

MINUTES OF THE PREMISES/PERSONAL LICENCES SUB-COMMITTEE 'B'**HELD ON 26 NOVEMBER 2014 AT 10.00 A.M. IN THE COUNCIL CHAMBER, WEELEY****Present:** Councillors Mitchell (Chairman), Casey, Sambridge.**In Attendance:** Environmental Services Manager (John Fox), Licensing Manager (Simon Harvey), Solicitor (Linda Trembath), Senior Democratic Services Officer (Ian Ford), Licensing Assistant (Michael Cook).**12. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

An apology for absence was submitted on behalf of Councillor Shearing (with Councillor Casey substituting).

13. MINUTES

It was **RESOLVED** that the minutes of the meeting of the Sub-Committee held on 20 June 2014 be signed as a true record.

14. DECLARATIONS OF INTEREST

There were none.

15. LICENSING ACT 2003 – APPLICATION NO: 14/00594/PREMGR - APPLICATION FOR THE GRANT OF A PREMISES LICENSE – MISTLEY QUAY WORKSHOPS, HIGH STREET, MISTLEY

The Chairman welcomed all persons present to the meeting, introduced the Sub-Committee members and outlined the procedure that would be followed during the event of a fire or other emergency.

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 Miss Lyndsey Ann Fairfield and Mr Henry Bennett Cooper, for the grant of a Premises Licence in respect of the above premises.

The Council's Licensing Manager (Simon Harvey) briefed the Sub-Committee on the application being considered, gave a general description of the premises, summarised the salient points of the application, including that it sought permission to allow the provision of regulated entertainment including live music [Thursdays to Sundays 12.00 – 22.00], recorded music [Mondays to Sundays 08.00 – 22.30] and the supply of alcohol on the premises [Mondays to Sundays 11.00 – 22.00]. He advised the Sub-Committee that the Live Music Act 2012 was pertinent to this application in that live music could be provided between 08.00 to 23.00 in premises that held less than 200 people and sold alcohol without it being a licensable activity and that all performances of unamplified live music between 08.00 and 23.00 on any day did not need a licence. He also advised Members that the proposed opening hours for the premises were Monday to Sunday 09.30 to 22.30 hours which conflicted with the sought after hours for the provision of recorded music, but that if the applicants were only going to provide background music as their application form suggested then this would not need a licence either. For the purposes of clarification for all parties at the hearing Mr Harvey explained that background music was defined as music not played above a level of normal speech or conversation and therefore would not disrupt or predominate.

Mr Harvey further advised the Sub-Committee that nine representations had been received in relation to the application. The Licensing Manager felt that it would be reasonable and proportionate to sum up that all nine representations to a greater or lesser extent expressed concerns about the likely effect of noise from music and

customers emanating at night from the premises and night time disturbance being caused to residential neighbours from customers standing outside the Gallery Teashop smoking and drinking. Those concerns fell within the 'Prevention of Public Nuisance' remit as matters pertinent to the application.

Members were further informed by Mr Harvey that Essex Police had advised that it had no objection to the application and that there had been no other representations received from any other Responsible Authority.

Mr Harvey also drew the Sub-Committee's attention to the relevant extracts from the Council's Statement of Licensing Policy in respect of planning considerations and the 'Prevention of Public Nuisance' licensing objective, together with the relevant Home Office Section 182 Guidance in respect of the prevention of public nuisance, prevention of crime and disorder and planning and building control matters.

Mr Cooper and Miss Fairfield, the applicants, spoke in support of their application with opening remarks, referring to the application. They stated that recorded music on the premises would be kept to a normal background level and the premises did fall under the Live Music Act 2012 by its size. Their plan was to hold live music on no more than five nights a month between Thursdays and Sundays and to sell alcohol as a response to customer requests and in order to increase their business income. They stated that no customers would be allowed to take alcohol outside of the premises and that the smoking area would be behind the premises and away from neighbouring houses.

