducing noise emanating from the premises as part of the renovation of the premises. Two noise tests were later carried out at the premises and showed that the level of noise had dramatically reduced. In response to this, Ms Parkin informed the Sub-Committee that noise from the premises should not just be based on the music, but also dance floors and people talking etc. Mr Douglas Archell informed the Sub-Committee that a Noise Management Policy had been produced for the premises and that they were happy to have this attached as a condition to the Premises Licence.

The Sub-Committee were shown a video clip of the type of music which the applicant intended to be played at the premises which was live acoustic music which was different to the DJ music that had been played at the premises in the past.

The applicant's representative, Mr West mentioned that the premises had recently had two Temporary Event Notices covering eight nights, and that there had been no noise complaints during this period. Mr West then introduced his witness, Mr Raymond Gray who lived directly behind the premises. Mr Gray commented that the music being played by the new owners was enjoyable and that the noise level was acceptable to himself and his partner and that it had not impinged on his quality of life. Mr West

acknowledged that local residents could change so proposed a condition that the side door of the premises be changed as per the 5 conditions stated in the material put before the Sub-Committee.

Mr West informed the Sub-Committee that the premises would now be trading under the name of Tin Pan Alley and that the Designated Premises Supervisor would be Mr Douglas Archell, the applicant.

Mrs Parkin stated that Environmental Control's objection to the application had been based on a long history of noise complaints about the premises from local residents. The Sub-Committee was informed that two noise abatement notices had been served on the premises; the first in 2004 and the second in July 2010. Environmental Control had not been aware until very recently that not all of the building was Grade II Listed, but re-iterated that the listed (front) part of the building could not be made soundproof. Mrs Parkin did not object to any of the conditions proposed by the applicant and confirmed that Environmental Control had not received any complaints when the recent Temporary Event Notices had taken place.

The location of the premises in the Stress Area was raised and Mr Harvey, the Council's Licensing Manager, set out the Council's Policy in relation to this area and the presumption of refusal unless the Sub-Committee was satisfied that granting the application would not undermine the licensing objectives.

In the applicant's closing statement, Mr West said that the premises was intended to be a community venue catering for a niche market. Mr West also commented that he believed Environmental Control's objection to the application to be speculative and based on historical evidence. Other points raised included that there had been letters in support of the application, no objections had been received from residents, conditions had been proposed by the applicant, measures had been taken to reduce noise emanating from the premises and a Review of the Premises Licence could be called if problems arose.

The Decision

To grant the application for the following hours and activities:

Performance of live music, playing of recorded music, performance of dance, other music or dance entertainment, facilities for making music, facilities for dancing, other facilities for music and dance indoors:

11.00 to 22.45 Mondays to Thursdays

11.00 to 00.15 Fridays and Saturdays

12.00 to 22.30 Sundays

Christmas Eve 11.00 to 02.00

New Year's Eve 11.00 to 02.00

Sundays of Bank Holiday weekends 11.00 to 00.30

Late night refreshment:

23.00 to 00.15 Fridays and Saturdays

Christmas Eve 23.00 to 02.00

New Year's Eve 23.00 to 02.00

Sundays of Bank Holiday weekends 23.00 to 00.30

Opening hours of the premises:

From 10.00 New Year's Eve until 02.30 New Year's Day

To remove the following conditions:

1. "Background Music Only"
2. "No under 18's on the premises"

The licence be granted subject to the following conditions -

Conditions proposed on the operating schedule:

1. Doors and windows will be kept closed whilst music is being played inside the premises
2. A "Challenge 21" policy will be introduced
3. A member of staff will hold a S.I.A qualification
4. No under 18s on the premises unless accompanied by a responsible adult.

