

MINUTES OF THE PREMISES/PERSONAL LICENCES SUB-COMMITTEE 'A'**HELD ON 30 OCTOBER 2014 AT 10.00 A.M. IN THE COUNCIL CHAMBER, WEELEY**

- Present:** Councillors Colbourne (Chairman), Casey and Powell
- Stand-by Member:** Councillor Mitchell
- Also Present:** Councillors D C Skeels and M J D Skeels
- In Attendance:** Environmental Services Manager (John Fox), Licensing Manager (Simon Harvey), Solicitor (Linda Trembath) and Senior Democratic Services Officer (Ian Ford)

6. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were none.

7. MINUTES

The minutes of the meeting of the Sub-Committee held on 12 May 2014 were approved as a correct record and signed by the Chairman.

8. DECLARATIONS OF INTEREST

There were none.

9. LICENSING ACT 2003 – APPLICATION NO: 14/00548/PREMVA - APPLICATION FOR THE VARIATION OF A PREMISES LICENCE – RAJ PAVILION, 33 TOWER STREET, BRIGHTLINGSEA

The Chairman welcomed all those persons present to the meeting, introduced the Sub-Committee members, invited the applicant, the objectors and the representative of a responsible authority present to introduce themselves, informed everyone present of the procedures to be followed in the event of a fire or other emergency and reminded everyone present that the Sub-Committee could only make its decision under the four licensing objectives of the Licensing Act 2003.

The Sub-Committee had before it for its consideration, as set out in item A.1 of the Report of the Corporate Director (Public Experience), an application that had been submitted by Mr Jabedur Rahman, for the variation of the Premises Licence held in respect of the above premises, which was described in the application as a Bangladeshi restaurant.

The Council's Licensing Manager (Simon Harvey) briefed the Sub-Committee on the application being considered, summarised the salient points of the application, principally that it sought permission to allow the provision of regulated entertainment including live music, recorded music, performance of dance, dancing and films from 17.30 to 23.30 hours. He reminded Members that the premises already had permission for the on and off sale of alcohol Monday to Saturday 10.00 hours to Midnight and Sundays from Noon to Midnight and Late Night Refreshment until Midnight on Monday to Saturday and 23.30 hours on Sundays.

He also advised the Sub-Committee that eleven letters of representation against the application had been received from local residents on the grounds of public nuisance. The Licensing Manager felt that it would be reasonable and proportionate to sum up that all eleven letters of representation from residents expressed concerns about the likely effect of noise from music and customers late at night in what was a residential area. He also

stated that a number of those residents had offered an opinion that the premises was not sound proofed to prevent the noise escape that was likely to occur from live and recorded music being provided at the restaurant.

The Sub-Committee was aware from the Officers' report that other matters such as a lack of customer parking and the exterior hygiene of the premises had also been raised in residents' representations, but that they could consider only those matters that directly related to any likely negative or positive effect on the four Licensing Objectives. A lack of customer parking, for example, could not be considered under the Licensing Act 2003.

Members were further informed by the Licensing Manager that Essex Police had advised that it had no objection to the application.

However, Mr Harvey advised the Sub-Committee that the Council's Pollution and Environmental Control section had submitted a representation against the application and informed Members that Mr A Rutson-Edwards, Environmental Protection Officer was present at the hearing to explain that representation and to answer any questions that that Members, the applicant or any other interested parties had in regard to that representation. The full text of the representation submitted by Mr Rutson-Edwards was contained in the Officers' report and read as follows:

"1. The premises is situated in a high density residential area of predominantly terraced properties and the Raj Pavilion itself does not appear to be constructed to afford any suitable attenuation of amplified music. The main construction appears to be of half brick thickness walls with large single glazed windows to the front of the property and only a single door allowing access and egress to the area that the music and performances proposed are to be held. When I visited the premises the main method of ventilation appeared to be by having the kitchen windows opened, this would also allow an increased level in noise breakout from the building.

2. The applicants proposed operating schedule does not offer any proposed levels of amplified music within the building or provide any measures as to how noise emanating from the premises will be controlled.