Mr O'Neill on behalf of Ms Lees, an objector, asked questions of the applicants in respect of: (1) was it their intention to turn the premises into a nightclub and what would be the demographics of the clientele; (2) was there a proven demand for evening events, how would they be organised and was the premises now to be a restaurant; (3) were the applicants underestimating the nature of the locality for example that there were working people and young families that need their sleep patterns to be undisturbed.

The applicants responded to those questions along the following lines: (1) There was no intention to create a nightclub at the premises and they could not say at this time what their clientele would be; (2) No it will not become a restaurant and all evening events would be ticketed; (3) Noise will not be a problem as it will be acoustic music amplified by a microphone only.

Mr Cross, an objector, asked questions of the applicants in respect of: (1) why did the applicants wish to sell alcohol; (2) where would customers park given the very limited availability in that locality which would be exacerbated by a further housing development nearby.

The applicants responded to those questions along the following lines: (1) they were responding to customer demand; (2) parking was not a material consideration under the licensing objectives and there were many other licensed premises that had similar issues.

Mrs Thorn, an objector, asked questions of the applicants in respect of: (1) could they really police the behaviour of their customers outside of the premises and were they aware that any licence went with the building and so could be used by future owners of the premises; (2) were the applicants aware that any noise disturbance would be a real issue for her dog who would continually bark as a result.

The applicants responded to those questions along the following lines: (1) Yes – they were confident that they could police their customers who would never number more than 30 at any one time [the Licensing Manager also responded to question (1) by reminding the Sub-Committee that Premises Licences could be transferred and that only Essex Police could object to such a transfer on crime and disorder grounds]; (2) the applicants felt that they could not answer that question.

Councillor Casey then asked questions of the applicants in respect of: (1) whether the applicants could clarify their intentions; (2) the proximity of the premises to neighbouring properties; (3) if the applicants could confirm that staff had received appropriate training in the event of a fire emergency and in providing alcohol.

The applicants responded to those questions along the following lines: (1) to hold evening events five times a month in accordance with their planning permission, alcohol sales would mainly be with meals served in the evening; (2) car's width to the garden but about 40 feet to door of the building, though the licensed premises was on the first floor; (3) Yes.

Councillor Sambridge then asked questions of the applicants in respect of: (1) were the applicants prepared to amend the start time for Recorded Music to 09.30; (2) could the applicants give an assurance that the outside of the premises would be continually policed to ensure that no glasses are taken outside by patrons.

The applicants responded to those questions along the following lines: (1) Yes; (2) Yes, they could give that assurance.

Councillor Mitchell then asked questions of the applicants in respect of: (1) if no live music was being provided would the applicants consider closing the premises earlier; (2) how many fire exits are there at the premises; (3) where would the smokers go; (4) how many staff would be working at the premises, would both applicants be present and what meals would be provided; (5) would the live music events be ticket only; (6) how many windows can be opened; (7) would the applicants be prepared to install insulation and/or air conditioning.

The applicants responded to those questions along the following lines: (1) Yes – they would probably close at 18.00 in the summer and at 17.00 in the winter; (2) Two – at front and rear of the premises; (3) At the rear of the premises where bins were provided; (4) 3-4 plus two kitchen staff, both applicants would be present, meals would be sandwiches, 'hot' specials and pies all cooked on the premises; (5) Yes, and there would be no parties or drinking promotions; (6) only one window at the front could be opened; (7) No – as it was a Listed Building and yes that was possible and also windows facing the river could be opened.

The Solicitor (Linda Trembath) asked the applicants what their permitted hours were under their planning permission and the applicants replied the hours were from 08.00 to 23.00 hours.

Mr Cross asked the Licensing Manager (Simon Harvey) if the fact that Miss Fairfield had amended her address on the application form had invalidated the application and whether the Council carried out checks as to where applicants lived. Mr Harvey replied that no, the application was not invalid, applicants could put down whatever address they felt was appropriate and that it was not appropriate for the Council to carry out such checks.

Mr Cross then spoke setting out that he accepted there was daytime noise from High Street traffic and from The Quay operations but he felt that noise in the evening from those visiting the premises was unacceptable for those wishing to enjoy their gardens and also in light of the fact that all the properties in that locality had only single glazed windows due to them being either Listed Buildings or part of the Conservation Area.

