

Licensing Sub- Committee Hearings

Grand Jury Room, Town Hall
17 September 2010 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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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.

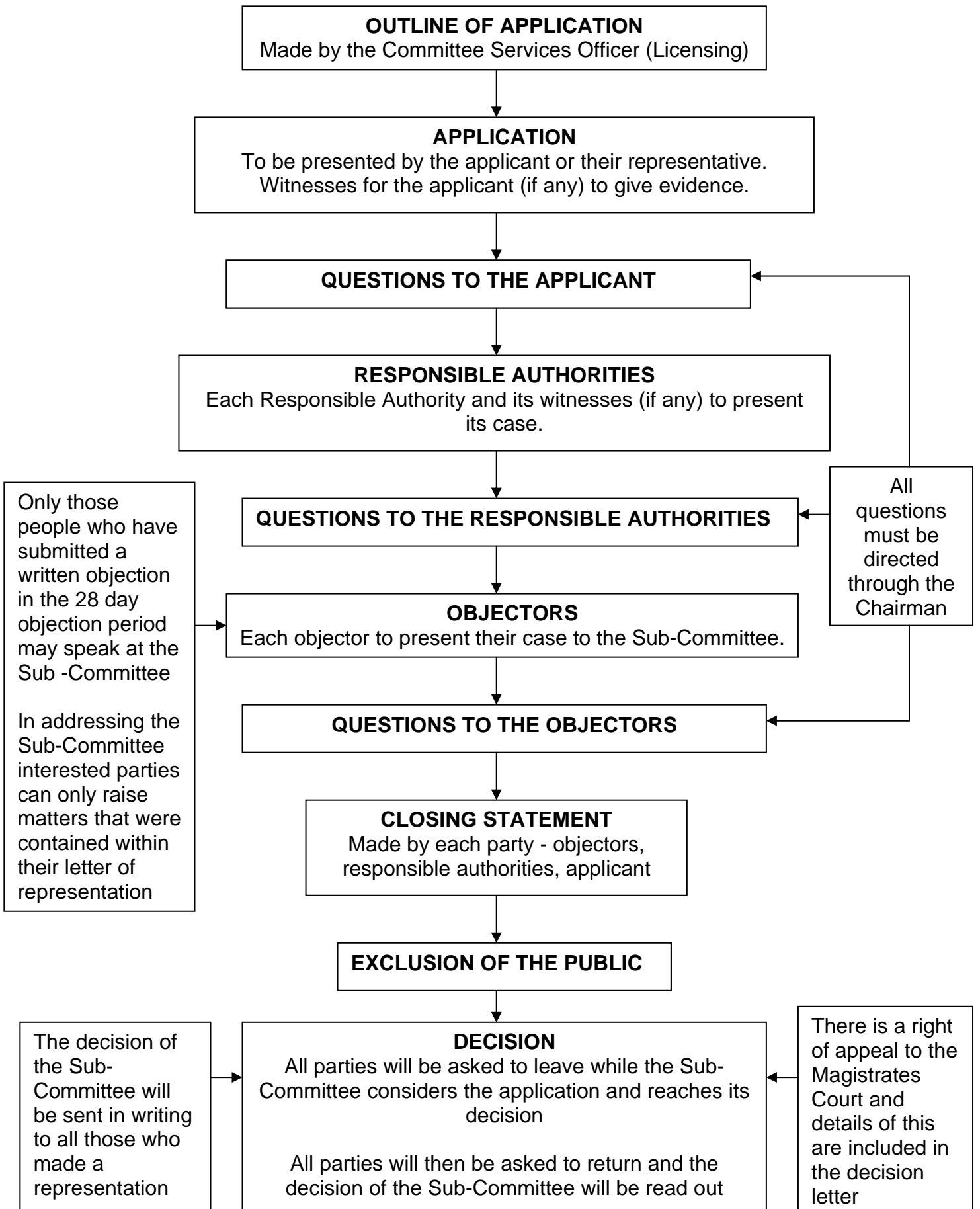
(21) The Chairman will ask the Legal Advisor whether there is anything else to be raised or settled before the proceedings are closed.

