

# LICENSING SUB-COMMITTEE HEARINGS

## 30 APRIL 2010

*Present :-* Councillor Barrie Cook (Chairman)  
Councillors Nick Cope  
*Substitute Member :-* Councillor Wyn Foster  
for Councillor Christopher Garnett

### 1. Appointment of Chairman

*RESOLVED* that Councillor Cook be appointed Chairman.

### 2. Declarations of Interest

Councillor Foster declared that she had a slight knowledge of the applicant and premises licence holder Mr Adnan Ademoglu who was neighbour of hers approximately 12 years ago. Councillor Foster further indicated that she did not have any close personal association with him within the meaning of the Members Code of Conduct and had been advised by the Council's Monitoring Officer that in his view she did not have any personal or personal and prejudicial interests to declare and her slight knowledge of the applicant did not prevent or prejudice her from sitting on the Sub-Committee to hear the application.

### 3. Minutes

The minutes of the meeting held on 15 January 2010 were approved as a correct record.

### 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.

#### **a) Fashion Cafe, 2 St Botolph's Street, Colchester**

The Sub-Committee considered an application to vary the premises licence in respect of the Fashion Café, 2 St Botolph's Street, Colchester to extend the hours for the sale of alcohol and the provision of regulated entertainment.

## **In Attendance**

Applicant's representatives: Mr I Adem, Designated Premises Supervisor; Mr Wahiwala, Counsel for the applicant; Mr Hughes, Thompson Smith and Puxon

Officers: Mr Essex, Lawyer; Mr S Harvey, Licensing Manager; Mrs White, Committee Services Officer (Licensing); and Ms Tuthill Committee Services Assistant (Licensing)

Essex Police; Mr N Sykes, Counsel for Essex Police; Inspector P Butcher; PC T Walker; Mr M Robbins, Analyst; Mr M Aitchison, Licensing Officer

Objector: Mrs J Edwards, Colchester Civic Society; Councillor Spyvee

## **The Application**

The Sub-Committee and those present at the Hearing viewed a DVD produced by Essex Police which had been served on all parties but which the applicant's representative indicated they had not been able to view. The hearing was then adjourned to enable the applicant to consider the evidence presented.

Mrs White, Committee Services Officer (Licensing), briefly introduced the application explaining that representations had been received in respect of the application from Essex Police, Colchester Civic Society, Councillor Spyvee and a local resident living in the vicinity of the premises.

Mr Wahiwala sought the assurance of the Sub-Committee that it had read the witness statement provided by Mr Adem and outlined the application to the Sub-Committee. He explained that the premises played a certain type of music and did not carry out drinks promotions because it wanted to attract a certain type of customer. It had always complied with the conditions on its licence and Mr Adem had a good relationship with the Police. In responding to questions from the Sub-Committee and the Counsel for Essex Police, Mr Wahiwala expanded on the operation of the business which he contended had been adversely affected by other establishments operating irresponsible drinks promotions thus necessitating the applicant to seek longer opening hours to attract customers to the premises. In order to counter the potential for migration to the premises after other premises closed the applicant had offered, in his witness statement, to institute a 3am last admissions policy and this would be widely advertised to discourage people trying to gain entry after this time. It was considered by the applicant that in opening longer, this would aid dispersal in the town centre by taking some individuals off the street.

Mr Sykes explained that the principle of objection of Essex Police concerned the potential increase in crime and disorder which was likely to result in the event that the application was granted to permit the sale of alcohol and the provision of regulated entertainment until 04.00. The Police were also concerned at the effect on the prevention of public nuisance. In presenting the case Mr Sykes made reference to the crime statistics for the area which he considered indicated a 107% increase in crime and disorder since the Fashion Café had been granted its last increase in hours. The statistics for March 2010 showed the level of crime at its highest in the last 3 years of

monitoring and the indications for April were that the upward trend would continue. The application had to be considered therefore in the context of an area that was declining and not improving in terms of crime and disorder. Mr Sykes gave details of a number of incidents which he believed could be directly attributed to the premises and which he contended indicated that the premises was not as well operated as had been stated by the applicant's representative.

