

EXTRAORDINARY LICENSING COMMITTEE held at 6.30 pm at COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN on 20 FEBRUARY 2007

Present:- Councillor J I Loughlin – Chairman.
Councillors E W Hicks, A Marchant and D J Morson.

Officers in attendance:- M Ford, M Hardy, C Nicholson, M T Purkiss and
A Turner.

LC64

REVIEW OF THE PREMISES LICENCE FOLLOWING A CLOSURE ORDER FOR THE QUEEN ELIZABETH PUBLIC HOUSE SAFFRON WALDEN

The Committee considered a review of the premises licence in respect of the Queen Elizabeth Public House following a closure order issued by Harlow Magistrates Court on 5 February 2007. The Council's solicitor explained the procedure for this hearing. The Chairman asked those who had made representations whether they wished to speak at the meeting. Victoria Markillie confirmed that she would speak at the meeting and Mr Heathcote was not present at the meeting.

The Licensing Officer explained that the Licensing Act 2003 placed an obligation on a licensing authority to hold a review where a Magistrates Court notified the authority that they had ordered a premises to remain closed until the review had been determined. He explained that the Licensing Act 2003 required a licensing authority to promote the objectives contained within the Act as follows:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

He referred to the conversion of the previous licence on 4 July 2005 and the increase of hours which had been granted on appeal by Epping Magistrates Court on 1 September 2006.

He reported that on 2 February 2007 Essex Police had issued a closure order in respect of these premises following the execution of an search warrant and the arrests of persons for drug related and disorder related offences. This order was subsequently reviewed by a senior police officer on 3 February 2007 and he authorised that the closure remained in place until the next available court date. On 5 February officers from Essex Police attended Harlow Magistrates Court to seek a further extension of the closure order which was subsequently granted.

He said that the decision that the Committee could make in respect of this application was:

- (a) to modify the conditions of the premises licence,
- (b) to modify the conditions of the premises licence for a specified period not exceeding three months,
- (c) to exclude a licensable activity from the scope of the licence,

- (d) to exclude a licensable activity from the scope of the licence for a specified period not exceeding three months
- (e) to remove the designated premises supervisor from the licence,
- (f) to suspend the licence for a period not exceeding three months, or
- (g) to revoke the licence;

He said that when determining this review due regard should be given to the Council's policy regarding licensing and to the guidance given by the Secretary of State. He said that if the Committee in their discretion wished to impose conditions, the only conditions that could be imposed were those that were necessary and proportionate to promote the licensing objective relative to the representations received. Equally, the committee could not impose conditions that duplicated the effect of existing legislation.

He reported that a petition had been served on the licensing authority for the premises to remain open but none of the signatories lived in the vicinity of the public house and had not addressed the four licensing objectives. Also, a petition had been received supporting the closure of the public house, but this had been received out of time.

Adrian Williams of Essex Police then made a statement on behalf of that authority. He referred to the execution of the search warrants and the arrests that had been made on 2 February. A closure order had been issued on that date and had been extended on two subsequent occasions. He said that the police would urge the licensing authority to revoke the premises licence.

He then called Superintendent Stokes who made the following statement.

"I am the Police Superintendent with responsibility for operational matters within Central Division. Central Division includes the Saffron Walden area of Essex. During 2006, I became aware of intelligence from a number of police sources stating that the Queen Elizabeth public house, Saffron Walden was a centre of drug dealing in the town. The intelligence was such that I deployed undercover police officers into the public house. This tactic is rarely used, it is expensive both in resources and financially to run, as is not a totally safe option for officers to deploy. The trafficking of drugs is often connected to other crime such as theft and violence and intelligence was such that I needed to prove or disprove the intelligence between October 2006 and February 2007 I deployed undercover officers into the public house. Officers were sold the class A drug cocaine on 17 separate occasions. Although a small number of the actual transactions occurred in the vicinity of the pub, ie the car park or the pathway outside, all the "arrangements" were made within the premises. Further, the large proportion of the actual transactions took place within the bar/communal areas of the pub itself (ie not the toilets). The evidence gathered during this part of the investigation was, in the view of the Crown Prosecution Lawyer(s), sufficient to justify a total of 26 drugs related charges.

Due to the overt nature of the drug dealing activities, I believed it was taking place with the knowledge, and possible, involvement of, the Premises Licence holder(s), Designated Premises Supervisor and/or the owner. Consequently, it was not appropriate to seek their co-operation in respect to a voluntary closure.

