

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 10am on 4
DECEMBER 2013**

Present: Councillor D Perry - Chairman.
Councillors V Ranger, J Salmon and A Walters.

Officers present: M Perry (Assistant Chief Executive-Legal), M Chamberlain (Enforcement Officer), M Cox (Democratic Services Officer), M Hardy (Licensing Officer), J O'Boyle (Environmental Health Officer) C Nicholson (Solicitor) and A Rees (Democratic Support Officer).

Also present: the drivers in relation to agenda items 2, 3, 4; the applicants and interested parties in relation to items 5 and 6.

LIC44 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

There were no apologies for absence or declarations of interest received.

LIC45 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.

LIC46 DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE

Members considered suspension or revocation of a private hire/hackney carriage driver's licence in accordance with section 61(1)(a)(ii) Local Government (Miscellaneous Provisions) Act 1976, under the heading that the driver had failed to comply with part of this Act.

The report explained that a routine inspection by ECC contract management on 1 October 2013 had revealed that the vehicle was displaying a private hire plate that had expired on 30 September 2013. An expired license plate was an offence under the Act.

At an interview under caution on 5 November 2013, the driver had confirmed that she had been driving the vehicle on that day but did not realise that the license plate had expired. She said she conducted a regular general check of the vehicle but did not look at the plate as she relied on receiving a text from the operator to bring the vehicle to the yard when a new plate was ready. She explained that after she had been stopped she went to the company offices where the vehicle plate was waiting and it was changed there and then.

The driver had accepted a council caution for the offence of failing to display a valid private hire vehicle plate. As a result the driver fell below the council's licensing standards, having received an official caution within the last 12 months, and it was for the Committee to decide whether she remained a fit and proper person to retain the licence.

The driver was not present at the meeting.

The Chairman stated there was an onus on both the operator and the driver to ensure that the vehicle had a valid license plate. However this was a minor matter and as a caution had already been given, the committee made the following decision.

DECISION

The Committee was satisfied that the applicant was a fit and proper person to hold a driver's licence and no further action should be taken.

LIC47

DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE

The Committee considered the suspension or revocation of a Private Hire/Hackney Carriage Drivers Licence in accordance with section 61(1)(a)(ii) Local Government (Miscellaneous Provisions) Act 1976 under the heading that since the grant of the licence the driver had failed to comply with part of that Act.

The Enforcement Officer explained that at a routine inspection by the Contract Compliance Officer on 30 October 2013, the driver was found not to have his private hire driver's badge with him.

At an interview under caution on 18 November 2013 the driver explained that he had returned from holiday on 28 October, collected his vehicle on 29 October and had driven without the badge on this date and on 30th October because he had forgotten to collect it from his house. He had confirmed that he had received training and understood the protocol for wearing his badge. He had accepted the offence and apologised.

In accordance with the Council's Licensing Policy, where an offence was committed under the legislation the Council should impose a sanction. The driver had chosen to accept a council caution and as a result, the driver now fell below the council's licensing standards. Members were required to decide if the driver remained a fit and proper person to retain his licence.

The driver addressed the meeting. He confirmed that he had not lost his badge but it was still in his house following his return from holiday. It was a simply a slip of memory. Also, at the time he had been distracted by the poor weather conditions. In answer to a question he confirmed that he always kept

his badges in the vehicle except when he went on holiday. He told the Committee he was sorry for this mistake and that it wouldn't happen again.

The Chairman was concerned that that this was the 4th case of this kind concerning this particular operator. The Assistant Chief Executive – Legal said the operator had been asked to remind the drivers of this requirement but pointed out that the wearing the badge remained the responsibility of the driver.

At 10.10am the Committee withdrew to consider its decision, and at 10.15 am returned.

DECISION

The Committee was satisfied that the applicant was a fit and proper person and that no further action should be taken.

LIC48

DETERMINATION OF A PRIVATE HIRE DRIVER'S LICENCE

Members were asked to consider suspension or revocation of a private hire/hackney carriage driver's licence in accordance with section 61(1)(b) Local Government (Miscellaneous Provisions) Act 1976, under the heading 'for any other reasonable cause'.

On 14 November 2013, information had been received that the driver had been referred to Aviation Medica by his employer and pending an examination had been suspended from driving. The Licensing Officer explained that when a driver was suspended by his employer his license still remained in force, which would permit him to drive for another operator, so in view of the doubt about the medical condition the licence had been suspended by the Assistant Chief Executive – Legal with immediate effect.

