

**EXTRAORDINARY LICENSING COMMITTEE held at 2.30 pm at
COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN on 17 AUGUST
2006**

Present:- Councillor J I Loughlin – Chairman
Councillors H D Baker, B M Hughes and D J Morson.

Officers in attendance:- M Hardy, J McKie, M Perry and A Turner.

LC16

**APPLICATION FOR A NEW PREMISES LICENCE UNDER THE
LICENSING ACT 2003 AT THE MIA ROSSA, GREAT DUNMOW**

The Council's Legal Officer outlined the procedure for the hearing and drew attention to the opportunity for all parties to have their say. He then asked for the names of those who would be speaking against the application. These were as follows:-

Mr M Magee – local resident
Mr R Dorney – Environmental Health Officer, Uttlesford District Council.

The applicant was also present.

He then explained that Section 35 of the Licensing Act 2003 gave the Licensing Authority powers to vary the licence. However, this procedure did not apply where the premises were to be substantially varied. In this case the applicant had converted living accommodation into a dining area and also wished to use the garden for licensable activities. An application for a new licence was therefore appropriate. If a new premises licence was granted, both licences would run concurrently. The applicant could choose which one he wanted to operate under.

The Licensing Officer reported that the premises were in the High Street, Great Dunmow, opposite the War Memorial and were formerly known as Wildens Restaurant. On 2 March 2006 the Licensing Authority had granted a transfer of the premises licence from the previous owners to the current applicant, Mr Collard, who also altered the name of the premises to Mia Rossa. The licence that was originally granted and simultaneously varied permitted the following licensable activities within the premises only.

- (a) For recorded music:
- | | |
|--------------------|-----------------------|
| Monday to Saturday | 11.00 am – 12.30 am |
| Sunday | 12 noon – 12 midnight |
- For the non standard timings i.e. Christmas Day and Good Friday:
12 noon – 12 midnight
- On New Year's Eve when it does not fall on a Sunday, the times
11.00 am – 12.30 am
- On New Year's Eve when it does fall on a Sunday, the times granted
were 12 noon to 12 midnight.
- (b) Late Night Refreshment

Monday to Saturday 11.00 pm – 12.30 am
 Sunday 11.00 pm – 12 midnight
 For the non standard timings the days and times were identical to those at paragraph (a) above.

- (c) The sale of alcohol by retail for both on and off the premises
 Monday to Saturday 11.00 am – 12 midnight
 Sunday 12 noon – 11.30 pm
 For the non standard timings i.e. Christmas Day and Good Friday
 12 noon – 11.30 pm
 On New Year's Eve when it does not fall on a Sunday :
 11.00 am – 12 midnight
 On New Year's Eve when it does fall on a Sunday
 12 noon – 11.30 pm
- (d) The hours granted when the premises can remain open to the public
 Monday – Saturday 11.00 am – 12.30 am
 Sunday 12 noon – 12 midnight
 For the non standard timings i.e. Christmas Day and Good Friday
 12 noon – 12 midnight
 On New Year's Eve when it does not fall on a Sunday
 11.00 am – 12.30 am
 On New Year's Eve when it does fall on a Sunday
 12 noon – 12 midnight

The premises licence now requested included the building itself plus the garden area at the rear which had not been previously licensed.

Representations had been received from the Council's Environmental Health Department concerning complaints from neighbours about noise and anti-social behaviour from patrons on the premises. Written representations had also been received from local residents, Christopher Spong and Christina Wiggins, Michael Magee, Jacqui Mileham, Jenny Salisbury and Paul and Jan Monk. Written representation had also been received from Planning Objections UK, on behalf of Mr Magee.

The applicant had consulted the Police who had asked that the following conditions be inserted on any licence that may be granted. These have been agreed with the applicant.

- CCTV shall be installed to cover the outside area.
- Waitress service only in the outside area.
- All beverages both alcoholic and non-alcoholic not to be served in glass bottles in the outside area.

The Licensing Officer explained that the Committee could grant, modify, remove a licensable activity or reject the application for a new premises licence.

Mr Dorney, District Environmental Health Officer, said that Mia Rossa adjoined residential premises. He had received complaints from local residents about excessive noise from people using the garden. The applicant intended to use the garden as part of the dining room. It was Mr Dorney's opinion that the outside area should not be used for licensable activities and should only be used for access/egress.

The objector, Mr Magee, presented his case. His garden adjoined the restaurant's garden and he had recorded 11 separate occasions when there had been excessive noise from people sitting in the garden, drinking and using mobile telephones. On occasions this had prevented him and his family from using their garden or being able to open doors and windows during hot weather. He asked that the application be refused.

The Chairman asked Mr Magee if he heard music from the restaurant when he was in his house or garden. Mr Magee replied that he did not hear music in his house, but he could hear it if he was outside in his garden. Mr Barry, solicitor for the applicant suggested a number of conditions which his client was willing to meet. These were restricting the hours of use of the garden, closing the outside doors after 7.00 pm and installing air conditioning. He said that his client would like the opportunity to use the garden for additional covers, but would be happy to reach a compromise that would satisfy all parties. His client had agreed to all the conditions requested by the Police and would be willing to withdraw the application for the change of hours for recorded music. Mr Barry considered that with the above conditions being met, the nuisance levels to residents would be reduced.

Mr Barry suggested that use of the garden area could be restricted to between the hours of 10.00 am and 7.00 pm, but Mr Magee did not feel that this would improve the situation for residents.