Conditions offered by the applicant at the Hearing:

1. Side door to be replaced with one of heavy construction, well acoustically designed frame and fastenings.
2. The door to be kept for emergency use only and to be fitted with an audible and visual alarm and glass bolt
3. A noise limiter to be fitted at the premises and only accessible to the installation company. The noise levels to be determined in consultation with Environmental Control.
4. Sound levels from music to be controlled to ensure that it does not give rise to statutory noise nuisance within any adjacent dwelling.
5. No music shall be provided by way of "Disc Jockey".
6. To maintain the Noise Issues Management Policy for Tin Pan Alley attached to the licence and that no changes be made without prior agreement to Environmental Control. Save that the said policy will deem to be amended in order to comply with the conditions set out in this decision.
7. All deliveries to the venue to be made between 08.00 and 21.00.
8. No recycling or emptying of glass bottles outside the premises before 8.00 or after

20.00

Condition Imposed by the Sub-Committee at the Hearing:

1. Music can only be played within that part of the building that is not Grade 2 listed in order to address the concerns raised by Environmental Control.

Reasons for the Determination

The Sub-Committee had given careful consideration to all the representations and evidence, and was satisfied that the concerns raised by Environmental Control were adequately addressed by the amendment to the hours for regulated entertainment, and the additional conditions offered by the applicant at the hearing.

4. Close of Meeting

The meeting closed at 13.45.

LICENSING SUB-COMMITTEE HEARINGS

20 APRIL 2011

Present :- Councillor Barrie Cook (Chairman)
Councillors Michael Lilley and Ann Quarrie

1. Membership

RESOLVED that Councillor Cook be appointed Chairman.

2. Declarations of Interest

There were no declarations of interest.

3. Application under the Licensing Act 2003

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

a) Premier C K Food and Wine, 6 The Willows, Colchester

The Sub-Committee considered an application for the grant of a new premises licence in respect of the Premier CK Food and Wine to permit the supply of alcohol off the premises.

In Attendance

Applicant: Ms Silvester (Agent for the Applicant) and Mr Delgahawattegedara (Designated Premises Supervisor)

Officers: Mr Daines, Head of Protective Services; Mr Samuels, Legal Services; Ms Tuthill, Committee Services Assistant (Licensing); Mr Weavers (Legal Services Manager & Monitoring Officer), Mrs White, Committee Services Officer (Licensing)
Ward Councillor: Councillor Harris

Mrs White, Committee Services Officer (Licensing) briefly introduced the application advising that three representations and a petition had been received opposing the application. Ms Silvester outlined the application on behalf of the applicant, Mr Delgahawattegedara, and explained that he intended to operate the premises as a convenience store and wished to sell alcohol in order to compete with similar shops in the area. Mr Delgahawattegedara had 8 years experience and had operated another similar premises in Ipswich for 3 years without any problems. The applicant had, in January 2011, passed a Trading Standards Test Purchase by refusing to sell alcohol to a minor and a letter was submitted to the Sub-Committee confirming this.

In response to the letters of representation that had been received and to address the concerns raised in them the applicant offered a number of further conditions related to

the licensing objective of the prevention of public nuisance. Signs would be put up on the premises asking people to keep the noise down when leaving the premises and those loitering outside the premises would be asked to move on. The area within the immediate vicinity of the shop would be kept clear of litter and waste and a litter bin would be provided. Ms Silvester confirmed that the applicant intended to provide CCTV to monitor activity inside and outside the premises and to ensure that youths were not asking people to purchase alcohol for them. Mr Delgahawattegedara was happy to work with all parties to ensure the smooth operation of the premises and there would be comprehensive staff training to ensure that staff were aware of their responsibilities.

Councillor Harris addressed the Sub-Committee on the points raised in his letter. He confirmed that he had created the petition on behalf of residents and 2 local businesses that had approached him concerned about the application. Councillor Harris stated that whilst he was in support of a community store in the area, there had been anti-social behaviour in that area in the past and it had taken a concerted effort of the part of a number of agencies to resolve the issues. He was disappointed that the police had not formally commented on the application and requested that the Sub-Committee consider only granting the licence until 18.00 to limit the disturbance to local residents.

