

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 2pm on 24
APRIL 2012**

Present: Councillor E Hicks – (Chairman).
Councillors J Loughlin, D Perry and Salmon

Also present: :Mr S Sparrow, Police Licensing Officer
Sgt M Ashton, Essex Police
Mr S Clark – Licence Holder of Zafferano.
Mr J Clark – representing Mr S Clark.

Officers in attendance: M Cox (Democratic Services Officer), M Hardy
(Licensing Officer) and M Perry (Assistant Chief Executive-Legal).

LIC

DETERMINATION OF AN APPLICATION FOR A OF A PREMISES LICENCE

The Chairman welcomed everyone to the meeting.

The Licensing Officer presented a report setting out an application for a review of a premises licence in respect of Zafferano Restaurant, Saffron Walden made by the Chief Constable of Essex. The review was being sought on the grounds that related to the licensing objective that deals with the prevention of crime and disorder.

The Licensing Officer took Members through the report which set out the objectives of the Licensing Act 2003, the granting of a premises licence to the store on 9 November 2005, the subsequent application to vary the license and the licensable activities that were currently permitted. Since 2005 the premises had changed hands on two occasions and since Mr Clark took over the nature of the premises had changed from a restaurant to a late night venue mainly catering for party events.

The report set out a series of events that had occurred in or in the vicinity of the premises, which had been reported to the Police from October 2010 to January 2012. The last recorded incident had involved a large scale public disorder at the premises which had resulted in an arrest and a conviction of assaulting a police officer and using threatening behaviour likely to cause a breach of the peace. It was on the basis of this incident that the review was being sought.

In the intervening period discussions had taken place between the Police and Mr Clark where advice had been given on the running and supervision of the premises. There had been no further incidents attributed to the premises.

The application for the review had sought to vary the license and include the following conditions

1. The licensable activities from Sunday to Thursday cease at 12 midnight and for a Friday and Saturday they finish at 1am.

2. A minimum of 2 registered door staff be employed on duty when the licensable activities go beyond 12midnight. The premises to operate a register that includes the name and badge number of the operative on duty to include the time when on duty together with their signature. The register to be made available to a Police Constable or authorised officer upon a reasonable request.
3. A personal licence holder shall be on duty throughout the whole time when a licensable activity is taking place.
4. There shall be no entry to the premises by any customer after 11.30pm.
5. A CCTV system to be provided which is capable of providing pictures of an evidential quality in all lighting conditions particularly identifying facial recognition.
6. CCTV cameras shall encompass all ingress and egress to the premises which include fire exits and all areas where the sale of alcohol takes place.
7. CCTV equipment and recordings must be maintained in good working order, be correctly timed and date stamped. Each recording must be numbered in sequence and kept for a period of 31days and handed to the Police or authorised officer upon demand.
8. The Premises Licence Holder must ensure that at all times the DPS or appointed member of staff is capable and competent in the downloading any of the CCTV footage in a recordable format either disc or VHS to the local Police or authorised officer.
9. The recording equipment tapes and discs shall be kept in a secure environment under the control of the DPS or other named responsible person.
10. An operational daily report log must be maintained, endorsed by signature, indicating the CCTV system has been checked and is compliant. In the event of any failings any action taken is to be recorded.
11. In the event of a technical failure of the CCTV equipment the Premises Licence Holder/DPS must report the failure to Essex Police on contact number 0300 333 4444 immediately.
12. A Challenge 25 policy will be in operation at all times and suitable posters will be displayed in the public areas of the premises.
13. A zero drugs policy will be in operation at all times and suitable posters will be displayed in the public areas of the premises.
14. The premises shall be members of the local Pub Watch Scheme and the Behave or be Banned (BOBB) scheme.

The Committee was advised that when determining the application it should have regard to the relevant sections of the Council's Licensing Policy and guidance issued by the Secretary of State. If it wished to impose conditions it could only include those that were necessary and proportionate to the licensing objective of the prevention of crime and disorder.

The Chairman invited Mr Sparrow to speak

Mr Sparrow drew took the Committee through the chronology of events relating to the premises. He concentrated on the incident on 29 January 2012 which had led to this review.

Mrs Sparrow asked Sergeant Ashton, who was on duty sergeant on that evening, to give more details of the events on 29 January. He said that at 12.10am that evening he had a call about a large disturbance outside of Zafferano's. He found around 30 people outside the venue who were hostile and aggressive, drinking and pushing and shoving. There had been damage to a window. Personally he had come into contact with one man, who was hostile and abusive and tried to elbow him in the face. He had been arrested and was subsequently charged and pleaded guilty to assaulting a Policeman. He said that this had been the worst public order situation in Saffron Walden for many years. There were only four Policemen on duty and they had been in fear of their safety, to such an extent that one policeman had extended his baton, ready to use.

Since this event various letters had been exchanged with the license holder, the Police had sought various conditions which had been devised in consultation with senior police officers and were seen as necessary and proportionate to the licensing objective. These had now been agreed by Mr Clark except for condition 1, which limited the opening hours of the venue.