Members had received the report from Aviation Medica. Whilst this concluded that the driver was not outside group 2 standards, there were some concerns about behavioural changes and it had been recommended that the driver should not drive until he had undertaken a formal driving assessment and a obtained a current optician's report. The driving assessment had been carried out by an approved driving instructor with many years of experience. This report had highlighted 7 areas of concern with the driving, which were of sufficient severity that the instructor had terminated the assessment early due to safety concerns.

The Committee was advised that a license could not be suspended indefinitely. If the driver was found to be unfit to drive there were two options, either to revoke the license, or to suspend the license until its expiry date, giving delegated authority for the license to be reinstated if he produced a medical certificate that he was fit to drive.

The driver spoke to the Committee. He said the assessment had been carried out in a vehicle that he was not used to, it had been dark and rainy and the instructor was aggressive towards him. He drove as he always did, using his gears to slow down at each corner and properly observing the speed limit. He contested the content of report did and said it did not reflect his experience of the drive.

In reply to questions, he said that he had driven extensively in Africa and he now drove a VW estate. He had driven other classes of vehicles and a minibus abroad. For the operator he now drove an 8 seat minibus.

The Chairman asked him to comment on the assessment by Aviation Medica He said it comprised a series of intelligence/ memory tests. The doctor had suspected that he had a cataract but a subsequent visit to the opticians had confirmed that he did not. He was prescribed a new pair of glasses, which he was now wearing.

He mentioned the 4 occasions when he had lost a wing mirror from his vehicle, and explained that he had not necessarily been at fault.

The Chairman asked what assurance he could give that he was still a fit and proper person to hold a license. He replied he had been with for the current company for 5 years and had driven many different vehicles during that time.

At 10.30 am the Committee withdrew to consider its decision, and at 10.50 am returned.

DECISION

The driver was first licensed by the council as a private hire vehicle driver on the 25 September 2008. At that time the driver produced a driving licence showing one lapsed fixed penalty notice for excess speed, a clear CRB check and a medical certificate showing that he was considered fit to drive by Group 2 standards. Since that time the driver's licence had been renewed annually. His last medical examination for the purpose of licence renewal was in September 2011. At that time he was again certified fit to drive. The driver's licence does not reveal any current endorsements. His driver's licence was last renewed with effect from the 1 September 2013.

On the 14 November information was received by the council that the Driver had been suspended by his employer due to concerns about his driving and he had been referred to Aviation Medica. It emerged today that at least part of the reason for this is that the Driver has recently lost 4 wing mirrors while driving his employer's vehicle. In the light of this information the Driver's private hire driver's licence was suspended with immediate effect in the interests of public safety. The suspension is due to expire at midnight tonight.

Since his suspension the Driver has been examined by Dr Orton of Aviation Medica and has undergone a driving assessment by a DSA approved driving instructor. There are some concerns arising from the medical report. Dr Orton

recommends that the Driver should see an optician regarding the prescription for his glasses although he states that with the current prescription the driver does meet the required standard. Dr Orton also suggests that due to behavioural changes exhibited by the driver he ought to be referred for neurological examination. However Dr Orton does not say that the driver fails to meet group 2 medical standards at the present time.

Notwithstanding the fact the driver may still meet group 2 standards and therefore would be considered to be a fit and proper person on medical grounds within the council's policy the committee have to take all relevant factors into account in determining whether an individual is or is not a fit and proper person. The committee have read the report of the driving instructor who assessed the driver's driving with the greatest concern. The assessment was intended to last for 1 hour 30 minutes. The instructor terminated the assessment after 45 minutes as he did not consider it safe to continue. He describes the assessment as the most frightening 45 minutes he has ever spent. He lists a number of very serious shortcomings in the manner of the driver's driving. The committee note not only the seriousness of the instances recorded but also that the driver seemed to be unaware that he was driving in a manner which was dangerous. The driver does not accept this assessment. He states that he was driving an unfamiliar vehicle at night and in poor weather conditions. He considers that his manner of driving was acceptable and in particular that it is appropriate to use the gears to slow down approaching bends rather than the brakes. However the driving instructor is an independent person with a great deal of experience and in the absence of any independent evidence to the contrary the committee has to be guided by his views.

In the light of the driving assessment the committee are not satisfied that the Driver is a fit and proper person to hold a licence. There is no suggestion that this position will change in the foreseeable future and suspension is not therefore an option. The committee therefore revoke the driver's private hire driver's licence. Given the manner of the driver's driving the committee are of the view that it is necessary for the suspension to have immediate effect in the interests of public safety and direct accordingly.

The Assistant Chief-Executive - Legal advised the driver of his right of appeal to the Magistrates Court in 21 days. He explained that the revocation was with immediate effect.

The public were admitted to the meeting.