The Sub-Committee gave consideration to the other written submissions. It was noted that the petition had been signed by a number of people who did not live in the vicinity of the premises and therefore had to be disregarded as they were not interested parties under the terms of the Licensing Act 2003. The Sub-Committee also gave consideration to references in the letters to the need for another premises selling alcohol in the area. The Sub-Committee was unable to consider the issue of demand as it fell outside the remit of the Licensing Act 2003.

The Decision

RESOLVED that having regard to the relevant parts of the Section 182 Guidance, the Council's Licensing Policy, the contents of the report and the submissions made at the Hearing the Sub-Committee determined to grant the application to permit –

- The supply of alcohol off the premises Mondays to Sundays from 07.00 to 23.00.
- The premises to be open Mondays to Sundays from 07.00 to 23.00.

The Licence was granted subject to the following conditions –

Conditions offered by the applicant at the Hearing:

1. Signs to be placed at the exit of the premises asking patrons to leave the shop and the area quietly.
2. Patrons of the shop loitering in the area will be asked to move on.
3. A litter bin will be located outside the premises.
4. The frontage of the property will be cleared of litter on a daily basis.

Conditions imposed by the Sub-Committee at the Hearing:

1. That the bin provided outside the premises be a heavy duty bin and that it be emptied daily and placed in the shop at night to avoid anti-social behaviour.

Conditions contained in the Operating Schedule:

1. Training of all staff on the premises to ensure that they understand and adhere to the law relating to the sale of alcohol.

2. CCTV installed and maintained so it is fully operational at all times.

3. CCTV recordings to be kept in accordance with police guidelines, for a minimum of 30 days and to be made available to police/council officers if required.

4. Alarm system in place.

5. Shutters at the front windows.

6. All staff trained to deal with any outbreak of fire at the premises.

7. Fire extinguishers installed and regularly serviced in accordance with fire authority guidelines.

8. To comply with any requirements of fire authority.

9. Anyone who is drunk or appears to be buying alcohol for someone who is drunk will be refused the sale of alcohol.

10. Challenge 25 to be operated at all times and all staff will be trained to accept only a proof of age (Pass Scheme) card, passport or photo driving licence as acceptable forms of ID when selling alcohol to young people.

11. Sign to be displayed at point of sale stating 'No proof of age – No sale'.

12. Refusal book to be kept at the premises and maintained at all times.

Mandatory conditions where licence authorises supply of alcohol:

1. No sale of alcohol may be made under the premises licence –

a. at a time when there is no designated premises supervisor in 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.

2. Every supply of alcohol under the premises licence must be made or authorized by a

person who holds a personal licence.

3. a. The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.

b. The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark.

Considerations:

The Sub-Committee noted that 3 relevant representations and a petition had been received from interested parties, Councillor Harris attended the hearing. It was also noted that there were no representations from any of the responsible authorities.

The Sub-Committee noted that the objections of the interested parties concerned the licensing objective(s) of the prevention of crime and disorder, prevention of public nuisance and the protection of children from harm. In addition they expressed concerns regarding the granting of a further licence to sell alcohol in the area

The Sub-Committee had regard to the statement on the petition that 'Colchester Council do not permit another off licence within the shops at the Willows. One is enough, any more and we will have anti social behaviour in the area'. The Sub-Committee could not consider the issue of need and the petition was accepted on the grounds of the likely increase in anti-social behaviour only. The Sub-Committee had regard to the number of people on the petition who were not interested parties by virtue of their distance from the premises and therefore the Sub-Committee could not give it significant weight.

The applicant submitted a letter from Suffolk Trading Standards relating to a successful test purchase which had taken place in January 2011 at the applicants other shop in Ipswich.

The Sub-Committee considered the guidance issued under section 182 of the Licensing Act 2003 and to its own policy.

Reasons for the Determination:

The Sub-Committee noted the residents' concerns regarding the number of licensed premises in the vicinity but this matter was not within the Sub-Committee's remit, it did not have the ability to restrict the number of premises selling alcohol in an area.