The Legal Officer then drew the Committee's attention to the sections of the Government guidance which related to the application being decided. Paragraph 7.13 stated that the only conditions which should be imposed on a premises licence were those which were necessary and proportionate for the promotion of the licensing objectives. Paragraph 7.39 related to public nuisance and required the Licensing Authority to make judgements concerning what constitutes public nuisance and what is necessary, in terms of conditions, to prevent it. Paragraph 7.40 stated that the prevention of public nuisance could include low-level nuisance perhaps affecting a few people living locally. It might include the reduction of the living and working amenity and environment of interested parties in the vicinity of licensed premises. Paragraph 7.42 stated that conditions relating to noise nuisance might not be necessary where the provisions of the Environmental Protection Act 1990 and of the Noise Act 1996 adequately protect those living in the vicinity of the premises in question. Paragraph 7.45 stated that in the context of preventing public nuisance, it was essential that conditions were focussed on measures within the direct control of the licence holder. It was reasonable for a Licensing Authority to impose a condition that required the licence holder to place signs at the exits from the building, encouraging patrons to be quiet

until they leave the area and to respect the rights of people living nearby to a peaceful night.

Annexe G related to conditions regarding the prevention of public nuisance and included provisions restricting the use of parts of the premises e.g. garden areas.

The Council's Statement of Licensing Policy, paragraph 5 Prevention of Public Nuisance set out in full the interpretation of public nuisance, the factors that impacted on the likelihood of public nuisance and examples of control measures given to assist applicants.

LC17 EXCLUSION OF THE PUBLIC

RESOLVED that under Regulation 14(2) Licensing Act 2003 (Hearings) Regulations 2005, the press and public be excluded from the meeting whilst the Committee considered its decision on the grounds that it was in the public interest so to do to permit a free and frank exchange of views between Members.

Members then left the Committee Room to consider their decision.

LC18 APPLICATION FOR A NEW PREMISES LICENCE UNDER THE LICENSING ACT 2003 AT THE MIA ROSSA, GREAT DUNMOW

Members returned to the meeting and the Chairman read the following decision:-

This is an application for a premises licence for Mia Rossa at 44 High Street, Great Dunmow. The premises currently have a premises licence for the front area of the building only. The application is for a premises licence for the whole of the ground floor and garden.

The Committee have considered the report of the Licensing Officer and have received written representations from Mr Spong and Ms Wiggins, Mr Magee, Ms Mileham, Ms Salisbury, Mr and Mrs Monk and Chris Plenderleith of Planning Objections UK, acting on behalf of Mr Magee. The Committee also heard from Mr Magee in person, from Mr Dorney, Environmental Health Officer and Mr Barry, Solicitor, who was acting on behalf of the applicant.

The Committee having regard to the licensing objectives decided that no evidence had been submitted to suggest that the objective of the prevention of crime and disorder would not be met if the licence were to be granted. Ms Mileham in her letter raised general issues of anti social behaviour, but there was nothing to link these allegations with the subject premises. Planning Objections UK made a sweeping statement that granting the licence would create greater crime and disorder apparently ignoring the fact that part of the premises are already licensed. Their submissions are also confused by a

contradiction as to the level of crime in Great Dunmow, saying alternatively that it has the lowest crime levels in the county of Essex, and on the other hand it had the third highest level of crime in the district. Issues of public safety were raised with regard to litter having spilled onto the street in bags. If there are issues relating to litter or waste from the premises there are adequate powers to deal with such problems under the Environmental Protection Act. Having regard to Government guidance on duplicating provisions from other statutory regimes containing paragraph 7.13 of the guidance, the Committee decided that this was not a reason to refuse the licence or to impose conditions on it.

With regard to the objective of the protection of children from harm legislation, whilst there was evidence of some swearing in the garden this was not sufficiently detailed to enable the Committee to form a view that there was a risk to children. The main thrust of the complaints was with regard to noise. The application included provision for regulated entertainment. The applicant states that he wishes to withdraw that part of the application. He states that the music provided at the premises is background only and therefore not licensable. The Committee accepted this concession. However, although the written representations are not completely clear on this point, Mr Magee who lives closest to the premises stated that whilst audible when he was in the garden, music from the premises was not a nuisance. What he complained of as being a nuisance was noise made by people drinking, smoking, talking and using mobile phones in the garden. He also complains that the noise from diners sitting near the patio windows is a nuisance when the patio windows are open.

Government guidance at paragraph 7.40 is that the prevention of public nuisance could include low level nuisance affecting a few people living locally. As a nuisance is being caused now the Committee is of the view that it would be far worse if patrons were permitted in the garden area. The application was for the supply of alcohol until 12.30 am Monday to Saturday and until midnight on Sunday. The applicant offered to limit the hours of use of the garden to between 10.00 am and 7.00 pm daily. However, Mr Dorney said that he still had reasons for concern. Mr Barry submitted that due to the climate, use of the garden would not be frequent, but the Committee did not accept that suggestion. The Committee takes note of the fact that there is a growing outdoor culture and that with the provision of outdoor heaters the garden would be capable of use for most of the year. Such use would breach the objective of the prevention of public nuisance.

Mr Dorney suggested some draft conditions which he felt may reduce the impact of granting the application. The Committee felt that these did not go far enough to address the current nuisance being caused.

The Committee grants the premises licence in the terms of the application save for the provision of regulated entertainment which will be deleted at the applicant's request. The Committee also imposes the following conditions:

- 1 Patrons shall not be permitted to use the garden area save for the purpose of access to and egress from the premises.
- 2 All external windows and doors must be kept closed other than when used for access and egress.
- 3 Prominent and clear notices shall be displayed at all exits requesting the public to respect the needs of local residents and to leave the premises and the area quietly.

The applicant agreed three conditions with the Police. In view of the Committee's findings on the crime and disorder objective and the fact that by virtue of the conditions imposed the garden area will not be generally available for use by patrons, the Committee decided these additional conditions were unnecessary.

The Legal Officer then advised the applicant of his rights of appeal against this decision.

The meeting ended at 4.50 pm.