LIC49

APPLICATION TO VARY A PREMISES LICENSE – SAFFRON WALDEN FOOTBALL CLUB

The Committee considered an application for the variation of a premises License for the Saffron Walden Football Club.

The Licensing Officer presented the report, which set out the current licensable activities. The variation sought would include live music, recorded music, and the performance of dance. The proposed hours for the entertainment activities would be from 7pm until midnight Monday to Friday, from 10 am until midnight on Saturday and from noon until midnight on Sunday. The variation also sought an extension of the permitted time for the sale of alcohol by retail by 1 hour to midnight and an extension of the time at which the premises should close to the public until 12.30 am. It also asked for non-standard times on Christmas Eve and New Year's Eve and the removal of all embedded conditions contained in the Licensing Act of 1964.

Members were given details of the operating schedule which set out the measures to be adopted to promote the key licensable objectives.

The application had been served on all statutory bodies and a representation had been received from the Principal Environmental Health officer, based on the licensable objective of public nuisance. An agreement had subsequently been reached with the applicant for 5 additional conditions to be added to the license to overcome this objection. These were as follows

- Premises supervisor or representative shall regularly assess noise from the premises during amplified music events. Steps shall be taken to reduce the level of noise where it is likely to cause disturbance to residents
- Prominent and clear signage shall be displayed near exits and around the site requesting patrons and guests to leave the premises and area quietly
- The premises supervisor or representative shall ensure that providers of live or recorded music announce at least twice before the end of their act a request that patrons and guests leave quietly and quickly
- External doors and windows to be kept closed after 2300hrs except for access and egress when live or recorded music is being played or performed
- The premises supervisor or representative shall monitor the car park for noise from customers. Steps shall be taken to encourage customers to leave quietly and quickly

Representation had been received from interested parties on the grounds of public nuisance and crime and disorder.

The Licensing Officer advised the members that when determining the application, they should have due regard to the council's licensing policy and statutory guidance.

The Committee asked questions of the Licensing Officer. The Chairman about comments from the Police, as the interested parties had mentioned incidents where the Police had attended. The Licensing Officer confirmed that the Police had raised no objection to the application.

The Environmental Health Officer attended the meeting and explained that her assessment had concluded that the indoor music could impact on nearby residential properties. The 5 conditions had been proposed to prevent public nuisance, the applicant had agreed and these would be applied to the license. The applicant confirmed that he was happy with this approach.

Councillor Ranger said the condition to measure noise levels was of little value if the acceptable level of noise was not explicitly defined. Mr Vincent, the representative of the applicant said there were acceptable levels set out in the Noise Act and using his own monitoring equipment, this was what he tried to adhere to.

The Committee then heard from the interested parties.

Peter Taylor referred to the difficulty of assessing noise levels and felt that the condition relating to this was not realistic. In summer it was unlikely that the windows would remain shut. The existing use gave reasonable discomfort especially on summer evenings and he thought that the extension to 12 midnight was too late, especially on week day evenings. He mentioned that new houses were being built very near to the site and the future occupants would have had no say in this application.

Catherine Cameron said she lived in Castle Street next to the alleyway, which was the way out from the football club. She was concerned that the increase in hours and the variation would exacerbate the public nuisance issues already being experienced.

Mr Vincent, the representative of Saffron Walden Football Club, made his statement. He said he understood the concerns of the local residents but pointed out that there were other public houses in the vicinity and it was not always possible to determine where people had come from. He and his wife were experienced publicans; at closing time there a member of staff outside the premises, monitoring behaviour and taking bottles and glasses. He confirmed that windows in the building were permanently fixed shut. There were 3 out-facing doors, three of which were fire doors, which could be pushed open, but there were regular patrols to keep them shut.

He explained the extension to midnight during the week was mainly to do with the drinking license, to operate alongside non music events. He was happy to operate within the conditions of the license and the additional conditions proposed. He explained that he had carried out an assessment of the noise levels by playing a PA very loudly inside the hall, leaving the door open and measuring the decibel level with a noise meter on his phone. At the boundary of the site 70dB had been recorded and at Castle Street 63dB, which he understood to be around the level for normal speech. When events were being held he or staff regularly checked these levels.

The Chairman asked whether soundproofing had been included in the recent refurbishment of the premises. Mr Vincent replied that the external wall had

been triple lined, double-glazing installed, the doors replaced so the noise levels were considerably lower than 18 months ago.

The Chairman asked the Environmental Health Officer if it was possible to set an appropriate noise level. She replied that it difficult to define a base level, in rural areas this should be around 35dB but would be more in the town. A noise study would be required to determine the level.