The Sub-Committee felt that the case made by the objectors in respect of the likely public nuisance and crime and disorder as a result of the application was not proved sufficiently to justify the refusal of the application. It was satisfied that the concerns raised were adequately addressed by the applicants' operating schedule and the additional conditions offered by the applicants' representative at the Hearing and those

imposed by the Sub-Committee in order to address the licensing objective of the prevention of public nuisance and to address the concerns of local resident Ms Spurr.



Licensing Committee – 10 June 2011	Agenda Item
Elite	FOR GENERAL RELEASE

Premises	Elite 6 Queen Street Colchester	Ward: Castle Stress Area: Yes Flare Ref: 073723 Author: Colin Daines
Application	Application for a new premises licence to permit the supply of alcohol and the provision of late night refreshment	Appendix 1
Street Plan		Appendix 2
Interested Parties Colchester Civic Society		Appendix 3

New Application for a Premises Licence
<p>To permit:-</p> <ul style="list-style-type: none"> - The supply of alcohol on the premises for the following hours- Mondays to Sundays inclusive – 20.00 to 02.00 - Provision of late night refreshment for the following hours – Mondays to Sundays inclusive – 23.00 to 02.00 - Hours the premises are open to the public – Mondays to Sundays inclusive – 06.30 to 02.30

Policy Guidelines – Elite, 6 Queen Street, Colchester
<p style="text-align: center;">Colchester Borough Council’s Statement of Licensing Policy</p> <p>Assessing Applications</p> <p>Boxed bold type refers to policy and to matters that the Licensing Authority would</p>

generally expect or encourage to see addressed in the applicant's operating schedule, where reasonable, proportionate or appropriate. Passages of text that are not in bold are provided to assist applicants to understand what the Licensing Authority is seeking to achieve to positively promote the four licensing objectives, the factors that influence the achievement of those objectives and the examples of best practice that could be implemented by the applicant to achieve that outcome.

Paragraph **3.8** of the Council's Statement of Licensing Policy recognises that "the new Licensing Act 2003 has brought with it great expectations and challenges, not least of which has been the extension of opening hours for licensed premises such as clubs, pubs, bars and takeaways".

The Policy goes on to add in paragraph **3.9** that "however, along with the great expectations and opportunities for business expansion, the Licensing Act has also brought with it the responsibilities of the four licensing objectives for all the stakeholders concerned in this venture".

Policy

Paragraph **3.10** of Colchester Borough Council's statement of Licensing Policy advises that:

The Licensing Authority wishes to work with the licensed trade to promote best practice, the responsible consumption of alcohol and the effective management of licensed premises. It will therefore consider sympathetically any applications for extended licensing hours from well-operated, well managed premises, whose operating schedules responsibly reflect how they are going to effectively promote the four licensing objectives.

Paragraph **3.11** of Colchester Borough Council's statement of Licensing Policy also advises that:

Premises that submit new applications, or applications to extend their opening hours, or vary their licensable activities whose operating schedules do not clearly demonstrate that they are well run, effectively managed and are responsibly operated in accordance with the four licensing objectives, should ordinarily expect such applications to be challenged by those responsible authorities as defined by the Act.

Prevention of Crime and Disorder

The Council's statement of Licensing Policy states under paragraph 5.12 that "the Council is committed to further improving the quality of life for the people living in the borough of Colchester by continuing to reduce crime and the fear of crime".

Policy

Paragraph **5.14** of the Policy states that:

Where relevant representations have been received, and in considering applications for review, the Licensing Authority will take into account the following factors:

- (i) Whether the premises has or will have a negative impact on levels of crime and disorder and anti-social behaviour, and whether the operating schedule reasonably and proportionately takes into account the**

likelihood of crime and disorder occurring as a result of the grant of the application. In deciding this, regard will be given by the Licensing Authority on the levels of crime and disorder in and around the venue, the proposals contained in the operating schedule; the level of compliance with conditions on existing licences; and the extent to which Essex Police's effective management checklist (see Appendix 18 of the Council's statement of Licensing Policy) has been taken into account. This provides a compressive list of best practice.