The Sub-Committee's attention was then drawn to the Section 182 Guidance which accompanied the 2003 Act and also to the Council's own Licensing Policy which provided the framework within which the application was to be judged. Particular regard was given to the Section 182 Guidance and the Council's Licensing Policy in relation to cumulative impact and the presumption of refusal for applications in the stress area unless it could be demonstrated by the applicant that the application would not add to the existing cumulative impact in this area and that there would not be a negative effect on the licensing objectives, particularly in relation to crime and disorder.

In questioning the Police, Mr Wahiwala referred to an informal meeting that had taken place between Mr Adem and Mr Aitchison in which the proposed extension to 04.00 had been discussed. Mr Aitchison had indicated at that time that the application would not be opposed but that conditions may be sought. In response to questioning Mr Aitchison informed the meeting that the Police had changed its view and decided to object to the application after consultation with the Town Centre officers responsible for that area. The Sub-Committee then heard from Inspector Butcher concerning the challenges of policing Queen Street and St Botolph's Street at night and on the negative impact of migration on crime and disorder in the area. It was a contention of the Police that by opening the Fashion Café later more people would be encouraged into the area and also that the late night refreshment venues would be encouraged to open longer thereby contributing to increasing crime and disorder and public nuisance in the area. Inspector Butcher informed the Sub-committee that in his experience the advertisement of the last entry policy would do little to discourage people from trying to gain entry and whilst he accepted that the door staff at the Fashion Café were very good at their job, there would still be problems and a likely increase in crime and disorder.

Councillor Spyvee addressed the Sub-Committee, reiterating the concerns of the Police and expressing his concern that if the application were to be granted there would be an increase in the levels of public nuisance that residents were subjected to and there would also be an impact on residents who lived further afield on routes leading away from home. Mrs Edwards spoke on behalf of the Colchester Civic Society and then on behalf of her husband, Mr J Edwards, who had objected to the application as a local resident but was not well enough to attend the hearing in person. Mrs Edward gave many examples of the anti-social behaviour that residents had to put up with and spoke of the detrimental effect this had had on the community of Priory Street. Mr Wahiwala questioned the proximity of Mrs Edward's house to the Fashion Café and Mr Harvey responded that the Licensing Authority had accepted the representations as relevant representations in the vicinity of the premises within the terms of the Licensing Act 2003 and this had not been challenged by the applicant or his legal representative at the time. Mr Wahiwala asked that the Sub-Committee give consideration to the case of Mead vs Brighton Corporation which he believed to be relevant to this matter.

## **The Decision**

The Sub-Committee considered the implications of Mead vs. Brighton Corporation and having received legal advice on the case considered it not to be of particular relevance to current legislation and to the considerations of the Sub-Committee in this matter.

The Sub-Committee carefully considered the application having regard to the Amended Guidance issued under Section 182 of the Licensing Act 2003 and in particular those paragraphs dealing with cumulative impact and the prevention of crime and disorder. The Sub-Committee also had regard to its own policy, in particular those paragraphs dealing with the prevention of crime and disorder and the prevention of public nuisance and the stress area; the contents of the report, the representations received and the submissions made at the hearing. Having considered all these matters the Sub-Committee determined to refuse to vary the premises licence.

## **Reasons for the Determination**

The Sub-Committee was mindful that its decision must be a necessary and proportionate response aimed at the promotion of the licensing objectives. Having regard to this and notwithstanding the application and the additional measures put forward by the applicant in his witness statement, the Sub-Committee was concerned about the potential effect on the cumulative impact in the stress area and the disturbance to local residents in the vicinity of the premises from the additional hours proposed.

The applicant had not shown that the application would not have a negative impact on the licensing objectives, namely the prevention of crime and disorder and the prevention of public nuisance.

The onus of proof in dealing with such an application within the stress area lay with the applicant; the police evidence suggested an additional potential cumulative impact; and critical objections have been received from interested parties.