In addition, the Pollution and Environmental Control section had also advised that:

"There appears to be no consideration in the application that there is a likelihood of noise nuisance being caused by the proposed activities or how it will be mitigated, so as not to cause unreasonable disturbance to local residents. The applicant has applied for a terminal hour of 23.30 hours for regulated entertainment seven days a week which includes live and recorded music and which is likely to have a negative effect on the residential amenity and quality of life for residents, including disruption to their sleep on weeknights and Sundays. Many residents will undoubtedly be working the following day and disturbance at these times in particular is likely to cause noise nuisance and disruption."

The Sub-Committee was further informed by Mr Harvey that a letter of representation had also been received from Brightlingsea Town Council and referred to the written Officers' report in which it was stated that the Town Clerk, on behalf of the Town Council, had advised that it had no objection to light music being played in the premises, but did not agree to the inclusion of dancing. The Town Council had not provided any detail as to what it felt constituted light music, for example, whether it referred to volume or content.

For the information of the Sub-Committee and all interested parties to the application it was reported that a late representation had been received from Essex County Council's Safeguarding & Family Operations Service. The Safeguarding and Family Operations Service had been advised that the Licensing Authority could not accept its representation

as it had been received outside of the 28 day representation period permitted under the Licensing Act 2003.

The Licensing Manager also drew the Sub-Committee's attention to the relevant parts of the Council's Statement of Licensing Policy and Home Office Section 182 Guidance in respect of the application which were set out in the Officers' written report.

That report also detailed for the information of the Sub-Committee and all interested parties to the application that a late representation had been received from Essex County Council's Safeguarding & Family Operations Service. The Safeguarding and Family Operations Service had been advised that the Licensing Authority could not accept its representation as it had been received outside of the 28 day representation period permitted under the Licensing Act 2003.

Mr Rahman, the applicant, spoke in support of his application with opening remarks, referring to the application. In respect of the Licensing Objective for the Promotion of Public Safety he stated that there was an escape plan in place in the event of a fire. In respect of the Licensing Objective for the Prevention of Public Nuisance he stated that if customers got too noisy then they were asked to quieten down. He further stated that the company had been operating from the premises since 1998 and no complaints about noise had ever been received. He also gave assurances that he would take all possible steps to alleviate any problem noise or disturbance. In respect of the objectors' concerns about parking Mr Rahman stated that he did not believe that it was an issue as the majority of his customers arrived on foot. In respect of the Licensing Objective for the Protection of Children from Harm Mr Rahman stated that children would not be allowed on the premises when live music was being provided.

Mr Rahman went on to say that he had applied for the variation following a successful trial of having a professional singer at the premises which had brought in extra business and had produced positive feedback from his customers. He also planned to use local performers.

Mr Richard Verrier, an objector, asked questions of the Mr Rahman and Licensing Manager in respect of: (1) whether the public notice on the premises had met statutory requirements and why was it on blue paper as that made it hard to read. He also asked why residents had not been individually notified of the application and alluded to the fact that that he was aware that residents had been notified of applications in the past.

The Licensing Manager responded along the following lines: (1) Yes - the public notice on the premises and in the newspaper had met statutory requirements and he was entirely satisfied. He further advised that the Public Notice was on blue because that was what the regulations that accompanied the Licensing Act 2003 required and that once again the applicant had complied. He also advised Mr Verrier and the hearing not to confuse the requirements and regulations under the Licensing Act 2003 with those required under Planning legislation. Planning legislation did require residents within a certain radius to be notified of Planning Applications, but the Licensing Act certainly did not require this for Premises Licence applications.

Mr Rahman responded to those questions along the following lines: (1) He had followed the advice given by the Licensing Authority to submit the application that he wanted to so that he did not have to submit Temporary Event Notices every time the restaurant put on entertainment.

