

Committee: Licensing and Environmental Health

Agenda Item

Date: 24 April 2012

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Title: Zafferano – Saffron Walden

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Item for
decision

Summary

- 1 This report sets out an application for a review of the premises licence in respect of Zafferano Restaurant, 9 Market Hill, Saffron Walden. The application is being made by the Chief Constable of Essex.
- 2 The Licensing Act 2003 places an obligation on a Licensing Authority to promote the objectives contained within the Act. The objectives are listed below:
 - The prevention of crime and disorder
 - Public safety
 - The prevention of public nuisance
 - The protection of children from harm
- 3 An application for a review can be made by a responsible authority or interested party.
- 4 In this instance, the review is being sought by the Police on the grounds that relate to the licensing objective that deals with the prevention of crime and disorder.
- 5 On 9th November 2005 a licence was issued to these premises who traded then under the name of Tylers Wine Bar following an application to convert their existing Justices On Licence in accordance with the Licensing Act 2003. This was followed by an application to vary the licensable activities on 15th November 2005 and now permits the following licensable activities to take place-
 - (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
- 6 Since 2005 the premises have changed hands on two occasions. The current premises licence holder and the designated premises supervisor is Sam Edward Clark

- 7 Since Mr Clark took over the running of these premises the nature of the venue has changed from a restaurant to what can be described as a late night venue in Saffron Walden which is open to the public
- 8 Bookings are taken for what can be described as party type events. The hours of operation remain the same as when the licence was issued on 9th November 2005.
- 9 At 00.18 am on 3rd October 2010 Essex Police received a report of criminal damage and assault which were linked to these premises details of which are at Annex 2.
- 10 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 details of which are at Annex 2.
- 11 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 details of which are at Annex 2.
- 12 At 3.20pm on 13th October 2011 Essex Police received a report from a female of the theft of a Fuji Compact 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. The details are recorded at Annex 2.
- 13 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. The details are recorded at Annex 2.
- 14 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. It is believed that no further incidents have taken place which can be attributed to these premises.*
- 15 It is on this basis that Essex Police is now seeking a review of the premises licence.
- 16 In accordance with the Licensing Act 2003, the Chief Constable has served copies of this application on all of the responsible authorities and

on the premises licence holder. No other representations have been received by a statutory body or interested party.

- 17 Upon receipt of this application, the Licensing Authority advertised this fact on its website and on its public notice board between 15 March and 12 April 2012. In addition the author of this report arranged for a notice to be displayed on the premises regarding this review which was displayed in a prominent position so that it could be seen by members of the public.
- 18 Upon receipt of the application for a review the Licensing Authority has received notification from Essex Police that the premises licence be varied to achieve a minimum desired outcome, which would meet their concerns regarding the licensing objective that relate to the prevention of crime and disorder. The conditions sought are listed below:
 - (a) The licensable activities from Sunday to Thursday cease at 12midnight and for a Friday and Saturday they finish at 1am.
 - (b) 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.
 - (c) A personal licence holder shall be on duty throughout the whole time when a licensable activity is taking place.
 - (d) There shall be no entry to the premises by any customer after 11.30pm.
 - (e) A CCTV system to be provided which is capable of providing pictures of an evidential quality in all lighting conditions particularly identifying facial recognition.
 - (f) 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.
 - (g) 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.
 - (h) 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.
 - (i) The recording equipment tapes and discs shall be kept in a secure environment under the control of the DPS or other named responsible person.
 - (j) 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.
- (k) 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.
- (l) A Challenge 25 policy will be in operation at all times and suitable posters will be displayed in the public areas of the premises.
- (m) A zero drugs policy will be in operation at all times and suitable posters will be displayed in the public areas of the premises.
- (n) The premises shall be members of the local Pub Watch Scheme and the Behave or be Banned (BOBB) scheme.
- 19 The premises licence holder is prepared to agree to the new proposed conditions of (b) (d) (l) (m) and (n) listed above.
- 20 This the first time the Licensing Authority has been asked to review the licence for these premises.
- 21 The decision that the Committee can make in respect of these applications is to:
- Allow the licence to continue unmodified
 - Modify the conditions of the licence.
 - Modify the conditions of the licence for a period not exceeding 3 months
 - Exclude a licensable activity from the scope of the licence.
 - Exclude a licensable activity from the scope of the licence for a period not exceeding 3 months
 - Suspend the licence for a period not exceeding 3 months
 - Revoke the licence
 - Remove the designated premises supervisor
- 22 When determining an application, then due regard should be given to the Council's licensing policy, and to the guidance issued by the Secretary of State.
- 23 The relevant sections of the Council's licensing policy are:-
1.5 In respect of each of the four licensing objectives, if representations are received from responsible authorities or interested parties applicants will need to provide evidence to the Licensing Authority that suitable and sufficient measures as detailed in their operating schedule, will be implemented and maintained, relevant to the individual style and characteristics of their premises and events. Reference will need to be made to whether additional measures will be taken on an occasional or specific basis such as when a special event or promotion is planned which is intended to, or likely to attract, larger audiences.