Mr Saxby then spoke setting out that he lived 12 feet from the entrance to the building and that when the previous owner had put on evening events he had been unable to enjoy the use of his garden due to the noise of customers smoking outside the premises and urinating up his wall as there was only one toilet available in the premises. He also felt that the fire exits in the premises were inadequate as they opened inward.

Councillor Sambridge asked Mr Saxby if he had ever called Essex Police. Mr Saxby replied that he had but that the Police had not been able to attend due to other commitments and exacerbated by the fact that there was no local Police Station.

Councillor Sambridge asked the Licensing Manager (Simon Harvey) that if the previous owner had had permission for evening events, why hadn't the Premises Licence been simply transferred. Mr Harvey replied that this was due to the fact that the previous owner had surrendered the Premises Licence and that therefore the present applicants had had to submit a fresh application.

Mr Jones referred to the ongoing noise at his property, especially in the summer months, as a result of the kitchen windows being left open, which left him unable to use his back garden. He stated that the locality was a 'fragile' one and believe that this application, if granted, would make people no longer want to live in that locality. He stated that, as a commuter to London, he needed to be able to go to bed early.

Mr Cooper asked Mr Jones if he was aware that the previous Licence Holder had held evening events. Mr Jones replied Yes he was but that these had been held very rarely. Mrs Thorn also answered stating that these events had involved friends of the previous Licence Holder but even then there had been problems with people 'spilling out' of the premises with glasses of alcohol and having loud conversations.

Mr O'Neill then spoke setting out that the previous Licence Holder had lived in the vicinity of the premises but that even he had not been able to control the problems that had arisen. He was therefore concerned that the current applicants did not live in the area. He believed that there would be a constant need for him to contact Essex Police to complain about disturbances of the peace and he reminded Members that the premises was set in a very intimate setting amongst Grade II Listed buildings where the community lived very close together.

The Chairman then asked the applicant if he wished to sum up his application by way of a closing statement. Mr Cooper did so reminding the meeting that there were three businesses on the same floor of the building as the café and that they employed four young people from Mistley to work in the café. Mr Cooper also said that they would do their utmost to maintain the community and to stop any occurrence of nuisance. 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 of the Act.

Members then withdrew from the meeting to deliberate and consider their decision. The Solicitor and the Senior Democratic Services Officer were asked to accompany them to advise on any legal points raised and to record the decision.

Following such deliberations the public were re-admitted to the meeting. It was reported that the Solicitor had given generic advice that the Sub-Committee had to bear in mind that, in considering any application for a licence, they should promote the four licensing objectives, but that no specific legal advice had been given to Members during their deliberations.

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 Applicants, the representations received from concerned residents 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, any conditions that are consistent with the Operating Schedule and the conditions agreed with Essex Police, 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 the following conditions will apply:

1. The provision of regulated entertainment (Live Music) will only take place on Thursdays to Saturdays from 12.00 hours to 22.00 hours;
2. The provision of regulated entertainment (Recorded Music) will only take place on Mondays to Sundays from 09.30 hours to 22.30 hours and at no more than background levels of noise
3. The supply of alcohol on the premises only will take place on Sundays to Wednesdays from 11.00 hours to 18.00 hours and Thursdays to Saturdays from 11.00 hours to 22.00 hours;
4. No alcohol or glasses will be permitted to be taken out of the premises;
5. The vicinity of the premises will be regularly inspected and any cigarette butts and other litter to be removed; and
6. Appropriate signs will be displayed prominently around the premises reminding customers to have consideration for residents in the area and to leave the premises quietly.

Reason: The above conditions have been imposed in the interests of protecting local residential amenity.

B. In respect of the Licensing Objective for The Promotion of Public Safety the following conditions will apply:

1. All entrance/exit doors will comply with Fire Safety Regulations
2. All staff will be appropriately trained in respect of fire safety, with such training kept up-to-date.

Reason: The above conditions have been imposed in the interests of ensuring the protection of the public using the premises.

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."

The meeting was declared closed at 12.41 p.m.

Chairman