

# LICENSING SUB-COMMITTEE HEARINGS

## 13 APRIL 2012

*Present :-* Councillors Barrie Cook and Ann Quarrie  
*Substitute Member :-* Councillor Michael Lilley for Councillor Nick Cope

### 1. Appointment of Chairman

*RESOLVED* that Councillor Cook be appointed Chairman.

### 2. Declarations of Interest

There were no declarations of interest.

### 3. 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.

#### • **Cosways Holiday Park**

The Sub-Committee considered an application to vary the premises licence in respect of Cosways Holiday Park at Fen Lane, East Mersea to permit the supply of alcohol.

#### **In Attendance**

Applicant - Mr J Anderson, Counsel; Ms L Bland, Solicitors, Ellisons; Mr B Lord, owner of Cosways Holiday Park; and Mr C Parsons, Manager of Cosways Holiday Park

Environmental Control – Mr D Martin, Environmental Control Officer

Interested Parties - Councillor Sutton on behalf of East Mersea Parish Council; Mrs Lawford, Fen Farm Caravan Site; Mrs Mason, local resident; Mr & Mrs Morgan, seasonal occupants at Fen Farm; Mrs Cripps, seasonal occupant at Fen Farm; Mr Allinson, seasonal occupant at Fen Farm; Mr Chisnall, seasonal occupant at Fen Farm; Mr & Mrs Moss, seasonal occupants at Fen Farm; Mrs Shelton, seasonal occupants at Fen Farm

Licensing Authority – Ms K Newman, Public Health & Enforcement Service Manager; Mr G O'Shea, Licensing & Enforcement Manager; Mr C Samuel, Legal Services; Mrs S White, Committee Services Officer (Licensing); Ms L Tuthill, Committee Services Assistant, (Licensing)

Mrs White gave a brief summary of the application and it was noted that 57 representations had been made in respect of the application and these included 3 from local residents of East Mersea, one from a local business and one from East Mersea

Parish Council. It also noted that the Police and Environmental Control had made representations in respect of the application and as a result of the representation by the Police, the applicant had amended the application and this amended application formed the basis of the Sub-Committee's consideration. The representation by Environmental Control had not been addressed prior to the hearing.

The validity of the representations submitted by seasonal residents of Fen Farm Caravan and Camping Site was questioned by the applicant's representative who contended that they were not interested parties as defined by the Licensing Act 2003. . In response to questioning, Mr Anderson stated that Article 1 of the First Protocol to the European Convention on Human Rights (ECHR) was not relevant to the question of who was an "interested party." He maintained that the Article did not argue that there should be a broader interpretation; there was particular protection for those living in the vicinity. The Sub-Committee heard evidence from both sides and having retired to consider the matter determined that it was appropriate for representations from seasonal occupiers to be admitted in the proceedings. It would consider such representations and supporting oral submissions as relevant on the grounds that it considered that the occupants of static caravans at the Fen Farm site were living at the site for a proportion of the year. The Sub-Committee was mindful that it should place only appropriate weight on such representations and the Council's legal services representative asked each person addressing the Sub-Committee to make known their period of residency per year on the Fen Farm site.

Counsel for the applicant, Mr Anderson, outlined the application and the changes that had been made to it following the representation by Essex Police. Mr Anderson explained that Cosways was part of a family business which had been operating Waldegraves, a partner site, for three generations. Cosways was acquired three years ago with the intention of offering their customers a more peaceful and tranquil site without the entertainments offered at their other site, Waldegraves, and since its acquisition, Cosways had been run by Mr B Lord. A 2012 brochure was submitted to the Sub-Committee to demonstrate the different characteristics of the two sites. The brochure marketed Cosways as offering customers the opportunity to "relax and unwind in peaceful and tranquil surroundings. Cosways' beautiful walks, views, beach and countryside are a quiet paradise away from the pressures of everyday life" and Mr Lord advised the Sub-Committee that if this was not delivered to customers the business would not succeed.