At 23:30 hours on Friday 2 February 2007, a search warrant was executed at the Queen Elizabeth public house. As a result 9 people were arrested for drugs related offences. During the search of the premises, police found the following items on the floor of the pub.

- 6 wraps of cocaine
- 6 assorted tablets
- A crack (cocaine) smoking pipe

During a search of the private quarter occupied by the owner (John HARE) and his wife (Cindy HARE one of the 3 premises licence holders) police found 8 separate deals of cannabis.

It was clear that this was a disorderly house and I caused a Police Closure Order to be invoked. I then went on to execute warrants on individuals that had been previously identified as dealing drugs within the pub. During the course of this operation 21 offenders with links to the Queen Elizabeth public house have been arrested, and to date 26 drugs charges have been preferred and criminal case continues. The criminal investigation is sub-judice and further detail is not available to the licensing body.

On Monday 5th February 2007 I attended Harlow Magistrates Court and sought a continuation of the Closure Order. This was granted by the Court.”

Chief Inspector Stubbs then made the following statement:

“About 23:30 hours on Friday 2 February 2007, I was on duty in full uniform, with Mr Martin Reed, when I attended the Queen Elizabeth public house, East Street, Saffron Walden.

Upon my arrival, whilst standing outside, I spoke to a male I now know to be the owner of the Queen Elizabeth, John Hare. At his request, I explained to him why the police had entered his premises. I went on to explain that it was our intention to serve a Closure Order. When I was explaining to him what we were doing, and why, he continually protested, saying words to the effect of, “I do all I can to stop drugs in my pub. I’m not allowed to search them like you lot and what can I do if they go into the toilet. I haven’t seen them do anything”. He went on to say words to the effect of, “I know who some of them are but I can’t search them and can’t stop them coming in just for a drink”. I explained to him that if he knew who the drugs dealers were, he could just ban them.

A short while later, we were able to access the pub itself and I therefore went in with Mr Reed and Mr Hare. After 23:47 hours the same day, I saw a person I now know to be one of the Premises Licence holders, Cindy Hare, in the bar area. I explained to her that we would be closing the pub down and I served her with a Police Closure Order, together with a leaflet containing explanatory notes. I asked Mrs Hare to sign both the Order and a copy thereof, the latter of which I retained.”

Martin Reed, the Licensing Manager for the Central Police Division, then made the following statement: Page 3

“I am employed as the Licensing Manager for the Central Police Division, which includes Chelmsford, Maldon, South Woodham Ferrers, Braintree and Uttlesford. I am responsible for all aspects of liquor licensing within the division.

From the records held in my office I am able to confirm that the Queen Elizabeth Public House, 2 East Street, Saffron Walden is owned by a Mr John Hare who until 20 July 2004 was the licensee of these premises in company with Ms Susan Seeney. On the 20 July 2004 the licence in respect of the premises was revoked by the Licensing Justices sitting at Harlow Magistrates Court. The police opposed the renewal of the licence, under the Licensing Act 1964, due to our concerns in respect of Crime and Disorder in and around the premises and repeatedly allowing the consumption of alcohol outside the permitted hours.

Subsequently a new licence was issued to the current premises licence holders under the Licensing Act 1964 with a condition that Mr Hare and Ms Seeney had no dealings with the sale of alcohol.

Since October 2006 there have been nine incidents at these premises requiring police attendance. I have detailed below the major ones:

- 1 At 01:17 hours on the 7 October 2006 there was a disturbance at the premises resulting in officer's having to use CS gas. Two arrests were made.
- 2 At 0120 hours on 14 October 2006 officers attention was drawn by a member of the public to man at the rear of the premises who was being attacked. Officers found the male at the bottom of the metal stairway at the rear of the public house. He stated he had been bottled in the toilet. He refused all offers of assistance and left the premises. Enquiries by Myra Stokely (Designated Premises Supervisor) failed to ascertain those responsible.
- 3 On 24 December 2006 a female reported that she had been glassed in the premise the previous evening around 23:30 hours
- 4 On 1 January 2007 an incident was reported having happened around 04:00 hours that day, as a male left the premises his car was surrounded by a group of youths and his car was damaged
- 5 On 1 January 2007 a further report was received alleging two assaults and a theft from a female in the premises the previous evening.

I am able to produce these records if required.”

Victoria Markillie then made the following statement.