- (ii) Whether the layout, lighting and fittings of the premises have been designed to minimise conflict and opportunities for crime and disorder and anti-social behaviour.
- (iii) Whether the operating schedule includes management measures to prevent crime and disorder.
- (iv) Whether the operating schedules for pubs and bars or for the provision of facilities for music and dancing have had regard to the number of people who may be admitted to the premises and the possibility of overcrowding increasing the likelihood of crime and disorder; the area set aside for drinking while standing at any time when any licensable activity is taking place and the measures set out in Appendix 18 of the Policy to help prevent crime and disorder and offences under the Licensing Act 2003. Other premises may have to have regard to these matters in exceptional circumstances.

There have been no relevant representations received from any of the relevant responsible authorities or any other interested party in regard to this licensing objective.

Public Safety

Paragraph 5.17 of the Council's statement of Licensing Policy states that "the Licensing Authority is committed to ensuring as far as is reasonable or possible, that the safety of anyone visiting or working in licensed premises, passers by and those living in the immediate vicinity, is not compromised".

Policy

Paragraph 5.18 of the policy states that:

Where relevant representations have been received, and in considering applications for review, the Licensing Authority will take into account the following factors:

- (i) Where appropriate and satisfactory general and technical risk assessments, management procedures and certificates have been made available to the relevant responsible authority and to the Licensing Authority where it may be necessary to do so that demonstrate that the public will be safe within, and in the immediate vicinity of, the premises.
- (ii) Whether the premises already has a premises licence or club premises certificate that specifies the maximum number of people who can attend it or be present and, if not, whether a risk assessment has been undertaken by the responsible person in accordance with the Regulatory Reform (Fire Safety) Order 2005 which advises the maximum number of persons who may be present in various parts of the premises

so that they can be evacuated from the premises safely in the event of an emergency.

- (iii) Whether there are procedures proposed to record and limit the number of persons on the premises with opportunities for 'pass outs' and re-admissions.
- (iv) Whether patrons can arrive at, and depart from, the premises safely.
- (v) Whether there may be local overcrowding in parts of the premises.
- (vi) Whether music and dance venues and performance venues will use equipment or special effects which may affect public safety (for example moving equipment, vehicles, pyrotechnics, strobe lights, smoke machines).
- (vii) Whether due account has been given to the measures outlined in 'Safer Clubbing', in applications for facilities for music and dance. The key areas identified are:
 - Prevention of overcrowding
 - Air conditioning and ventilation
 - Availability of drinking water
 - Further measures to combat overheating
 - Overall safety.
- (vii) Whether there are defined procedures and responsibilities for medical and other emergencies and for calling the emergency services.

There have been no relevant representations received from any of the relevant responsible authorities or any other interested party in regard to this licensing objective.

Prevention of Public Nuisance

Paragraph 5.21 of the Council's statement of Licensing Policy advises that "some licensed premises have the potential to have a significant negative impact on communities through the public nuisances that may arise from their operation. The Licensing Authority wishes to maintain and protect the amenity of residents and other businesses from the potential consequences of the operation of licensed premises that are not effectively or responsibly managed, whilst at the same time it recognises the valuable cultural, social and business importance that the vast majority of licensed premises provide to local communities".

Paragraph 5.22 of the Council's statement of Licensing Policy goes on to advise that "the Licensing Authority therefore intends to interpret 'public nuisance' in its widest sense and takes it to include such issues as noise, disturbance, light, odour, litter and alcohol related anti-social behaviour, where these matters impact on people living, working or otherwise engaged in normal activity in the immediate vicinity of the licensed premises".