Mr Anderson referred to the reduction in the scope of the application and to the fact that the representations from interested parties had been made before the application had been amended to restrict outdoor events and the provision of live and recorded music. Photographs of the premises were circulated to the Sub-Committee which showed the internal layout and external appearance and location of the premises. Mr Anderson contended that the Clubhouse was not designed for large scale public entertainment and it was envisaged entertainment would be provided by a solo artist performing to a recorded backing. The extension was sought not with the intention of transforming the nature of the site but to offer increased flexibility in providing amenities and to be able to respond to requests for birthday parties and the like from customers of Cosways. In response to questions Mr Lord commented that in the event that the licence was granted the entertainment would not be any different to that provided over the last three

years as there was neither the space to enable more to be provided nor the customer base to support spending money on bigger entertainments. The sound system in the Clubhouse was no bigger than one that may be used in a domestic residence.

The Chairman sought clarification on the nature and construction of the Clubhouse and was advised that it had been on the site for more than 30 years and that there was no air conditioning in the premises beyond the ability to open the windows and doors. In response to questions concerning the licensing of the field area, Mr Parsons gave details of the welcome party that was held every year for residents of the site and which attracted far more people than the Clubhouse could hold; it was for this reason that permission was sought to licence the field area and there was no intention to hold a music festival at that site. Mr Martin confirmed the position of Environmental Control and commented that following the amendments to the application it had fewer concerns with the outdoor area but in relation to the inside area, there was insufficient information submitted within the application to determine whether the application would lead to an increase in noise nuisance. In order to determine whether the activities would be detrimental to the amenity of the surrounding area because of undue noise emission and unacceptable disturbance it required a report from a competent person in regard to sound insulation against internally generated noise and such a report had not yet been received.

Councillor Sutton addressed the Sub-Committee on behalf of East Mersea Parish Council and in particular sought clarification on whether the applicant intended to have events every day; why it wished to licence the field surrounding the Clubhouse; why it sought to remove the restriction limiting the sale of alcohol to owners/occupiers of the units on the site and their bona fide guests, and the breach of planning consent that had occurred in relation to the shop. Mr Lord responded that the planning breach had been resolved by putting up a barrier between the shop and the reception area and by turning off the shop lighting, in this way the reception area which formed part of the open plan area could remain open whilst the shop was closed. The Sub-Committee also heard matters in relation to the breach of a planning consent for the provision of additional hard standings but it was pointed out by the Chairman that these were matters it was not able to take into consideration when reaching a decision on the application.

The interested parties addressed the Sub-Committee expressing their concerns regarding the application and the potential detrimental impact that it would have on the peace and tranquillity of the locality and on the enjoyment of those using the Fen Farm site which was adjacent to Cosways, and which the majority of seasonal occupants had chosen for its peaceful and rural nature. It was mentioned that noise nuisance from Cosways had increased in the past year. Mrs Mason commented that given the geography of the area noise travelled a considerable distance and she was already able to hear noise from Cosways. This point was reiterated by a number of those who spoke on the application and some specific examples were offered of occasions where noise had clearly been audible emanating from the premises or from people returning to their caravans after an event. Considerable mention was made of the close proximity of Cosways and Fen Farm and the lack of buffering between the two sites. It was noted by the Sub-Committee that a number of caravans on the adjacent Fen Farm site were located closer to the Clubhouse than those on Cosways. The Sub-Committee questioned the applicant about how they would manage any noise issues, disturbance

and/or anti-social behaviour that occurred at the premises, to which the applicant responded that they were unsure.

Mr Chisnall addressed the Sub-Committee and circulated to the meeting a copy of an aerial view of the site showing the close proximity of Cosways and Fen Farm. He and his family spent a considerable period of time per year at Fen Farm and had made considerable investments in purchasing caravans to put on the site. He did not wish to see his and his families enjoyment of the site diminished by the proposed application but felt this would be inevitable given the management practises and operation of Cosways that he had already witnessed. The applicant presented three letters demonstrating how site users would be dealt with in the event that they caused a nuisance although it was noted that the applicant had advised that these had been issued in relation to events at Waldegraves and not Cosways.

