

LICENSING SUB-COMMITTEE HEARINGS

29 MAY 2009

Present :- Councillor Barrie Cook (Chairman)
Councillors Christopher Garnett and Ann Quarrie

1. Membership

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.

4. The Cherry Tree, Mersea Road, Colchester

The Sub-Committee considered an application to vary the premises licence in respect of The Cherry Tree, Mersea Road, Colchester to permit-

- Extension of hours for the sale of alcohol
- Extension of opening hours
- Provision of live music, recorded music, performances of dance, provision of facilities for dancing and making music indoors

In Attendance

Premises Licence Holder: Ms Crosby and Mr Stellan

Responsible Authority: Ms L Newman, Environmental Control

Officers: Mr Essex, Lawyer and Mr Harvey, Licensing Manager

Residents: Councillor T Sutton on behalf of Mrs Keating, local resident

The Application

Mrs White, Committee Services Officer (Licensing), briefly introduced the application explaining that representations opposing an extension to the

premises licence had been made by Environmental Control and by three local residents.

Ms Crosby addressed the Sub-Committee explaining that she wished to extend the licence to assist the business in holding weddings and other similar functions. 70% of the business turnover was from food and therefore it was not her intention to have music all the time. In response to questions, Ms Crosby explained that the extension on a Wednesday was sought to enable karaoke to take place. She also identified the position in the premises where the music would take place and said that she had had sound proofing made to put up at the windows to block the noise. It was her contention that there was no noise nuisance from the garden. Ms Crosby did not consider that the events she held required door staff and as the premises was normally well staffed door staff were unnecessary and were also expensive to provide.

Ms Newman from Environmental Control addressed the Sub-Committee on the noise nuisance complaints that had been received in respect of the premises. The complaints concerned nuisance from loud music and noise from the smoking area some reports concerned nuisance occurring as late as 02.00. The noise had been witnessed by an officer from Environmental Control. The first complaint had been made on 17 February 2009 with the most recent complaint being made at the beginning of May. In response to the first complaint a letter had been sent to Ms Crosby informing her of the complaint and of the process involved in noise complaints. No response had been received from Ms Crosby. In response Ms Crosby said that she had stopped people using the garden and had moved the smoking area to the front. She confirmed that she was happy to work with everyone to address the problems and was happy to accept the conditions sought by Environmental Control.

Councillor Sutton attended the Sub-Committee and addressed the Sub-Committee on behalf of Mrs Keating, a local resident who had submitted an objection to the application. Mrs Keating had lived in the locality for 10 years and had already contacted Environmental Control regarding the noise nuisance emanating from the premises. The application sought to licence activities that were already being carried out at the premises either without a licence or by way of temporary event notices. These activities were already causing problems and nuisance to local residents. Mrs Keating had on occasions telephoned the premises to ask them to turn the noise down and had not been treated with respect. The last incident had occurred the previous weekend. Reference was also made to the fact that patrons had been seen in the premises after hours.

Mr Harvey, the Licensing Manager, clarified the position with regard to the provision of late night refreshment which as it had not been included on the licence could not be provided after 23.00. He also stressed the importance of

role of the DPS and their responsibility for the day to day management of the premises and the responsibility that the DPS has in controlling the licensable activities at the premises. Ms Crosby acknowledged that she was aware of these responsibilities.

The Decision

The Sub-Committee, having carefully considered the application and having regard to the relevant parts of the Section 182 Guidance, the Council's Licensing Policy, the contents of the report, the representations received and the submissions made at the hearing, resolved to vary the licence to permit the following-

- Supply of alcohol on and off the premises for the following hours-

Friday and Saturday – 10.00 to 00.00

Sunday – 12.00 to 23.30

- Provision of facilities for making music indoors-

Wednesday – 12.00 to 23.00

Friday and Saturday – 12.00 to 23.30

- Provision of live music, recorded music, performances of dance, provision of facilities for dancing indoors-

Friday and Saturday – 12.00 to 00.00

- The premises to be open for the following hours-

Friday and Saturday – 10.00 to 00.30

Sunday – 10.00 to 00.00

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 and in particular that of the prevention of public nuisance.

