

# LICENSING SUB-COMMITTEE HEARINGS

## 24 JUNE 2011

*Present :-* Councillor Barrie Cook (Chairman)  
Councillors Mary Blandon and Margaret Kimberley

### 1. Appointment of Chairman

*RESOLVED* that Councillor Cook be appointed Chairman.

### 2. Declarations of Interest

There were no declarations of interest.

### 3. Minutes

The minutes of the meeting held on 20 May 2011 were noted and confirmed as a correct record.

### 4. 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.

#### • **Tin Pan Alley, 7 Queen Street, Colchester, Essex**

The Sub-Committee considered an application for a variation of a premises licence in respect of Tin Pan Alley to extend the hours for the supply of alcohol on the premises, late night refreshment indoors and hours the premises were open to the public.

#### **In Attendance:**

Applicant: Mr West, Agent for the Applicant, Mr B. Archell, co-owner of the premises and Mr B. Howard, witness and co-founder of 'Keep Colchester Cool' and Director of 'Colchester Free Festival 2010'.

Officers: Mr Daines, Protective Services Manager; Mr Samuels, Legal Services; Ms Tuthill, Committee Services Assistant (Licensing); Mrs White, Committee Services Officer (Licensing)

Responsible Authority: Ms Silkstone, Environmental Control

Interested Party: Mrs Edwards, Colchester Civic Society

Mrs White, Committee Services Officer (Licensing), briefly introduced the application advising that valid representations had been received from Environmental Control and Colchester Civic Society in relation to the application.

After confirming that the additional evidence submitted by the applicant prior to the hearing had been received and accepted by the Chairman, Mr West introduced his client's application. Mr West advised the Sub-Committee that the applicant was only seeking an extension to their hours for the sale of alcohol and opening and that they were not applying to extend any of their regulated entertainment hours. The application had been submitted for purely financial reasons and the applicants hoped that if they could increase their trading hours it would enable them to compete with other nearby licensed premises which had later hours. Mr West explained that a considerable amount of money had been invested in the premises to create a small, niche music bar which he believed had enhanced the musical diversity of the town. Since the premises had been operated by the current owners they had not been made aware of any complaints from the responsible authorities or interested parties. The premises had operated the extended hours, that were now the subject of the application, by using its allocation of Temporary Event Notices and there had been no complaints in this period. It was noted that the premises had used its yearly quota of Temporary Event Notices and therefore now needed to vary the licence to enable it to continue to operate the extended hours.

Mr Howard then spoke as a witness for the applicant and commented that he believed the premises was an asset to Colchester's music scene, that it should be supported and that the owners should be applauded for their investment. When asked by the Chairman as to what type of music he thought was predominantly played at the premises, Mr Howard confirmed that it was Jazz and Blues.

In response to questioning from the Sub-Committee Mr West confirmed that the premises attracted older customers than those usually going to pubs and clubs and that when the regulated entertainment finished it was anticipated that customers would remain on the premises to drink and talk and that background music would be played in this period. It was considered that this would assist in reducing the cumulative impact in the stress area by reducing migration between premises. Mr Archell commented that customers were currently leaving the premises at closing time and going on to other nearby premises, particularly the V Bar in the High Street.

The Environmental Control Manager, Ms Silkstone then addressed the Sub-Committee and stated that there had been a long history of complaints from the premises and therefore Environmental Control was very familiar with the building and its fabric. Ms Silkstone confirmed that the Service had not received any complaints from the public since the premises opened under its current management but that as a Service it had a responsibility to protect the public and not just respond to complaints. Environmental Control had been monitoring the premises via the Council's Weekend Noise Team, of which Ms Silkstone was one of the lead officers. Ms Silkstone presented to the Sub-Committee details of dates and times, namely one in April, two in May and three in June this year, when she and/or members of the Noise Team had witnessed outbreaks of noise from the premises and breaches of the licence conditions. The breaches of conditions included the front door and windows being left open when live music was being played; no apparent door staff; people drinking outside the premises after 21.00; and music and singers been audible outside the premises. On 18 June 2011 at 22.00 the noise emanating from the premises, which had been witnessed, had been audible at a level which was considered likely to cause a nuisance to residents living in

properties in the High Street. On this occasion, the fire door was shut which suggested that there were sound insulation problems with the fabric of the building. This noise nuisance should have been audible to the person conducting sound checks at the perimeter of the premises and Ms Silkstone raised her doubts therefore as to whether these checks, listed in the premises' Noise Issue Management Policy and a condition on the licence, were taking place.

In response to Mr West's questioning Ms Silkstone advised the Sub-Committee that she had never known there to be any door staff at the premises. On the occasions when the Noise Team had witnessed and had concerns about the noise emanating from the premises or other breaches of conditions and had tried to speak to a member of staff about the problem at the time, they had been unable to do so due to the absence of door staff. Further entry to the premises had not been attempted due to the number of patrons in the premises. Ms Silkstone advised the Sub-Committee that she would be writing to the applicant regarding the latest and most concerning nuisance on the 18 June 2011.

