

**EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH
COMMITTEE held at TOWN COUNCIL OFFICES MARKET SQUARE
SAFFRON WALDEN at 2.30pm on 17 APRIL 2013**

Present: Councillor D Perry - Chairman.
Councillors M Lemon, J Salmon and A Walters.

Officers present: M Perry (Assistant Chief Executive-Legal), R Dobson
(Democratic Services Officer) and M Hardy (Licensing Officer).

Also present (for the determination of premises licence): John Gaunt –
solicitor for Cozy Pubs Limited; Paul Cutsforth – owner, The
Saracen’s Head; Councillor Wendy Barron – Great Dunmow Town
Council; Roger Stiffell – resident, Great Dunmow; (for the
determination of driver’s licence: the driver and a friend).

LIC59 **WELCOME**

The Chairman welcomed all those present and introduced members of the
Committee and officers.

LIC60 **DETERMINATION OF A PREMISES LICENCE – THE SARACEN’S HEAD**

The Committee considered a report setting out an application for the variation
of a premises licence for the Saracen’s Head, Great Dunmow. The Licensing
Officer informed Members of the location of the premises on the High Street in
Dunmow. He described the provisions of the original premises licence. He
said the applicant, Cozy Pubs Limited, sought a variation to the licence by
increasing the licensable activities in respect of regulated entertainment,
adding late night refreshment and extending the times permitted for the sale
of alcohol by retail. The Licensing Officer referred to the proposed operating
schedule showing how the licensing objectives would be met. He said the
Police had asked for certain conditions to be implemented should the variation
be granted. The only representations which had been received were from
Councillor Barron on behalf of Great Dunmow Town Council, and Mr Roger
Stiffell, who lived next door to the premises.

The Chairman thanked the Licensing Officer and invited questions.

In response to a question from Councillor Barron the Licensing Officer said
the licensing authorities were the Police, Fire, Health and Safety,
Environmental Health, Planning, Primary Care Trust, Trading Standards,
Essex County Council Children and Young People Safeguarding Board and
the Licensing Authority.

In response to a question from Mr Stiffell the Licensing Officer explained that
the hours during which premises were open to the public were not classed as
a licensable activity but did form part of the operating schedule.

Mr Stiffell asked about the application regarding the showing of films. On behalf of the applicant Mr Gaunt said the law required that if premises were to have TV screens and broadcast non-live TV then this activity needed to be licensed. It was not uncommon for public houses to have TVs mounted on the wall.

Councillor Barron made a statement, objecting on behalf of Great Dunmow Town Council to the application on the grounds that it would contravene the licensing objectives of the prevention of crime and disorder, public safety and the prevention of public nuisance. She said the application was also contrary to the Council's aims stated in its licensing policy, referring to its intention to interpret 'public nuisance' in the widest sense. She disagreed with the impact assessment in the report with reference to community safety and the right to peaceful enjoyment of a property under human rights legislation. She said the consequences of granting the variation to the licence would affect not only the ward of Great Dunmow South but also the North ward. She said The Saracen's Head was surrounded by residential areas, which had the potential to be severely affected by the variation.

Councillor Barron went on to say that Great Dunmow Town Council objected to films being shown at the premises, and considered that activities at the premises should be confined to those allowed by the existing licence. In the past residents living nearby had suffered nuisance from noise and from crime and disorder, involving unsociable behaviour, which had coincided with late night opening at the former Lennon's Bar. Some incidents had been reported to the Police, and the Town Council had received representations from some residents and business owners. Whilst the Town Council supported business in general, these proposals represented a substantial change. Taking into account the size of the building the change could have an adverse impact on the local community in terms of antisocial behaviour attributable to drinking.

Councillor Barron said the conditions which had been suggested were insufficient mitigation. Drink-fuelled issues tended to spread to other areas. The Saracen's Head was a listed building close to other properties, and the proposals would have a detrimental impact potentially on the sleep of nearby residents. She urged the Committee to reject the application.

The Chairman thanked Councillor Barron, and invited her to mention specific rather than potential issues.

Councillor Barron said the Police had had several antisocial behaviour reports. The Town Council did not assert that the incidents she had mentioned were attributable directly to The Saracen's Head but it was the view of the Town Council that these issues would be a potential hazard.