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
17 September 2010 at 10:00am**

Members

Councillors Nick Cope, Dave Harris 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 the 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 - 7

To confirm as a correct record the minutes of the meetings held on 30 April and 6 August 2010

5. Applications under the Licensing Act 2003

8 - 20

Wivenhoe Film Theatre,
Phillip Road Community Centre,
Phillip Road,
Wivenhoe,
Colchester,
Essex
CO7 9BA

COLCHESTER BOROUGH COUNCIL

LICENSING SUB-COMMITTEE

30 April 2010

MINUTES OF PROCEEDINGS

At a meeting of the Licensing Sub-Committee held on 30 April 2010 at 10.00 in the Grand Jury Room, Colchester Borough Council, Town Hall, High Street, Colchester

Present:- Councillor Cook
Councillor Cope
Councillor Foster

1. Membership

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. Licensing Applications

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 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.

5. Close of Meeting

The meeting closed at 2.30pm.

Chairman:

COLCHESTER BOROUGH COUNCIL

LICENSING SUB-COMMITTEE

6 August 2010

MINUTES OF PROCEEDINGS

At a meeting of the Licensing Sub-Committee held on 6 August 2010 at 10.00 in the Grand Jury Room, Colchester Borough Council, Town Hall, High Street, Colchester

Present:- Councillor Bouckley
Councillor Cope
Councillor Foster

1. Membership

RESOLVED that Councillor Cope be appointed Chairman.

2. Declarations of Interest

There were no declarations of interest.

3. Minutes

The minutes of the meetings held on 4 June 2010 were approved as a correct record.

4. Licensing Applications

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) Mobile Hot Dog Van, Lay-by fronting 138142 High Street, Colchester

The Sub-Committee considered an application for a premises licence in respect of a Mobile Hot Dog Van to permit the provision of late night refreshment.

In Attendance

Applicant: Mr Gary Mateer

Responsible Authorities: Inspector Paul Butcher and PC Tom Walker (Essex Police), Ms Parkin (Environmental Control)

Interested Parties: Councillor W. Frame and Councillor H. Spyvee (Ward Councillors)

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

Mrs White, Committee Services Officer (Licensing), briefly introduced the application advising that representations had been received from Essex Police, the Dutch Quarter Association, Councillor Frame and Councillor Spyvee. Observations on the application had also been made by Environmental Control.

Mr Mateer presented the application to the Licensing Sub-Committee and explained that he had designed the van so that it could be mobile around the streets of Colchester. The applicant told the Sub-Committee that he had previously approached the Council regarding permissions and was told that he did not require a licence because the van was mobile. In the light of this information he had started to trade in the High Street. It was not until one of Colchester Borough Council's Licensing Enforcement Officers visited the van and asked to see the Premises Licence that Mr Mateer realised his business required a Premises Licence and he made an application for a premises licence. Mr Harvey explained that the relevant legislation and the Council's Licensing Policy both clearly state that an operation such as this would require a licence.

The applicant explained that the business only sold hot dogs and that he intended to operate between the licensable hours of 23.00 and 05.00, but would probably close at 03.30 when most of the passing trade would have stopped. Mr Mateer thought that the location of the van in High Street would provide those in the Town Centre at that time with an alternative place to Queen Street to get food late at night, and would be something different in the town. When asked about the possibility of reducing his hours of operation, Mr Mateer confirmed that he would be prepared to reduce his licensable hours to 03.30.