Mrs Lawford of Fen Farm Caravan and Camping Site addressed the Sub-Committee on the implications for her family's business in the event that the application was granted. It was the policy of Fen Farm to insist on quiet after 23.00 and also not to permit the use of powered equipment on the site after 12.00 on Sundays in order to preserve the peace and tranquillity of the site and they employed wardens to enforce these rules. In the event that the licence was granted their customers would be adversely affected and their business affected as residents would no longer wish to come to the site. It was again pointed out that the Clubhouse was closer to many of the Fen Farm caravans than its own on the Cosway site.

After these witnesses had given their evidence and been questioned, Mr. Anderson was asked what bearing he considered that Articles 1 and 8 of the First Protocol ECHR had on the application and its consideration. He responded that they did not add anything more or take matters further.

## **The Decision**

*RESOLVED* to permit:-

- In the Clubhouse and the new field site, the sale of alcohol by retail on and off the premises for the following hours-

Mondays to Sundays inclusive from 09.00 to 23.00.

- In the shop area the sale by retail of alcohol on and off the premises for the following hours-

Mondays to Sundays inclusive from 09:00 to 20:00

- The exhibition of films, indoor sporting events, 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 and outdoors for the following hours-

Mondays to Sundays inclusive from 09.00 to 23.00.

Subject to the condition that outdoor events with live music, recorded music and facilities for making music to be limited to five events (which shall last no more than 24 hours and shall not be consecutive) per year, with the Police and Council Licensing Officers being given 21 days notice, in writing, of such an event.

### **Reasons for the determination**

The Sub-Committee considered the guidance issued under section 182 of the Licensing Act 2003, as amended, and its own policy. In arriving at the decision the Sub-Committee considered each point very carefully. It noted the representations, arguments and evidence presented by all parties.

The Sub-Committee gave consideration to the representation of the Parish Council, the local residents, local business and to the seasonal occupants at Fen Farm Caravan Park. The Sub-Committee gave appropriate weight to the representations and in particular, in considering the representations made by seasonal occupants Fen Farm Caravan Park had regard to the requirements of the Act and to the length of occupancy at Fen Farm in an average year, giving the greatest weight to those representations made by individuals resident at the farm for the greater part of the season.

The Sub-Committee had regard to the physical characteristics and geography of the site and in particular the flat landscape and the implications of this for the transmission of sound, and also to the close proximity of the neighbouring caravan site at Fen Farm. The Sub-Committee found that there was evidence from interested parties to suggest that noise travelled across the sites and that the levels had increased since the current owners had acquired the Cosways site. The Sub-Committee also noted the comments of Environmental Control that it was unable to determine whether the Clubhouse was suitable for a late licence as there was no information available on the suitability of the building for entertainment purposes and that it would require a report from a competent person in regard to sound insulation against internally generated noise before comments could be made. The Sub-Committee noted that this had not been addressed by the applicants and that therefore on the balance of probability given the prefabricated design of the Clubhouse, noise levels would be likely to increase to nuisance proportions.

The Sub-Committee was mindful that it must make its decision on the evidence placed before it and therefore concluded that, notwithstanding the amendments to the application it was likely that there would be an increase in noise nuisance from the hours proposed and that to grant the application as applied for was not justified by the application as it had been made as it lacked detail regarding suitable measures to demonstrate that public nuisance would be prevented.

In relation to the sale of alcohol and the concerns raised in a number of the representations, members were mindful that the applicant gave no indication of how noise from late night revellers would be controlled. Again due to the prefabricated structure, the likelihood of outside drinking, anti-social behaviour and the lack of adequate control measures by the applicant it was felt that 23.00 was the limit for alcohol sales especially given the close proximity of Fen Farm to the Clubhouse.

#### **4. Minutes**

The minutes of the meeting held on 24 June 2011 and 2 March 2012 were confirmed as correct records.

#### **5. Close of Meeting**

The meeting closed at 15.00.