Mr Gaunt said there was no evidence against The Saracen's Head.

Mr Stiffell made a statement. He said he lived next door to The Saracen's Head. He had on his return from holiday on 22 March 2013 received a letter dated 11 March 2013 from the Licensing Officer inviting him as a nearby

resident to make representations if he so wished on the application to vary the licence. The deadline for replies was stated in the letter to be 25 March and therefore due to the short time remaining he had ensured he submitted his response quickly. On advice from Mr Steve Sparrow, the Police Licensing Officer for Uttlesford, Mr Stiffell had then consulted surrounding residents. Three had agreed to sign a document objecting to the application. Mr Stiffell had leafleted 14 other houses and obtained 12 replies, and he had submitted all such representations to the Council.

The Chairman asked Mr Stiffell to give specific details of representations.

Mr Stiffell said his complaint included two incidents of smashed windows. He had a police incident number regarding this damage to his own property. Mr Stiffell said another problem was noise. He recounted an incident last year when the pub had had a band playing. At midnight he spoke to one of the doormen to ask that the doors be closed because the music was too loud. The doorman had replied that he could not because it was too hot. Mr Stiffell said there had also been a number of people outside smoking, and he had told the doorman 'there was trading going on'. The Chairman asked whether this was a reference to drug trading. Mr Stiffell said he would not know.

Mr Stiffell said he was concerned about the impact of increasing the licensable activities of the business as Dunmow was a small country town. This variation would attract more people from outside the area and he was concerned that 'something would kick off'. He had experienced the nuisance of glasses being left outside on his drive, people being sick, and even copulating on the drive, and he felt matters would only get worse. He felt the residents at the back of the property would also be very concerned.

The Chairman asked about the frequency of the incidents described. Mr Stiffell said his windows had been broken once this year; that he had spoken once to staff at the hotel. He had not kept a log of incidents, but felt incidents would increase. He knew of one lady who now had to sleep in her back room due to the noise.

Councillor Walters asked whether the hotel employed security guards at the weekends.

Mr Cutsforth said only a night porter was employed but security guards were not used routinely, only for events under TENs.

Mr Gaunt drew attention to the condition requested by Police that if trading after midnight there should be door staff.

Councillor Lemon asked if there had been any occasion recently when the Police had been called to the Saracen's Head.

Mr Cutsforth said in the twelve months he had been operating the business the Police had never been called.

Mr Gaunt asked whether Mr Stiffel could say whether the antisocial behaviour he had described was from customers of The Saracen's Head rather than other premises. Mr Steffel said he could not say that this was the case as at the times in question he was in bed.

Mr Gaunt said this was an application on behalf of Cozy Pubs. Mr Cutsforth owned Cozy Pubs and operated from other premises in the district. He had acquired The Saracen's Head a year ago and had invested £1 million in the premises, which were now in very good condition. He had inherited 31 letting bedrooms which were at that time not being used, but which were now being actively promoted, and had recently gained 91% occupancy. Mr Cutsforth did not wish to detract from the accommodation side of his business. The premises had been inherited under the old licensing regime. Mr Gaunt referred to a map showing the premises, although unfortunately this was not a detailed plan.

Mr Gaunt said his had agreed with the Police certain conditions for the variation to the licence, such as CCTV and door staff. The Police had made no representations to the application, neither had Environmental Health Officers. Since May 2012 the premises had opened to 1am on eighteen occasions under TENs. There had been five TENs events this year, and no complaints about the business had been received in relation to these events.

In reply to a question from the Chairman, Mr Cutsforth said the number of people attending such events was 100 to 150. The events were not aimed at young people.

Mr Gaunt said other businesses in the town were already operating late night trading and in submitting the application to vary the licence The Saracen's Head was not a pioneer. Another business, Lennon's Bar, did not have a rear external area under its control, in contrast to The Saracen's Head which did. The determination of licence should be based on evidence, but the objections raised by the Town Council were all speculative, with many references to 'potential' but not actual issues. The Committee should look at reality and there was no evidence from the Town Council that such issues would arise, and if they did there was the option to review.

Regarding the representations of Mr Stiffell, there had been a meeting between Mr Stiffell with Mr Cutsforth and Mr Gaunt, at which the applicant sought to explain his intentions. It was the applicant's belief that this discussion had reassured Mr Stiffell.