PC Walker outlined Essex Police's objections to the application and explained that the intended location of the van was already a hot spot area for crime and disorder and from experience considered that its location was likely to be an obstruction. PC Walker explained that people were likely to congregate around it whilst waiting for food, and that fights and vandalism would almost inevitably result. When asked about the possibility of the licensable hours been reduced to 03.30, PC Walker stated that the Police would still object to the application as it believed that the same issues would occur, particularly with nearby premises such as Liquid/Envy closing at about that time. PC Walker was unable to confirm if there had been any reported incidents in relation to the van when it had been in operation without a licence

Ms Parkin who spoke on behalf of Environmental Control voiced its concerns about the number of people who would congregate in the area and create a public nuisance. Ms Parkin also referred to the likely increase in litter in the area, which would be generated by the business, and when questioned, stated that this was already a problem in the area late at night. The applicant advised the Sub-Committee that he was prepared to pick up any of his customers' dropped napkins in the immediate area but that it was not practical for him to pick this litter up from a wider area.

Councillor Frame informed the Sub-Committee that he believed that the business was in the wrong place at the wrong time as the location is already one of the flash points in Castle Ward. Councillor Frame believed that if the application were granted it was likely to cause public nuisance to residents and become a focal point for crime and disorder. Councillor Frame also thought that a closure time of 03.30 would be no better than 05.00 and was concerned that the applicant would not stop trading at 03.30, if there was a queue of potential customers.

Councillor Spyvee then addressed the Sub-Committee and reiterated the concerns of the Police, Environmental Control and Councillor Frame with regards to the potential increase in crime and disorder and public nuisance in the area, should the application be granted. Councillor Spyvee said that he admired Mr Mateer's entrepreneurship but that the applicant was an inexperienced licensee and that he considered the application submitted and in particular the proposals to deal with crime and disorder to be inadequate.

In his closing statement, Mr Mateer informed the Sub-Committee that he had lived in Colchester for 34 years and that he knew what to expect and that he thought that offering food to drunken individuals would be a help and offer them somewhere different to go in the town.

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 refuse the application.

Reasons for the Determination

The Sub-Committee being familiar with the area considered that the application would have a detrimental effect on the achievement of its policy to minimise crime and disorder and public nuisance in the area.

The Sub-Committee had given careful consideration to all the representations and evidence, and was not satisfied that the concerns raised by Essex Police and the interested parties were adequately addressed by the applicants' operating schedule or in his representations made to the Sub-Committee notwithstanding the proposed reduction in the terminal hour to 03.30.

5. Close of Meeting

The meeting closed at 11.20.

Chairman:



Licensing Committee – 17 September 2010	Agenda Item 5
Wivenhoe Film Theatre	FOR GENERAL RELEASE

Premises	Wivenhoe Film Theatre, Phillip Road Community Centre, Phillip Road, Wivenhoe, Colchester, Essex CO7 9BA	Ward: Wivenhoe Quay Stress Area: No Flare Ref: 071601 Author: Simon Harvey
Application	Application for a new premises licence to permit the exhibition of films.	Appendix 1
Street Plan		Appendix 2
Interested Parties		
Local Residents		Appendix 3

New Application for a Premises Licence
<p>To permit:-</p> <ul style="list-style-type: none"> - Provision of exhibition of films for the following hours- 11.00 to 23.00 Mondays to Sundays inclusive - Hours the premises are open to the public for the following hours- 11.00 to 23.30 Mondays to Sundays inclusive

Policy Guidelines – Wivenhoe Film Theatre
<p>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 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</p>

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 5.18 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 5.20 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 5.23 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 5.24 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 **5.27** 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 **5.28** 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 **5.29** 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 received in regard to this licensing objective which has been submitted by a Mr Peter Cook who indicates in his letter that he writes on behalf of the residents of Phillip Road in Wivenhoe. Mr Cook advises the residents believe that the soundtracks played and associated amplification used during the showing of films would cause the emission of unacceptable noise disturbance which will not be contained in the building due to its design and lack of sound proofing.

Mr Cook adds that they also have concerns about the potential noise that may be caused by people leaving the premises such as the slamming of car doors and the revving of engines. It is not made clear in Mr Cook's letter what other residents he writes on behalf of, i.e. names and addresses and there has been nothing else received by the Licensing Authority to confirm these details such as for example a signed petition or letters of support or confirmation.