Mr West questioned Ms Silkstone about the content of her colleague's representation which he believed to be repetitious, speculative and irrelevant to the current management. Ms Silkstone responded that whilst it may in part refer to the history of the premises there was recent evidence of noise nuisance and breaches of conditions which had occurred since the variation to permit live music had been granted in December 2010. The most recent breaches of conditions had been witnessed six days before the Hearing. Ms Silkstone commented that she did not consider paragraph one of the objection to be speculative because the Service received more complaints in the summer months. Ms Silkstone confirmed that she had personally witnessed the noise nuisance on 30 April 2011 when a live band was playing and doors and windows had been open and stated that Environmental Control had records of all these incidences that were taken at the time they happened. Mr West commented that had his client known about the noise problems, these could have been addressed. Mr Daines confirmed that he had witnessed doors and windows being left open and expressed doubts as to whether the internal door return was working as he had seen the inner door open. Mr West explained that doors and windows had been left open because there was currently no air-conditioning at the premises although consent for this was being sought it was a lengthy process due to the nature of the building. Mr Archell expressed his concern at the length of time the Planning department were taking concerning this matter.

Mr Daines informed the Sub-Committee that it was not the Council's responsibility to notify licence holders, including the management of Tin Pan Alley, when the terms of their licence were being breached. It was the responsibility of the licence holder to ensure that the premises was operated in such a way as to ensure that the terms of the licence including all the conditions were adhered to.

The Chairman asked Mr Archell how he intended to deal with the outside drinking problem, to which he admitted that it was a management problem. The premises had one member of door staff and they only monitored the inside of the premises. Mr Daines, Protective Services Manager informed Members that as part of the Council's

Weekend Noise Team, he had visited the premises and noted an absence of door staff.

Mrs Edwards then spoke on behalf of the Colchester Civic Society and gave some background history in relation to the premises which could not be considered by the Sub-Committee relating as it did to the previous owners and their management issues at the premises. Mrs Edwards then referred to paragraph three of the Civic Society's representation and confirmed that the evening noise problems which had been witnessed by and concerned members of the Society were not just related to music but also came from patrons congregating on the narrow pavement outside the bar and talking, smoking and drinking and that these issues had been raised by members during a meeting held in May 2011. Ms Edwards informed the Sub-Committee that the issue of customers spilling out of the premises onto the pavement was a new issue which had begun since the premises had become 'Tin Pan Alley' at the end of last year.

The Council's legal representative, Mr Samuel, referred to page 5 of the additional evidence submitted by the applicant and confirmed that full details of the Council's Stress Area were contained in the Council's Licensing Policy which had been available on the Council's website since its implementation.

### **The Decision**

*RESOLVED* that the application to vary the premises licence for Tin Pan Alley, 7 Queen Street, Colchester be refused.

### **Considerations**

In arriving at its decision the Sub-Committee considered each point very carefully. It noted the representations, arguments and evidence presented by all parties including the applicant and the interested parties under the Licensing Act 2003.

The Sub-Committee considered the guidance issued under section 182 of the Licensing Act 2003 as amended. Consideration was also given to its own policy and in particular to the guidance on applications made for premises in the stress area. This guidance was set out in the report.

The Sub-Committee was mindful that its decision must be proportionate and based on the four licensing objectives.

The Sub-Committee noted that a representation had been received from Environmental Control opposing the application on the grounds that if granted the application would undermine the Licensing Objective of the Prevention of Public Nuisance. Ms Silkstone, the Environmental Control Manager was in attendance to present the case, but the Case Officer, Mr Martin was not.

A relevant representation had also been received from Colchester Civic Society and Mrs Edwards attended the hearing on its behalf and addressed the Sub-Committee. Members disregarded all references to the history of the premises prior to the current management.

These representations were not considered by the members of the Sub-Committee to

be speculative or repetitious, as there was recent evidence to support the representations.

It was noted that Mr Douglas Archell, the Licence Holder, Designated Premises Supervisor and one of the managers of the premises was not in attendance.

Additional information had been submitted by the applicant in advance of the hearing to support their application. A list of the dates and times of the 15 Temporary Event Notices was circulated to all those present following the consent of the Chairman.

The Sub-Committee noted the concerns raised in the evidence bundle supplied by the applicant concerning their awareness of the location of the premises in the Stress Area but found that such a matter was the responsibility of the purchaser and was a matter outside the remit of the Sub-Committee. It was also noted that full details of the Stress Area have been included in the Council's Licensing Policy, which has been available to the public and on the Council's own website since its introduction.

### **Reasons for the Determination**

Notwithstanding the application and the additional measures and conditions offered by the applicant, the Sub-Committee determined to refuse the application, on the grounds that if granted the application would undermine the licensing objective of the prevention of public nuisance.

The Sub-Committee found that there had been persistent breaches of the current premises licence conditions which had been granted in December 2010 when the licence had been varied to include the provision of regulated entertainment including live music. The breaches of the conditions had been witnessed on a number of occasions by members of the Council's Noise Team. The Sub-Committee had regard to the conditions on the licence including those in the Noise Issues Management Policy which had been offered by the applicant at the last hearing to deal with potential noise breakout from the premises and to mitigate any potential noise nuisance. The Sub-Committee accepted Environmental Control's evidence that there had been breaches of conditions including outside drinking after 21.00 and that the doors and windows had been open during the playing of live music. The Sub-Committee felt that these non-compliances were likely to add to the cumulative negative impact on the Stress Area.

The Sub-Committee felt that the current problems were not being dealt with adequately by current management controls and that to allow later opening was not justified by the application as it had been made.

The Sub-Committee had regard to the potential disturbance to local residents. The current and first-hand evidence presented by Mrs J Edwards on behalf of Colchester Civic Society confirmed the breaches of conditions witnessed by the Council's Noise Team.

## **5. Close of Meeting**

The meeting closed at 13.30.