The Sub-Committee was concerned at the likely problem of noise nuisance which may arise from the use of the premises however the Sub-Committee felt that when weighed against the evidence presented by the interested parties, some of which was not within the remit of the Sub-Committee, it preferred the evidence of the applicant and that these concerns could be successfully addressed by varying the proposed hours as set out and by limiting the

regulated entertainment permitted. In addition the imposition of the conditions as set out together with those offered in the operating schedule would mitigate any potential increase in noise nuisance that may occur as a result of the grant of the licence.

The Sub-Committee felt that the case made by local residents in respect of the likely noise nuisance as a result of the application was not proved sufficiently to justify the refusal of the application but did justify the imposition of the conditions sought by Environmental Control to control the noise nuisance emanating from the premises.

Conditions imposed by the Sub-Committee at the Hearing

The Sub-Committee considered that the imposition of the following conditions was necessary and proportionate in order to promote the licensing objective of the prevention of public nuisance-

- All external doors/windows must be kept closed, other than for access and egress, in all rooms when events involving amplified sound are taking place.

Note to applicant: mechanical ventilation or air conditioning may be required in warm weather.

- A noise limiting device shall be installed, fitted and maintained in such a manner as to control all sources of live and amplified music at the premises. The noise limiting device shall be connected to all music and public address equipment and all available mains power sockets within the area of the stage/music equipment. Once set such a device should be inaccessible to any person other than the licensee. Levels to be set in consultation with the Council's Environmental Control Team.

Note to applicant: The use of noise limiters does not necessarily solve or prevent noise nuisance. To be wholly effective they must be used in conjunction with other measures and structural attenuation, and need regular calibration/checking by the owner or operator. Maintenance records must be kept for 12 months.

- Amplified sound from the licensed premises including a designated smoking area shall not be audible at the boundary of any noise sensitive premises.
- The licence holder or their representative shall conduct regular assessments of the noise coming from the premises on every occasion the premises including the designated smoking area on every occasion the premises is used for regulated entertainment and shall take steps to reduce the level of noise where it is likely to cause a disturbance to local residents. A written

record shall be made of these checks in a log book kept for that purpose and shall include, the time and date of the checks, the person making them and the results including any remedial action.

- Clear and prominent notices shall be displayed within the car park requesting that the public respect the needs of local residents and to leave the premises and the area quietly.
- A member of staff to supervise the smoking area.
- A member of staff to supervise the car park area at closing time to encourage patrons to leave the premises quietly.
- No bottles or glasses to be permitted in the smoking area 30 minutes before closing.
- No bottles to be emptied outside between 00.00 and 08.00.

Conditions offered by the Applicant on the Operating Schedule

- Aim to sound proof all doors and windows.
- Stop people from smoking outside.
- Plenty of bar staff to supervise.
- Only serve people over the age of 18.
- Check ID on a regular basis.
- Refuse to serve anybody over intoxicated.
- Door staff as required.
- The licence is required for the facility of karaoke and disco not on a regular basis but when people book mainly private functions.
- At the end of the evening ask people to leave quietly and respect the neighbours.
- Place notices in the pub to ask people to leave quietly.
- No children allowed in the pub after 20.00.

Mandatory Conditions

Mandatory conditions where licence authorises supply of alcohol

1. No sale of alcohol may be made under the premises licence when there is no designated premises supervisor in the respect of the premises licence.
2. No sale/supply of alcohol shall be made when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.
3. Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

Mandatory condition: door supervision

Where a premises licence includes a condition that at specified times one or more individuals must be at the premises to carry out a security activity, the licence must include a condition that each such individual must be licensed by the Security Industry Authority.

5. Close of Meeting

The meeting closed at 12.33.