It is understood by the Licensing manager that the applicant and Mr Cook have previously spoken and have endeavoured to find an acceptable solution or an agreement which will satisfy Mr Cook's concerns and those of the residents he writes on behalf of but unfortunately such a solution could not be found or agreement reached.

E mail correspondence to this effect from Mr Cook is shown as part of appendix 3 attached to this report.

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 **5.33** 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 **5.34** 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 5.36 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 5.37 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 5.38 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 5.39 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.

Areas outside of the Stress Area Policy

Paragraph **3.100** of the Policy states that:

The absence of a stress area policy for a particular area does not prevent any responsible authority or interested party making representations on a new application for the grant or variation of a premises licence on the grounds that the premises will give rise to a negative cumulative impact on one or more of the licensing objectives. However where no relevant representations are received the application must be granted automatically.

Paragraph **3.101** of the Policy states that:

Applications outside of the Stress Area will be judged on their own individual merits, but the Licensing Authority may take into consideration the following:

- (i) Existing levels and concern about crime and disorder or public nuisance, and the impact that the proposed use will have on a locality.**
- (ii) The proximity of residential properties to the proposed use.**

Rural Areas

Paragraph **3.102** of the Council's statement of Licensing Policy states that "within the rural areas of the Borough, there are a number of village halls, community facilities, local pubs and shops that make an important contribution to the social, recreational and cultural life of rural communities and as such are key in sustaining their vibrancy and viability. A number of these benefit from premises licences which allows for the sale of alcohol and the provision of regulated entertainment. There are also a number of shops and pubs that have off-licence facilities".

Paragraph **3.103** of the Council's statement of Licensing Policy states that it "is keen to maintain the provision of active and vibrant rural community facilities, including public houses, village halls, church halls, community centres and village shops and welcomes the provision of additional similar facilities".

Paragraph **3.104** of the Policy states that:

Therefore where reasonable, proportionate or appropriate to do so, the Licensing Authority will endeavour to apply a light touch, risk assessed approach to applications for Village Hall or Community Centres in particular, in order that regulatory conditions are only applied in instances where it is needed to promote one or more of the licensing objectives.

Paragraph **3.105** of the Council's statement of Licensing Policy states that "it is important to realise that with most premises licence applications, it is likely that a balance may have to be struck between the rights of those community or commercial facilities and the customers who wish to enjoy those facilities, with the rights of residents living in the immediate vicinity of such premises to enjoy the peaceful enjoyment of their homes and possessions".

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.