Regarding the determination of the application to vary the licence, Mr Gaunt said this was a significant investment for Mr Cutsforth. The Thwaites case was the authority that licensing committees should base their determination on evidence and that their decision must be reasonable and proportionate. New guidance indicated that licensing committees should accord greater stature to Police advice, and in this case the Police had no concerns regarding this application. The applicant submitted this application was reasonable and proportionate and asked the Committee to grant the variation.

Mr Cutsforth said he wished to offer reassurance as to how the premises would operate. He had no intention of hosting live music or DJ events every week. The 'party nights' held at the premises were on the last Friday of every month and most of the time the business was trading only to midnight. There was a fairly equal balance between the revenue from the guest accommodation, the bar and the restaurant, and he did not wish to distort that balance. The Saracen's Head would continue to hold these events from time to time and the repeated application for TENs was a bit of a chore.

In reply to a question from the Chairman Mr Cutsforth said he anticipated late night trading to 1am on the last Friday of the month, on Bank Holidays and at Christmas, with flexibility to do so at weekends.

Councillor Lemon asked whether the premises had air conditioning to minimise noise from open windows in summer.

Mr Cutsforth said there was no air conditioning. He had not been aware of any complaint by Mr Stiffell as referred to earlier but said that both doors of the premises doors were lobbied. The issue of air conditioning might be considered.

In reply to a question by the Licensing Officer Mr Cutsforth said the other premises he operated in the district were the Eight Bells in Saffron Walden and the Cricketer's Arms in Rickling Green.

Mr Stiffell pointed out that the plan available at the meeting was out of date in that it showed the old auction house, where there were now houses. He said the ground floor plan of the premises was also incorrect.

Mr Gaunt said due to an administrative error the plan attached to the agenda papers did not show the current layout of the premises. At the request of the Chairman he explained the layout.

Mr Stiffell said that in Shepherd's Lane there were now about a dozen houses which would be blighted by the exiting of customers to the car park and to the rear of The Saracen's Head.

Mr Gaunt apologised for the incorrect map and said the application had been properly advertised, and that only one resident had put in a representation.

Regarding an area which had been referred to as a place available for smoking, Mr Stiffell said this was part of the walkway. The security guard had told him that asking people to move to the rear of the property would give rise to trouble. He said a longer consultation period was required and more information was needed showing the downstairs facilities at the premises.

The Assistant Chief Executive Legal said he endorsed the interpretation of the Thwaites case. The Committee was only dealing with the current application. He did not accept Mr Gaunt's submission regarding current guidance about

weight to be given to Police evidence in terms of the licensing objective of prevention of crime and disorder. The guidance did not mean that Committees should disregard representations made by others just because the Police had not made representations.

Mr Gaunt said it was not his intention to dismiss objections made by others in that way and he was simply making the point that the Police had made no objection.

At 3.30pm the Committee withdrew to determine the application, and at 3.35 returned.

DECISION

The Chairman gave the Committee's decision as follows:

As no representations were made by the statutory authorities, and all the issues put forward by other interested parties who made representations were speculative in nature, the Committee cannot support their objections. Those parties have the right, if problems arise, to make further representations to the statutory authorities and seek a review of the licence. The Committee grants the application to vary the licence in accordance with the application subject to the addition of the conditions set out at paragraph 12 of the report.

LIC61

EXCLUSION OF THE PUBLIC

RESOLVED that, under section 100I of the Local Government Act 1972, the public be excluded for the following item of business on the grounds that it involved the likely disclosure of exempt information as defined in paragraphs 1 and 2 part 1 of Schedule 12A of the Act.

LIC62

DETERMINATION OF A DRIVER'S LICENCE

The Committee considered a report asking Members to determine whether a driver's licence should be revoked, in that since the grant of the licence the driver had been convicted of an offence which involved dishonesty.

The Licensing Officer explained that the driver's licence was valid to 31 July 2013. The Licensing Officer set out the circumstances of the offence as described in the report. The driver had informed the authority on 4 April 2013 of her conviction for fraud relating to benefit claims following a change of circumstances which she did not declare to her local authority.