Mr Richard Verrier then went on to ask questions of Mr Rahman only in respect of: (2) if the licence was granted, where would the extra customers park given the already existing parking problems in that locality; (3) how would Mr Rahman solve the problem of extra noise nuisance from the extra customers and the live music given previous occasions of unacceptable noise from the premises from staff and the recent "Elvis" themed live music

nights and also given that the premises was not sound-proofed and therefore the music had reverberated through Mrs Moyes' shared wall and through his double-glazed windows; (4) how many times had Essex Police visited the premises in response to a disturbance; (5) was Mr Rahman trying to turn the premises into a night club and, if not, why had Mr Rahman applied for Dancing/Performance of Dance and Films; (6) if there was an increase in the volume of trade what facilities were in place to take away customers given the lack of taxis in Brightlingsea and (7) was it Mr Rahman's intention to hire an acoustic engineer to install sound-proofing at the premises given the fact that Ms Moy's property was physically attached to the premises.

Mr Rahman replied to those questions along the following lines: (2) He did not feel that parking was an issue as the majority of customers walked to the premises or parked for a short time only in order to collect a takeaway and there was sufficient parking available in neighbouring streets and in nearby public car parks; (3) Doors were kept shut when live music was being performed and the singer that performed at the premises was experienced and used equipment suitable to the premises thereby keeping sound levels at a low level; (4) Never. Essex Police had not attended the premises for any disturbance either noise or fight related; (5) No – there was no intention to turn the premises into a nightclub. He had applied for Dancing/Performance of Dancing and Films as he was unsure of his future requirements and he wanted to avoid having to make further licence variation applications. At the moment there was no space within the premises to permit dancing to take place; (6) This was not an issue as customers rarely requested staff to arrange a taxi and (7) He had no plans to do so at the moment. The closure of doors and windows prevented noise from escaping and, in addition, Mrs Moyes' property was separated from his premises and not physically connected.

Ms Moy, an objector, then asked questions of Mr Rahman in respect of: (1) whether this application meant live music seven nights a week and (2) did the live music have to be amplified.

Mr Rahman replied to those questions along the following lines: (1) No – the live music events would be held infrequently and (2) the singer used a microphone as it best suited his style of performance.

Mr A Rutson-Edwards, on behalf of the Council's Pollution and Environmental Control section who, as a Responsible Authority, were objecting to the application, then asked questions of Mr Rahman in respect of: (1) did he intend to have a professionally conducted noise survey undertaken at the premises; (2) did he intend to keep the kitchen windows closed as this allowed noise to escape and also did he intend to install double glazing; (3) could he confirm that he did not intend to show films or permit dancing at the premises and (4) had he considered installing a noise limiter system which could be set at a suitable level by Environmental Services and used by all performers at the premises.

Mr Rahman replied to those questions along the following lines: (1) he was open to the idea if it was felt to be a requirement of his licence; (2) the kitchen window was only opened occasionally and he did not feel that he needed to install double glazing at the moment; (3) Yes – he did not intend to show films or permit dancing at present due to a lack of sufficient floor space within the premises and (4) No – he paid the singer to bring his own equipment and he did not feel there was a problem at present.

Councillor Powell then asked questions of Mr Rahman in respect of: (1) how long had Mr Rahman been at the premises; (2) how many customers could the premises hold; (3) was there any air conditioning in the premises; (4) did Mr Rahman intend to put on regulated entertainment every night; (5) would he consider having a noise limiter installed; (6) was the hall adjacent to the premises used regularly and (7) how many staff were employed at the premises.

Mr Rahman replied to those questions along the following lines: (1) the company had owned the premises since 1998, he had been there ten years and had run the premises for the last 5/6 years; (2) 56; (3) Yes – at the front and the back of the premises; (4) He had no plan for regulated entertainment every night as he believed that his customers would soon lose interest; he merely wanted flexibility as to which nights he could have and avoid the need to submit further applications to vary his licence; (5) Yes maybe if he was required to do but he was concerned about the cost implications; (6) [Mr Verrier answered this question and informed the Sub-Committee that the hall was a Masonic Hall that was used daily for eight months a year and that it had its own car park] and (7) Six.

Councillor Casey asked Mr Rahman if he could confirm that staff had received appropriate training in the event of a fire emergency and Mr Rahman confirmed that this was the case.

Councillor Colbourne then asked questions of Mr Rahman in respect of: (1) could he confirm that the singer was employed on an irregular basis and (2) was there a qualified first aider on the premises when the regulated entertainment was being provided and, if not, was he prepared to have someone appropriately trained.