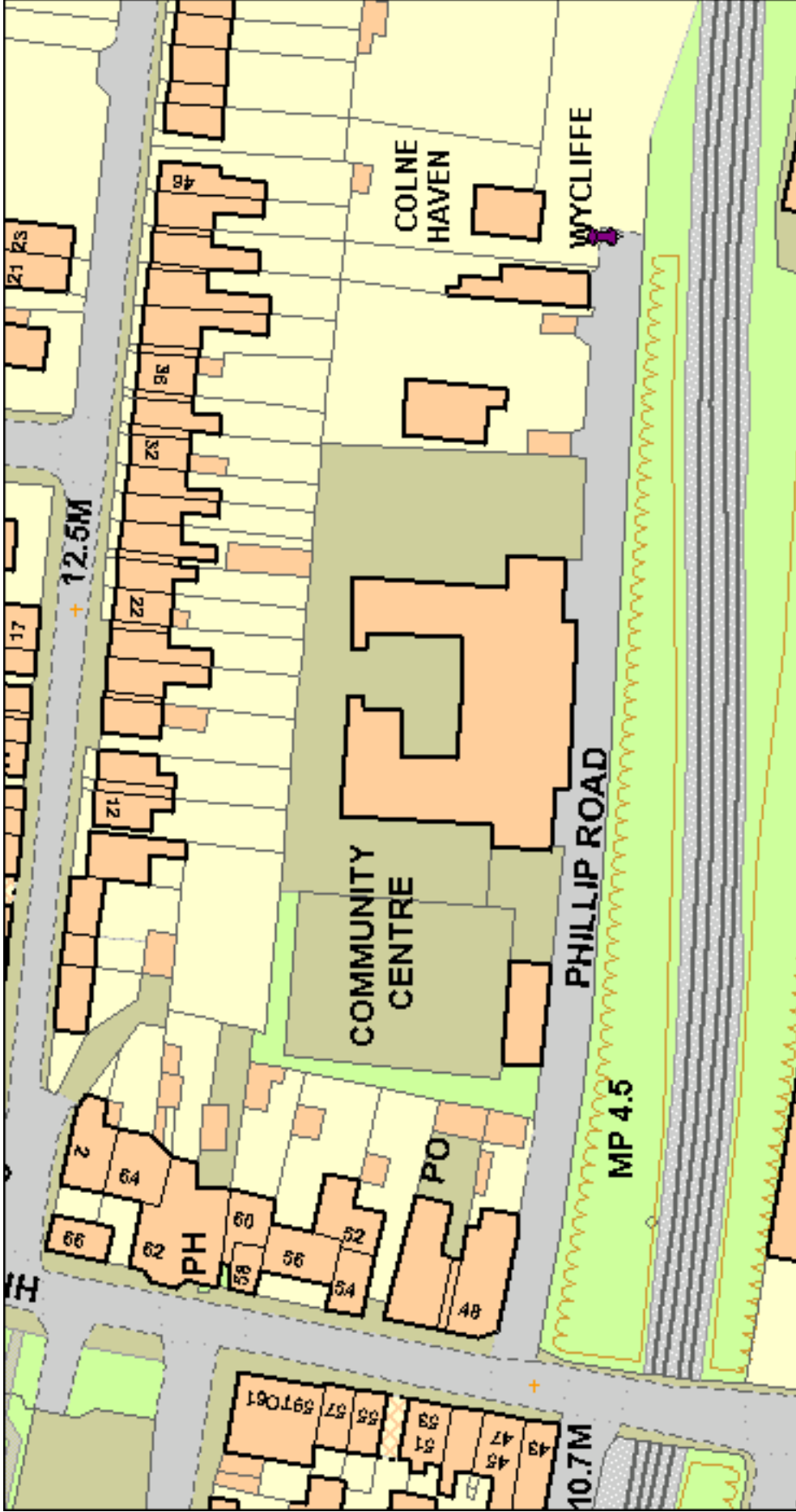
In making their decision as to whether to grant this application, Members of the Licensing Sub-Committee should in particular consider Article 1 of the First Protocol of the Human Rights Act 1998, that individuals are entitled to the peaceful enjoyment of their property and also Article 8 that everyone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

Premises Location Plan



Licence Application Reference: 071601
Premises Name & Address: Wivenhoe Film Theatre Wivenhoe Community Centre Phillip Road Wivenhoe Colchester
Date Produced: 8 September 2010

MAP NOT TO SCALE

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For the Attention of;

The Licensing Team
Colchester Borough Council
PO Box 889
Town Hall
Colchester
Co1 1FL

17th August 2010

Licensing Application:

Ref. No: 071601
From: Wivenhoe Film Theatre
Purpose: To use Wivenhoe Centre, Phillip Road, to show films.

We the residents of Phillip Road Wivenhoe wish to inform you of our serious concerns regarding the above license application.

Noise and disturbance resulting from use

We note that the application covers use of the building from Monday through to Sunday nights 11.00 am to 11.30 pm.

Showing of Films

We understand that it is intended to show films of all types. The sound tracks and associated amplification would cause unacceptable noise disturbance since the building was not designed (sound proofed) for containing this volume of sound.

Car parking

The car park for the "Centre" is right onto the boundary of "Gumtree" in Phillip Road and twelve properties in Queens Road. We deem the level of noise associated with people leaving the "Centre", car doors slamming, engines starting, etc. during the evenings/late at night to be totally unacceptable.