The invited the driver to make a statement. The driver said she knew she had done wrong but felt that the conviction did not affect her ability to act as a driver on a school contract. She had held a position of trust for 22 years looking after the elderly, and had worked for the past 3 years for a charity. She felt she should not be punished further and said she would suffer

financial hardship if she lost her job. It would be difficult for her to find other work. She had never done anything fraudulent before. The incident had occurred at a bad time for her when she was in ill health and she asked the Committee to take all these factors into consideration.

The Chairman thanked the driver. He asked about the length of time over which the dishonesty had taken place.

The driver said the dishonesty had taken place over two years.

The Licensing Officer asked the driver to explain why she had not notified her local authority of the change in her circumstances, when she had received both a redundancy payment and pension. The driver said she had been in poor health and was depressed and had overlooked this issue.

The Assistant Chief Executive Legal explained to Members that under the Social Security Act 1992 there were two types of offence, the more serious of which involved proof of dishonesty, the lesser of which involved proof of knowledge. The certificate of conviction had not been supplied, but it seemed unlikely that the offence in this case was the lesser offence. The narrative seemed to indicate there had been two offences committed, one arising from starting work at the care home, the other arising from her commencing work as a licensed driver.

The driver said she did declare the changes in her circumstances when she started working for ECC but the council kept changing the benefits.

The Assistant Chief Executive Legal said underlying entitlement was relevant. The driver had repaid the sum of almost £10,000 which was a high sum if there was an underlying entitlement to benefit. This was clearly a very serious offence. The driver had had legal aid, which was only available where one's liberty was at stake, and she had received a custodial sentence, indicating the serious view taken by the court.

Members had heard the driver's plea not to be punished again, and it was true that she had already been punished by the justice system. However the question before the Committee was whether she was a fit and proper person to hold a driver's licence.

At 3.55pm the Committee withdrew to determine the driver's licence. At 4.30pm the Committee returned to give its decision.

DECISION

The driver has been licensed as a driver by the council since 2010. In 2009 she was temporarily out of work and applied to Harlow District Council for housing benefit and council tax benefit. Shortly after lodging the claim she obtained work with Essex County Council. Unfortunately, she was injured shortly after starting that job and received statutory sick pay instead of her salary. Her contract was terminated in March 2010. She commenced work

as a licensed driver in Uttlesford in or about August 2010. Ten months later she was interviewed for an offence of benefit fraud and her benefit stopped. The amount of benefit which had been overpaid was almost £10,000. The driver was subsequently prosecuted for an offence of dishonestly failing to notify a change of circumstances. She was given a custodial sentence, albeit suspended, a community service order and ordered to pay £550 costs.

As a result of her conviction the driver no longer meets the council's licensing standards. Councils have a duty to grant licences to those who are fit and proper persons. In determining whether a driver is fit and proper the council has a policy and members should only depart from that policy if there are good reasons for doing so.

It is essential that licensed drivers are honest. They are in a position to obtain information about customers which is sensitive and could cause members of the public to be targets of crime if it comes into the wrong hands. Parliament has underlined the importance of drivers being honest in the legislation as it is a ground for revocation of a licence that a driver has been convicted of an offence of dishonesty.

The driver's offence was a serious one. It involved proof of dishonesty. The offence was committed over an extended period of time, some two years. The amount of overpayment obtained by the fraud was substantial. The severity of the sentence demonstrates the weight the court gave to the aggravating features of the offence against what would have been very powerful mitigation, namely that the overpayment had been repaid in full before the case came to court.

Before the committee today, the driver says that if her licence is revoked she will lose her job and be forced back onto benefits. She says that she has been punished by the courts and that the committee should not punish her further.

The committee agree that it should not take action with a view of imposing a punishment. Indeed it would be contrary to its policy to do so. Suspension of the licence is not therefore an option. The question for the committee is whether or not the driver remains a fit and proper person. In considering that question the personal circumstances of the driver are a factor which the committee cannot as a matter of law take into consideration.

The committee have heard nothing regarding the circumstances of the offence to suggest that there are any grounds for it to depart from its policy. The driver does not meet the standards required by the council and cannot therefore be considered to be a fit and proper person. Her licence is therefore revoked.

The meeting ended at 4.35pm.