He said he had met with Mr Clark a number of times after the various incidents and he had always been cooperative however the schedule of incidents but showed a worsening of events over a period of time,

The Chairman thanked Mr Sparrow for his presentation..

Councillor Loughlin asked about the ages of those attending the event and whether all those outside had been drinking at the premises. Mr Sparrow replied that those present were predominantly older people and he suspected that most had come from the event.

Councillor Perry queried the situation at the nearby public house. Mr Sparrow said that when the Police arrived people were already out on the street and engaged in the brawl. The original fight had originated in Zafferano's. Councillor Perry asked whether all the incidents shown on annex 2 could be attributed to Zafferano's. Mr Sparrow said that the accounts given were as accurate as possible.

Councillor Loughlin questioned the inclusion of theft and the spiking of drinks in the schedule of events as these could not necessarily be controlled by the licensee. Mr Sparrow replied that these activities served to give a picture of the activities occurring at the venue. He reiterated that on 29th January the Police had been subject to an extreme level of abuse.

The Chairman then invited Mr Sam Clark to speak. He was represented by his father Mr John Clark.

John Clark questioned a number of the events that had been included in annex 2. He did not feel that they could necessarily be attributed to Zafferano's. The female referred to in the item 3 of the schedule had been refused serving at Zafferano's and this had been substantiated in a witness statement. In terms

of the criminal damage, he failed to see how it could be if he knew that the individuals were drinking at the premises if no details were given. The incident with the spiked drink had not been substantiated or referred back to Zafferanos. Also the suspect calls referred to appeared to have no foundation. The incident on the 29th of January was incredibly regrettable. The booking was for a 60 birthday party where trouble would not necessarily be expected. It was dealt with in the best way possible, Sam Clark had kept people inside the venue and had called the police and assisted where possible.

John Clark then read a statement in support of his son giving details his life and business in the town and organising and contributing to charitable events, and referred to a number of character references. Since he had taken over Zafferano's he had taken his responsibility very seriously and extended opening in the evening in response to the economic climate.

In relation to the suggested conditions, he thought it was unreasonable to impose a condition to restrict the opening hours. The violence on the 29th had taken place at 11.45pm, restricting opening to 1pm would not have prevented this. The punishment should be solely to achieve the repetition of serious disorder.

Mr Sparrow answered the queries made by Mr Clark in relation to the schedule of events and confirmed that they had all been reported incidents..

Sam Clark explained the circumstances around the spiked drink incidence, which had led to a false allegation. He also explained that he had now introduced a policy whereby no one would be admitted or readmitted to the venue after 11.30pm. He had also now installed the CCTV that had been requested by the Police.

He was asked by Mr Sparrow whether he often traded beyond 1pm. Sam Clark agreed that it was rarely necessary for him to do so, but he would like this to remain his choice. He genuinely wanted to run the venue correctly and didn't want his reputation to be affected.

Councillor Perry asked Sam Clark how many people had been excluded from the premises since it had opened, and how he dealt with known trouble makers?

He replied that he probably excluded about 1 person every other week. As for the party on the 29th he did know the reputation of two of the members on the guest list but as they had been invited guests at a 60th birthday party he had made the judgement that it was acceptable to let them in.

Councillor Loughlin asked if he knew that it was against the law to sell alcohol to people who were already intoxicated. Sam Clark replied that he did but it was a grey area as a judgement call as to when this should be applied. However he had stopped selling certain drinks like shots that tended to lead to more rapid intoxication. In answer to a question from Councillor Salmon he said that during the evenings, as well as himself, he employed two bar staff and two bouncers one on the door and one walking around the venue.

At 3.50pm the Committee withdrew to consider its decision, and returned at 4.50pm.

DECISION

The committee have today considered an application by the Chief Constable of Essex for a review of the premises licence in respect of Zafferano Restaurant, 9 Market Hill, Saffron Walden. The review is being sought on grounds that relate to the licensing objective that deals with the prevention of crime and disorder.

On 9th November 2005 a licence was issued in respect of these premises following an application to convert the existing Justices On Licence under the Licensing Act 2003. On 15th November 2005 an application was made to vary the licence which now permits the following licensable activities-

- (a) Performance of live music indoors only Monday – Saturday from 8pm to 1am and on a Sunday 8pm to 12 midnight
- (b) Playing of recorded music indoors only Monday to Sunday from 9am to 2am
- (c) The sale by retail of alcohol for consumption both on and off the premises Monday to Sunday from 9am to 2am

The current premises licence holder and the designated premises supervisor is Sam Clark who took over on 31 March 2010.

Since Mr Clark took over the running of these premises the nature of the business has changed from a restaurant to what can be described as a late night venue. Bookings are taken for what can be described as party type events. Also since the licence was transferred there have been a number of incidents requiring police intervention.

At 00.18 am on 3rd October 2010 Essex Police received a report of criminal damage and assault which were linked to these premises.