The noise Act 1996, Chapter 37 makes particular reference to the control of this type of noise disturbance taking into account the background sound levels which are low particularly during the evenings/late at night.

Road access

Access to the "Centre's" car park is via a narrow single track non through road. If users of the building were aloud to use the car park this would cause great inconvenience to Phillip Road residents and pose a potential safety risk for emergency service access.

Yours sincerely,

From:
Sent: 31 August 2010 08:35
To: Stephen Swain
Subject: RE: Wivenhoe Film Theatre

Dear Mr. Swain,

Thank you for your email and subsequent telephone conversation. I have spoken to Mike Padmore who has not allayed my fears/concerns regarding using the Wivenhoe Community Centre, Phillip Road as Cinema. I still have concerns re the noise that will be generated, you note from the attached that they will be using amplification equipment borrowed from the University, the build is not sound proofed and ventilation is by open windows. Mike Padmore agrees that cars using Phillip Road will be a problem and says that this will be discouraged – this is not workable.

The group organising this Cinema activity, you see from the attachment from their web site are advertising the first film showing the day after the Licensing Application Hearing! Is not this somewhat presumption on their part?

Please note that I will be attending the hearing on the 17th September.

Regards,

Simon Harvey

From: Saved by Windows Internet Explorer 7

Sent: 31 August 2010 08:06

Subject: Wivenhoe Film Theatre

Wivenhoe F

Main sections:

- Home**
- Up**
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- Colchester**
- Cook's Shipyard**
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- University of Essex**
- Useful Information**
- Useful Web Sites**
- Walks**
- What's On**
- Where to Stay**
- Wivenhoe People**
- Wivenhoe Town Council**



The Wivenhoe Encyclopedia

Wivenhoe Film Theatre

Next phase: Moving Image

We want to tell you about our exciting plans

Reel Appeal continues to search for a long-term venue to call home, but meanwhile our immediate project is to get screenings underway. Moving Image is the name of the new film society we have set up to organise this aspect of the project. The Moving Image programme will not overlap with that of the Film Club at the Nottage - the intention is to make more film available locally rather than to threaten an existing enterprise. We can now share with you our plans to show an autumn season of films in not one but two local venues:

Starting in mid-September, we will be presenting regular Saturday night screenings at the Phillip Road Centre. The first showing will be of the acclaimed 'Sex, Drugs and Rock and Roll' on the 18th September. We will also have occasional Sunday afternoon screenings intended for family viewing.

To enhance the facilities at Phillip Road we have purchased a large, high quality cinema screen and are installing blackout blinds and a portable box office. Initially at Phillip Road we will use digital projectors and a sound system loaned from the University. In due course we will buy

our own projection equipment once we have established our programme of screenings.

In addition we have been given a slot on an experimental basis in the University's Lakeside Theatre which has excellent facilities. At the Lakeside we will be showing films on alternate Monday evenings during the Autumn term, starting on 11 October.

Full details of our programmes and news of developments will be published on our new webpage at www.movingimage.org.uk

Moving Image will be a membership organisation, and Reel Appeal Donors will automatically become members. We intend to keep ticket prices as low as possible consistent with the need to break even on running costs, and in 2010/11 we will be charging £5 for membership and £3 for tickets, or £4 for non-members to include guest membership. Of course our ability to offer regular screenings is dependent on the willingness of volunteers to support us by joining a rota of helpers to sell tickets, set up the hall, project the films, etc, but we hope, given the enthusiasm with which people have welcomed news of our plans, that we will be successful.

Moira Collett
Secretary
Wivenhoe Film Theatre

Last updated:
29 August 2010

This site is maintained by Webmaster Eugene Kraft and Paul Alden (technical).

Regarding the contents of these pages, your attention is drawn to this legal notice

e-mail: licensing.committee@colchester.gov.uk
website: www.colchester.gov.uk