2.3 Further, in each section, a list of possible control measures is provided, to be of assistance to applicants, but again is not intended to be an exhaustive list. Many control measures achieve more than one objective but have not necessarily been listed under each objective. Similarly, applicants need not mention a control measure more than once in their operating schedule.

2.4 The selection of control measures, referred to in 2.3 above, should be based upon a risk assessment of the premises, events, activities and the customers expected to attend (eg their age, number, etc). Whilst the Licensing Authority cannot require such risk assessments to be undertaken or documented (other than where required by other legislation), it considers such documentation to be good practice and a useful tool in the instruction and training of staff, as well as a sound basis for review by the licence holder, in the event of requiring to make application for variation or in response to changing circumstances/conditions at the premises.

3.3 The promotion of the licensing objective, to prevent crime and disorder , places a responsibility on licence holders to become key partners in achieving this objective. If representations are made to the Licensing Authority applicants will be expected to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained to reduce or prevent crime and disorder on and in the vicinity of their premises, relevant to the individual style and characteristics of their premises and events

.3.4 When addressing the issue of crime and disorder, the applicant should consider those factors that impact on crime and disorder. These may include:

Violent behaviour

3.5 The following examples of control measures are given to assist applicants who may need to take account of them in their operating schedule in the event that representations are received, having regard to their particular type of premises and/or activities

Effective and responsible management of premises

Training and supervision of staff

Provision of effective CCTV and mirrors in and around the premises

Employment of Security Industry Authority licensed doorstaff

24 The relevant sections of the guidance issued by the Secretary of State are:-

2.1 The steps any licence holder or club might take to prevent crime and disorder are as varied as the premises or club where licensable activities may be carried on. Licensing Authorities should therefore look to the Police as the main source of advice on these matters. They should also seek to involve the local CDRP, as recommended in paragraph 1.21 of this guidance.

2.2 The government's expectation is that the police will have a key role in undertaking the following tasks;

Advising on the provision of safe and accessible transport home in consultation with community safety colleagues, local transport authorities and transport operators.

2.5 Licence conditions should not replicate licensing offences that are set out in the 2003 Act

2.6 Conditions are best targeted on deterrence and preventing crime and disorder. For example where there is good reason to suppose that disorder may take place, the presence of closed-circuit television cameras both inside and immediately outside the premises can actively deter disorder, nuisance and anti-social behaviour and crime generally. Some licensees may wish to have cameras on their premises for the protection of their own staff and for the prevention of crime directed against the business itself or its customers. But any condition may require a broader approach, and it may be necessary to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition.

2.7 Similarly, the provision of requirements for door supervision may be necessary to ensure that people who are drunk or drug dealers or carrying firearms do not enter the premises, reducing the potential for crime and disorder, and that the police are kept informed.

2.12 In the context of crime and disorder and public safety, the preservation of order on premises may give rise to genuine concerns about the competency of the management team charged with the maintenance of order. This may occur, for example, on premises where there are very large numbers of people and alcohol is supplied for consumption, or in premises where there are public order problems.

10.2 Conditions include any limitations or restrictions attached to a licence or certificate and essentially are the steps or actions the holder of the premises licence or the club premises certificate will be required to take or refrain from taking at all times when licensable activities are taking place at the premises in question.

11.19 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns which the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than a necessary and proportionate response.

11.24 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 should 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 or associated problems may be taking place or have taken place despite the best efforts of the licensee and the staff working at the premises and despite full compliance with the conditions attached to the licence. 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 holder of the premises licence.

- 25 If the Committee in their decision wishes to impose conditions, the only conditions that can be imposed are those that are necessary and proportionate to promote the licensing objective relative to the representations received. Equally, the Committee should not impose conditions that duplicate the effect of existing legislation.

RECOMMENDED that

- 1 The application is determined
- 2 In the event of an appeal against the decision of the Licensing Authority, then a member is nominated to attend at court.

Background papers:

- Application for a review from the Chief Constable of Essex Police
- Minimum desired outcome Annex 1
- Chronology of Events Annex 2
- Witness Statement Michael Robert Ashton Annex 3
- Witness Statement Neil James Russell Annex 4
- Witness Statement Mark Osbourn Annex 5
- Witness Statement Hannah Mary Griffiths Annex 6
- Letter dated 31st January 2012 to Sam Clark Annex 7
- Letter dated 7th February 2012 from Sam Clark Annex 8
- Letter dated 16th February 2012 to Sam Clark Annex 9
- Copy of Premises Licence
- Location of Premises
- Plan of Premises

Risk Analysis

Risk	Likelihood	Impact	Mitigating actions
There may be further cases reported to Essex Police which gives cause for concern at these premises	3 Members would need to take a view on the probability of further incidents taking place at these premises	3 The undermining of the licensing objective relating to the prevention of crime and disorder would be treated as a serious matter by the Licensing Authority	The premises may be subject to a further review

- 1 = Little or no risk or impact
- 2 = Some risk or impact – action may be necessary.
- 3 = Significant risk or impact – action required
- 4 = Near certainty of risk occurring, catastrophic effect or failure of project.