Mr Rahman replied to those questions along the following lines: (1) Yes. The singer was booked for 4 shows only in 2015 and (2) Yes, he was prepared to do this if it was deemed necessary.

Mr Verrier then spoke setting out that he felt that the Sub-Committee should visit the site to see the parking issues for itself and that the noise pollution from the recent "Elvis" themed nights had caused great concern to local residents. He accepted that the restaurant needed to act as a business and maximise its trade; he wanted to be a 'good neighbour' but he also wanted Mr Rahman to be a 'good citizen' and have regard to the fact that the premises was located in a predominantly residential area.

Councillor Powell asked Mr Verrier if he was objecting to all aspects of the application and Mr Verrier replied that he was prepared to put up with live music being held on four occasions in the year as suggested by Mr Rahman.

Mr Rutson-Edwards then spoke stating that he would be happy if the number of live music events was limited and that the noise was kept at an appropriate level. He confirmed that no complaints had been received in respect of the recent "Elvis" nights and that no complaints had been received in respect of the premises dating back to 2005.

Councillor Powell asked Mr Rutson-Edwards if he felt that the air conditioning in the premises was adequate. Mr Rutson-Edwards replied that his biggest concern was the window in the kitchen being open. If this was kept closed this would considerably mitigate any noise problem.

The Chairman then asked the applicant if he wished to sum up his application by way of a closing statement. Mr Rahman said that there was nothing else that he wished to add. The Chairman then stated that if there were no other points and all parties were happy that they had said what they wanted to say Members would now leave the room whilst they considered their decision. All parties indicated that they had said all they wanted to say.

The Sub-Committee then:

RESOLVED that the public be excluded from the meeting pursuant to Section 100A(4) of the Local Government Act 1972 during the period when the Sub-Committee would be deliberating and considering its decision on the grounds that such deliberations involved the likely disclosure of exempt information as defined in Paragraph 5 of Part 1 of Schedule 12A, as amended, of the Act.

Members of the Sub-Committee then withdrew from the meeting to deliberate and consider its decision. The Solicitor and Senior Democratic Services Officer were asked to accompany Members to give advice on any legal points raised and to record the decision.

Following such deliberations, members of the public were readmitted to the meeting. The Solicitor reported that she had reminded the Sub-Committee of the four Licensing Objectives in reaching its decision.

It was **RESOLVED** that the decision of the Sub-Committee be as follows:

“The Sub Committee has given careful consideration to this application. In reaching our decision, we have taken into account the views expressed by the applicant, the representations received from local residents and responsible authorities along with the Guidance issued by the Secretary of State and other matters set out in the Licensing Authority's own Statement of Licensing Policy.

The decision of the Sub-Committee is to grant this application, subject to the imposition of certain conditions.

In addition to any mandatory conditions and any conditions that are consistent with the Operating Schedule the following conditions will apply in order to satisfy the relevant Licensing Objective.

A. In respect of the Licensing Objective for the Prevention of Public Nuisance:-

1. The provision of regulated entertainment – films, live music, recorded music, performance of dance and dancing will only take place on a maximum of three days in any one week, Monday to Sunday.
2. The provision of regulated entertainment – films, live music, recorded music, performance of dance and dancing shall cease at 23.00 hours on Mondays to Sundays.

Reason: These conditions have been imposed in order to mitigate noise and other disturbance to residents in the locality of the premises.

B. In respect of the Licensing Objective for the Promotion of Public Safety:-

3. On all occasions when regulated entertainment is being provided a qualified first aider will be present on the premises at all times.

Reason: This condition has been imposed to ensure that immediate assistance is available in the event of an emergency.

The decision will be confirmed in writing to all parties and they will also be informed that they have a right of appeal to the Magistrates' Court within a period of 21 days beginning with the date the Applicant is notified of the decision by notice.”

NOTE: In accordance with the provisions of Council Procedure Rule 18.5, Councillor Powell required that she be recorded in the minutes as having voted against the motion.

10. ANY OTHER ITEMS THE CHAIRMAN DECIDES ARE URGENT

There were none.

The meeting was declared closed at 12.41 p.m.

Chairman