Policy

Paragraph 5.23 of the Policy states that:

Where relevant representations have been received, and in considering

applications for review, the Licensing Authority will take into account the following factors:

- (i) **The potential for nuisance associated with the style, characteristics and activities for the proposed licensable activities to be carried on at the premises, and the potential steps that could be taken to reduce the risk of nuisance occurring. This particularly may apply where residents live in the immediate vicinity of the premises;**
- (ii) **Whether operating schedules contain adequate measures to prevent noise and vibration, either air-borne or structure-borne, and which are generated from within the premises or outside it, causing disturbance to people in the immediate vicinity of the premises. Regard will be given to disturbance of people whether at home or at work or otherwise staying in or visiting that area. Stricter conditions on noise control will be imposed in areas that have denser residential accommodation or residents living in the immediate vicinity of the premises.**

There has been one representation made in relation to this licensing objective by the Colchester Civic Society. The letter opposes the grant of a new premises licence in the stress area on the grounds that it will contribute to the already considerable problems in the street. The letter outlines the existing problems in Queen Street and St Botolph's Street and the experience of those people in that area late at night.

The application states that during the day the front of the premises will be used to serve hot and cold drinks and snacks. In the evening from 20.00 the premises will be open to members only, predominately from the Turkish community, as a place to visit and socialise.

Additional Policy Guidance – Public Nuisance

The Council's statement of Licensing Policy goes on to give the following policy advice in relation to the promotion of the Prevention of Public Nuisance licensing objective

Paragraph 5.27 of the Policy states that:

The Licensing Authority encourages applicants to set out in their operating schedules the steps taken or proposed to be taken to deal with the potential for public nuisance arising from the operations of the premises.

Paragraph 5.28 of the Policy states that:

When addressing the issue of prevention of public nuisance, where it is reasonable, proportionate and necessary to do so, the applicant should demonstrate that those factors that may impact on the likelihood of public nuisance have been considered.

These may include:

- **The location of the premises and proximity to residential and other noise sensitive premises, such as hospitals, hospices and places of worship.**
- **The hours of opening between 11.00pm and 7.00am.**
- **The nature of activities to be provided, including whether those**

activities are of a temporary or permanent nature and whether they are to be held inside or outside the premises.

- The design and layout of the premises; particularly the presence of noise limiting features.
- The provision of toilet facilities on the premises.
- The safe capacity of the premises.
- The availability of public transport or taxis.
- A wind down period between the end of the licensable activities and closure of the premises.
- The last admission time.

Protection of Children from Harm

Paragraph 5.32 of the Council's statement of Licensing Policy states that "the protection of children from harm is a most important issue. It is hoped that family friendly premises will thrive, but the risk of harm to children remains a paramount consideration when determining applications".

Paragraph 5.33 of the Policy states that "the general relaxation allowed by the Licensing Act gives accompanied children greater access to licensed premises and is a positive step, aimed at bringing about a social change in family-friendly leisure. Clearly this relaxation can place additional responsibilities upon licence holders. However, it is also recognised that parents and others accompanying children also have their own responsibilities in this regard".

Policy

Paragraph 5.34 of the Policy states that:

The Licensing Authority will rarely impose a complete ban on access to licensed premises for children. In exceptional circumstances and only where it is reasonable proportionate or necessary to do so to promote the licensing objective, conditions restricting access or excluding children completely may be considered necessary.

Paragraph 5.35 of the Policy states that:

The Licensing Authority will not impose conditions requiring that children be entitled to access to the premises. This is a matter for the sole discretion of the individual premises or club or person who is applying for a Temporary Event Notice.

There have been no relevant representations received from any of the relevant responsible authorities or any other interested party in regard to this licensing objective.

Additional Policy Guidance – General

The following additional policy guidance is taken from the Council's statement of Licensing Policy and is included in this report for the advice and information of the

Licensing Sub-Committee, the applicant and for any other interested party concerned with this application.

Stress Area Policy

Paragraph 3.96 of the Policy states that:

After full consultation, the Licensing Authority will continue to apply a special policy relating to cumulative impact to the Queen Street/St Botolph's Street area of Colchester town centre. This area continues to be identified as being under stress because of the cumulative effect of the concentration of late night food and alcohol and entertainment premises, which results in serious problems of disorder and/or public nuisance affecting residents, visitors and other businesses located in that area.