At 1.40am on 24th October 2010 Essex Police received a report of a disturbance at the premises resulting in a female being arrested for Public Order Offence. However Mr Clark has given evidence that the female concerned had not been drinking in his premises. She had arrived at his premises drunk and refused entry as had happened at other licensed premises she tried to enter a short time earlier.

At 2.25am on 14th August 2011 Essex Police received a report of public disorder at these premises and an identical report at 2.14am on 21st August 2011. Both of these reports were anonymous and on neither occasion did the police find any evidence of disorder occurring. Mr Clark says that he was not aware of any disorder on either occasion.

In October 2011 Essex Police received a report from a female of the theft of a camera, mobile telephone, £250 in cash and a bank card which took place at

the premises on the night of 8th October 2011 when customers were asked to leave the premises following a fight at that location.

At 12.05am on 29th January 2012 Essex Police received a report of a large scale public disorder involving approximately 25 to 30 persons at the premises which resulted in a 48 year old male being arrested who was under the influence of alcohol. That person was later found guilty at Court of assaulting a Police Officer and using threatening words and behaviour likely to cause a breach of the peace.

In the intervening periods Essex Police have met with Mr Clark on 3 separate occasions giving advice regarding the supervision and management on the running of these premises which promotes the licensing objective that relates to the prevention of crime and disorder. The last meeting between Mr Clark and Essex Police was on 30th January 2012. There have been no complaints of other incidents since that meeting.

Essex Police ask that the premises licence be varied to include the following conditions to promote the licensing objective of the prevention of crime and disorder:-

- 1 The licensable activities from Sunday to Thursday cease at 12midnight and for a Friday and Saturday they finish at 1am.
- 2 A minimum of 2 registered door staff be employed on duty when the licensable activities go beyond 12midnight. The premises to operate a register that includes the name and badge number of the operative on duty to include the time when on duty together with their signature. The register to be made available to a Police Constable or authorised officer upon a reasonable request.
- 3 A personal licence holder shall be on duty throughout the whole time when a licensable activity is taking place.
- 4 There shall be no entry to the premises by any customer after 11.30pm.
- 5 A CCTV system to be provided which is capable of providing pictures of an evidential quality in all lighting conditions particularly identifying facial recognition.
- 6 CCTV cameras shall encompass all ingress and egress to the premises which include fire exits and all areas where the sale of alcohol takes place.
- 7 CCTV equipment and recordings must be maintained in good working order, be correctly timed and date stamped. Each recording must be numbered in sequence and kept for a period of 31days and handed to the Police or authorised officer upon demand.
- 8 The Premises Licence Holder must ensure that at all times the DPS or appointed member of staff is capable and competent in the downloading any of the CCTV footage in a recordable format either disc or VHS to the local Police or authorised officer.
- 9 The recording equipment tapes and discs shall be kept in a secure environment under the control of the DPS or other named responsible person.

- 10 An operational daily report log must be maintained, endorsed by signature, indicating the CCTV system has been checked and is compliant. In the event of any failings any action taken is to be recorded.
- 11 In the event of a technical failure of the CCTV equipment the Premises Licence Holder/DPS must report the failure to Essex Police on contact number 0300 333 4444 immediately.
- 12 A Challenge 25 policy will be in operation at all times and suitable posters will be displayed in the public areas of the premises.
- 13 A zero drugs policy will be in operation at all times and suitable posters will be displayed in the public areas of the premises.
- 14 The premises shall be members of the local Pub Watch Scheme and the Behave or be Banned (BOBB) scheme.

Mr Clark agrees to all of these with the exception of condition 1 which would vary the hours of the licence.

In considering applications for reviews the Committee must have regard to the Council's licensing policy, and to the guidance issued by the Secretary of State.

The relevant sections of the Council's licensing policy and government guidance are set out in the licensing officer's report and the Committee have had regard to them

The Committee acknowledges that the amendments to the Licensing Act contained in the Police Reform and Social Responsibility Act 2011 are not yet in force and that the only conditions that can therefore be imposed are those that are necessary and proportionate to promote the licensing objective relative to the representations received.

Mr Clark points out through his father who represented him that the function which caused the disturbance in January was a 60th birthday party when trouble would not normally be expected. The incident occurred at the latest at 12.05 am. The police application for the review is expressed to be "solely to prevent a repetition of the serious disorder which occurred on [the] premises on 29/1/12 at 00.05". The Committee do not see how requiring licensing activities to cease at 1.00 am would achieve that objective. The Committee is not satisfied on the evidence before it that restricting the licensing hours is necessary for the promotion of the licensing objective of the prevention of crime and disorder. If the premises were to become a focus of crime and disorder on any future application for a review the Committee would need to consider whether a reduction in hours would be sufficient to deal with the problem or whether more drastic action such as the removal of the DPS or even a revocation of the licence may be necessary. However for today the Committee will vary the licence to impose the conditions agreed as set out in paragraphs 2 – 14 above.

The meeting ended at 5.00pm.