She said that she was a former employee of the Queen Elizabeth public house. She said that people of her generation were deeply saddened by the action which had taken as it was the only place in the town where they could go for a drink and a dance at the weekends after a long week of work. She said that on the evening in question there had been over 120 people in the public house and nine had been arrested and she felt that customers in general were being punished for the actions of a few people.

She said that the owner and licensees of the public house had done a great deal for local and national charities. She said that on 15 July 2006 they had been involved in the organisation of a sports relief evening which had raised over £1,500. They were also planning a charity sky dive on 3 March 2007 to help raise money for Childline. She concluded that she was currently involved in the security industry and suggested that SIA licensed door staff during the evening and the installation of internal CCTV would allow the establishment to work with the local police and to combat local crime.

Adrian Chaplin, the legal representative of the licensees, questioned the police on the statements which had been made. In answer to his questions, Superintendent Stokes confirmed that drugs were a national and Essex problem and said that he could not state that this public house was the only one in the town where drug dealing had taken place. In answer to a further question, Superintendent Stokes confirmed that an approach to the management of the premises had not been made prior to the raid as it was clear that dealing was of an overt nature. Mr Chaplin also referred to the search of the private quarters of the owner of the public house and asked whether Superintendent Stokes had seen the cannabis himself. He confirmed that he had not. He asked Superintendent Stokes whether he considered that the arrests would act as a deterrent to further drug dealing at these premises. Superintendent Stokes said that they would but he felt that dealing was so prevalent that there was no reason to doubt that it would start up again. In answer to a final question from Mr Chaplin, Superintendent Stokes said that he had no evidence that the dealers who had not been arrested were operating elsewhere in the town.

Mr Chaplin then made a statement to the hearing. He circulated extracts from the Licensing Act 2003 and guidance about reviews which he thought would be helpful. He pointed out that the sanctions listed in Section 12 of the committee report were listed in order of severity. He said that the guidance made it plain that in deciding which penalty to invoke the committee should address the cause of the problems and any sanction should be an appropriate response. The guidance envisaged that reviews should be used effectively and revocation should only be considered in the most serious circumstances. He said that he was under no illusions as to the seriousness of the events, but following closure of the public house there was now scope for the licence to continue in force, subject to two additional conditions, which he claimed could be fulfilled within seven days. These conditions were:

- 1 Install appropriate CCTV equipment (he pointed out that quotations had previously been obtained for this prior to the events in February).
- 2 On Friday and Saturday nights there should be two appointed licensed door supervisors in attendance.

He said that the CCTV would provide up to one month's recording and the knowledge of this would be an effective deterrent against drug dealing on the premises. The appointment of licensed door supervisors would also be a deterrent and he said that Myra Stokely, one of the licensees had obtained her door supervisor's licence and would have the ability to refuse admission to anyone not agreeing to a search.

He referred to the First Protocol of the Human Rights Act and the concepts of necessity and proportionality. He said that whilst he recognised that it was necessary to be seen to be doing something about drugs, the revocation of the licence would go further than was necessary to deter this use and he suggested this would be disproportionate. He also acknowledged that revocation must be seriously considered, but submitted that there was a step short of revocation. With the agreement of the Chairman he circulated a letter dated 30 November 2006 which set out the steps which the licensee was taking to install CCTV to address problems. He said that should the committee give the opportunity to continue, the licensee intended to seek assistance from the police as to what further steps could be taken to prevent problems in the future. He concluded that the cannabis found in the private quarters was in that part lived in by the owner and not the licensees and said that this was a class C drug being used for alleviating the symptoms of gout and he asked the committee to treat this as being separate from the police search of the licensed premises on 2 February.

Councillor Loughlin then asked Myra Stokely whether she felt she would be able to deal with some of the violent incidents which had occurred in the past and whether she would be able to restrain the perpetrators. Myra Stokely said that she would do her utmost to deal with these problems and said there would be an additional door supervisor so they would be able to assist each other.

Councillor Morson asked Myra Stokely why, as she had suspicions about drug dealing, she had not introduced the measures mentioned in the two conditions earlier. Mr Chaplin replied that CCTV proposals had been explored in November 2006 and Myra Stokely had now obtained her door supervisor's qualification.

Councillor Loughlin asked if Myra Stokely or Mr Hare had witnessed any drug dealing on the night of the raid. Mr Hare said that he had not witnessed any drug dealing in the bar area.