Paragraph 3.97 of the Policy states that “although the stress area policy is being maintained, each and every application to grant or vary a premises licence in this area will be considered on its own individual merits and in its own right and in relation and relevance to any representations received that are pertinent to the application and also to the licensing objectives. Applicants should be aware however that all applications received within the stress area may receive closer scrutiny from the responsible authorities, particularly from Essex Police, in order to ensure that the application will not have a negative impact on the licensing objectives, especially where the objectives of the prevention of crime and disorder and the prevention of public nuisance are concerned”.

Paragraph 3.98 of the Policy states that:

The Special Policy applies to applications for new licences and to variations which are relevant to the licensing objectives. This may include extensions of hours or capacities at the premises. Applicants are expected to state in their operating schedule how it is proposed to ensure that the application will not add to the cumulative impact currently being experienced in the stress area. Their operating schedule is likely to receive the close scrutiny of responsible authorities.

Paragraph 3.99 of the Policy states that:

Where no relevant representations are received, the application will be granted. Where, however, relevant representations are received the application will normally be refused unless the applicant demonstrates that the application will not add to that impact. The Licensing Authority may attach further or modified conditions to the licence where this is necessary to meet those concerns. This Policy is not an absolute bar on new applications. Where relevant representations are received, the individual merits of the application will always be considered and a decision made as to whether it is appropriate to make an exception to the Policy.

Paragraph 3.101 of the statement of Licensing Policy states that “the Licensing Authority welcomes the provision of a diverse choice of alternative entertainment where this is suitable, in order to reduce or ameliorate the impact of clubs, pubs, bars and fast food takeaway outlets situated within the stress area”.

Café Bars

Paragraph 3.58 of the Policy states that:

The Licensing Authority will look favourably on applications which seek a grant of licence or variation of a licence for a café bar that offers or views the consumption of alcohol as an ancillary accompaniment to the enjoyment of food purchased and eaten by their customers on the premises.

Paragraph **3.59** of the Policy states that:

Any such grant or variation agreed could however, be subject to the following conditions, which would be applied in circumstances where it was reasonable and proportionate to do so, and in order to prevent the premises from gaining a licence to sell alcohol and then simply converting to an ordinary public house or bar that relies more on the sale of alcohol and vertical drinking than it does on the provision of food.

These conditions, which relevant applicants are encouraged to include in their operating schedules, could be:

- (i) The supply of intoxicating liquor and other beverages shall be made by waiter/waitress service solely for the consumption of persons seated at tables.**
- (ii) Substantial food shall be available at all times.**

Late Night Refreshment

Paragraphs **3.50** and **3.51** of the Council's statement of Licensing Policy state that "all premises selling hot food or drink for consumption either on or off the premises between the hours of 11.00pm and 5.00am will require a premises licence. The same requirement to hold a licence will also apply to burger/hot dog/fast food vans trading after 11.00pm and up to 5.00am the following day. There are limited exemptions in certain circumstances to such a requirement. These are explained in Appendix 5 of the Policy, along with the definition of what constitutes a licensable activity for the sale of hot food and hot drink between the hours of 11.00pm and 5.00am".

Paragraphs **3.52** and **3.53** of the Policy state that "the Licensing Authority is concerned that premises offering hot food and drink between the hours of 11.00pm and 5.00am, either for consumption on or off the premises, often attract large groups of customers seeking refreshment after the pubs, clubs, bars or nightclubs have closed. Many of these customers may have consumed alcohol excessively before seeking this refreshment. The combination of the effects of alcohol combined with the congregation of large groups of people both in and around these premises can and often does lead to violence and disorder, or to unacceptable levels of noise and disturbance for local residents. Police and residents have both expressed concerns over the levels of alcohol related violence, anti-social behaviour, noise and disturbance that emanates from or around the vicinity of fast food takeaways".