Adrian Williams from Essex Police then asked Myra Stokely whether she felt that her duties as a door supervisor would conflict with her duties as a designated premises supervisor. She said that this would not be a problem as other door staff would be recruited.

Mr Williams then stated that he did not feel the two suggested conditions would be appropriate, but if the committee was minded to agree to such a proposal, there should be an opportunity for the police to discuss these further with the licensees before making a decision. He felt that any licence should also include the following conditions:

- Four door supervisors should be appointed, two to roam and two at the door.
- There should be a written search policy to be agreed with the police
- CCTV should be installed and approved by the police as four internal cameras were insufficient for premises of this nature.

- The use of plastic glasses and a bottle ban should be compulsory
- There should be an ID scanner or similar installed
- The personal licence holder should be present on Friday and Saturday evenings
- Door staff should be present from 7.30 pm until half an hour after closing time on Friday and Saturday nights.

Mr Chaplin said that he would welcome the opportunity to take further instructions on these conditions from his clients. However, he felt that the conditions were more appropriate to a large city centre pub and having door staff in place from 7.30 pm would be uneconomic and not appropriate to the clientele of the pub at that particular time. He suggested that 9 or 10.00 pm would be more appropriate. He concluded that the licence could be granted with conditions for a period of up to three months and, as the police remained a properly interested party, they could seek a further review if there were concerns.

Councillor Hicks asked if there was any indication of how long it would take before the charges would be considered by the Court. Superintendent Stokes said that no indication could be given of the timescale involved.

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EXCLUSION OF THE PUBLIC

RESOLVED 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 Council Chamber to consider their decision.

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REVIEW OF THE PREMISES LICENCE FOLLOWING A CLOSURE ORDER FOR THE QUEEN ELIZABETH PUBLIC HOUSE SAFFRON WALDEN

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

“The committee has listened carefully to everything it has been told tonight from all parties, and has taken note of the written information that had been provided in advance. The Committee has heard evidence of serious crimes being committed within the premises. Of particular concern is the period of time over which these incidents have occurred, and the fact that the licence holders have been unable to prevent these activities occurring.

The Committee has heard from the Police details of a number of occasions that drug dealing activities have taken place on the premises even openly in public areas.

In addition, the Committee has heard of the ongoing problems with general disorder at the premise, not least pointed out by the number of incidents reported to Essex Police since October 2006.

The Committee acknowledges that the premises does provide the livelihood for the applicants, and has heard that the pub does provide a venue for some residents of Saffron Walden and wider to attend in their leisure time.

However, the Committee feels that the undermining of the licensing objective of prevention of crime and disorder by the premises being open outweighs resident's preference for the premises to continue to operate.

The Committee has taken account of the Secretary of State's guidance, and in particular paragraph 5.113, which says

"Where the licensing authority is conducting a review on the ground that the premises have been used for criminal purposes, its role is solely to determine what steps are necessary to be taken in connection with the premises licence for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity ... may be taking place or have taken place despite the best efforts of the licensee... In such circumstances the licensing authority is still empowered to take any necessary steps to remedy the problems. The Licensing Authority's duty is to take steps with a view to the promotion of the licensing objectives in the interests of the wider community and not those of the individual holders of the licence".

In addition the committee has considered paragraph 5.115 which provides that

"There is certain criminal activity that may arise in connection with licensed premises, which the Secretary of State considers should be treated particularly seriously. These are the use of the licensed premises – for, amongst other things, the sale and distribution of Class A drugs..."

It is envisaged that licensing authorities, the police and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that the revocation of the licence, even in the first instance should be seriously considered."

Due to the nature of the problems associated with the premises, and the fact that they appear to be carried out as a result of the failure of the premise licence holders to control the situation, the Committee feels that a 3 month suspension, even with a change of DPS would not be sufficient, and equally feels that there are no conditions that can satisfactorily ensure the licensing objective of the prevention of crime and disorder is not undermined.

The Committee acknowledges the points raised in relation to the proportionality and the Human Rights Act and does note the rights under the First Protocol relating to the interference with property. However, the Committee feels that the seriousness of the issues at this pub and the

promotion of the prevention of crime and disorder for the residents of Saffron Walden are a legitimate aim and the actions taken are necessary and proportionate in pursuance of that aim.

Therefore the Committee revokes the premise licence of the Queen Elizabeth public house.

The Council's Solicitor advised the licensees of the right to appeal to the Magistrates Court within 21 days.

The meeting ended at 8.40 pm.