Paragraph **3.54** of the Council's statement of Licensing Policy states that "the consumption of food outside take-aways and mobile fast food vans also often results in unacceptably high levels of food waste and litter being deposited onto the street. This can occur to such an extent that it is the cause of public nuisance and cost to residents and the Council in litter and food being removed and cleaned from these pavements and roads".

Paragraph **3.55** of the Policy states that:

The Licensing Authority will therefore seriously consider any relevant

representations made by the Police, responsible authorities or any other interested party such as local residents, to limit the opening hours of fast food take-away premises or any other action that is reasonable and proportionate in relation to the level of the complaint made. This would apply either in the area identified as a cumulative impact or stress area, or anywhere else in the Borough where it can be reasonably established that the late opening hours of such an establishment are attracting or leading to violence, crime and disorder, anti-social behaviour or noise and disturbance to the detriment of the living and working conditions of local persons.

Paragraph **3.56** of the Policy states that:

Where relevant representations have been made, the licensing authority will where necessary impose conditions on the licence, such as a limitation on opening hours or other measures, in order to promote the licensing objectives of the prevention of nuisance or crime and disorder.

Paragraph **3.57** of the Policy states that:

Such measures may include for example the employment of SIA registered door staff for the prevention of crime and disorder, digital CCTV cameras and litter picking around the immediate vicinity of the premises. This list is not exhaustive and other measures may be requested by the Police, responsible authorities or local residents for example.

Diversity of Premises

Paragraph 3.86 of the Council's statement of Licensing Policy states that "Colchester's STAND (Strategy to Tackle All Night-time Disorder) initiative highlighted that too many single-use premises in a confined area, combined with patrons turning out of licensed premises all at the same time, create the potential for alcohol related violence, crime, disorder, anti-social behaviour, noise and disturbance. It therefore recommended a mixed use of venues, providing a variety of entertainment for a wide-ranging age group across a wide choice of opening hours".

Paragraph **3.87** of the Policy states that:

The Licensing Authority believes that genuine diversity would provide buoyancy against changing markets and trends and attract a more diverse range of customers from different age groups who have different interests and attitudes toward the consumption of alcohol. It would also provide the potential for positively changing the ambience of Colchester Town Centre, which in turn may have a positive effect on reducing the fear that residents and visitors alike have of crime and disorder in the town centre, especially in the evenings or late at night.

Paragraph **3.88** of the Policy states that:

It is also to be hoped that such a positive outcome would lead to an increase in the number, age and diversity of visitors to Colchester in the early evening and also late at night, which in turn may have a beneficial effect on reducing alcohol related crime and disorder and therefore also benefit the overall evening and night-time economy scene in Colchester town centre as a whole.

Human Rights Implications

A Licence is to be regarded as the property of the applicant; however their right to the use of that property must be balanced against all other public interests or representations in this matter that the Licensing Sub-Committee may wish to consider reasonable and proportionate in relation to the application that has been submitted and also the representations that have been received against it.

In making their decision as to whether to grant this application, Members of the Licensing Sub-Committee should in particular consider Article 1 of the First Protocol of the Human Rights Act 1998, that individuals are entitled to the peaceful enjoyment of their property and also Article 8 that everyone has the right to respect for his private and family life, his home and his correspondence.

Crime and Disorder Implications

Section 17 of the Crime and Disorder Act 1998 imposes a duty on local authorities when exercising any of their functions to have due regard to the likely effect of the exercise of those functions on, and the need to do all it possibly can to prevent, crime and disorder in its area.

The Guidance issued by the Secretary of State for Culture, Media and Sport under the Licensing Act 2003 underlines the importance of the provisions of Section 17 when considering applications for premises licences under the new licensing legislation and in particular if a local authority is considering having a policy regarding the issue of new licences in areas where there may have been concerns about crime and disorder issues put forward by local residents and or the Police and the Council are considering the cumulative effect of the number of licences in existence in a designated area.

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