Councillor Walters said that being realistic, in the summer it would hard to prevent doors being opened, and it was also difficult to control noise levels for live music. From the representations received there appeared to be objections to certain types of music. Mr Vincent responded that the demographic of people who attended events had changed over the years and was now more in the 35 -55 years category. He also explained that although the public could hire the premises, it was still managed by the club who provided the staff, bar and catering.

In answer to a question about training he said that there were currently 3 Personal License Holders (PLH) and other staff had expressed an interest in obtaining this qualification. The Chairman felt there should be at least one PLH present at each event. Mr Vincent confirmed this was currently the case. He and wife were responsible for the day to day running of the club and his wife was the Designated Premises Supervisor.

At 11.45 the committee retired and returned at 12.40 and announced the following decision.

DECISION

The committee have today considered an application for a variation of the premises licence for the Saffron Walden football club. The premises have been licensed for a number of years and the licence was converted from a magistrates licence to one issued by this authority under the Licensing Act 2003 during the transitional period. The current licensable activities are the playing of recorded music and the sale of alcohol by retail. The permitted hours for both licensable activities are 10.00 am to 11 pm, with music and drinking up time up to 11.20. The hours are less on a Sunday, from 12pm to 10.30 pm.

The variation sought would include live music, recorded music, and the performance of dance. The proposed hours for the entertainment activities would be from 7pm until midnight Monday to Friday, from 10 am until midnight on Saturday and from noon until midnight on Sunday. The variation also seeks an extension of the permitted time for the sale of alcohol by retail by 1 hour to midnight and an extension of the time at which the premises should close to the public until 12.30 am.

The application attracted representations from the Council's Environmental Health Department as a responsible authority and also from some local residents as interested parties. These concerned the licensing objectives of

the prevention of public nuisance and in the case of the interested parties' also prevention of crime and disorder.

Having considered the submissions on the issue of crime and disorder Committee were not satisfied on the evidence that was likely to be a significant problem of crime and disorder and it was not necessary or proportionate to take any steps in that regard either by refusing the application, modifying the licence or imposing conditions.

The objective of the prevention of public nuisance is however far more relevant in particular with regard to potential noise nuisance from the premises. The Committee note that the premises are close to a residential area and note the concerns of local residents are to the potential of noise nuisance.

The proposed hours for licensable activities extend beyond 11.00 pm and on week days the premises will not close until 12.30 am. Licensable activities (particularly the provision of regulated entertainment) may adversely impact upon the local community. The Committee has to balance the benefits of musical events against the rights of residents to peace and quiet.

Mrs Lee-Moore in her representation and Mrs O'boyle today on behalf of the Environmental Health Department proposed certain conditions which would meet their concerns.

- Premises supervisor or representative shall regularly assess noise from the premises during amplified music events. Steps shall be taken to reduce the level of noise where it is likely to cause disturbance to residents
- Prominent and clear signage shall be displayed near exits and around the site requesting patrons and guests to leave the premises and area quietly
- The premises supervisor or representative shall ensure that providers of live or recorded music announce at least twice before the end of their act a request that patrons and guests leave quietly and quickly
- External doors and windows to be kept closed after 2300hrs except for access and egress when live or recorded music is being played or performed
- The premises supervisor or representative shall monitor the car park for noise from customers. Steps shall be taken to encourage customers to leave quietly and quickly

The applicant has got a noise meter which they do use to monitor decibel levels.

In reaching its decision the Committee has had regard to its licensing policy and in particular to paragraphs 1.16, 2.1 – 2.4, 5.1 – 5.3 and 5.5 – 5.7. It has also had regard to the government guidance including paragraphs 2.7, 2.11, 2.20, 2.22, and 2.24. Members also took into account residents' concerns over the proposed Environmental Health conditions when reaching their decision.

The Committee is of the view that the promotion of the licensing objective of the prevention of public nuisance can be met by conditions. Such conditions should normally flow from a risk assessment carried out by the applicant as is reflected by the Council's policy and government guidance. These documents are there not only as a reference point for the Licensing Committee but also as a guide to applicants to assist them in making applications which are more likely to succeed. In this case it would appear that the applicant either did not carry out a risk assessment or did not submit it with the application. In the circumstances in determining what is necessary to promote the licensing objectives the committee has had to rely upon representations made in writing and received today.

Members are also aware of the deregulation of the playing of live music by the Live Music Act 2012, that amended the Licensing Act 2003 which no longer needs a licence between 0800 and 2300 if it is unamplified, and if it is amplified music it does not need a licence if it is for an audience of less than 200 people. It follows that no conditions can be placed on a licence in respect of those times for that particular activity.

The Licensing Committee are therefore prepared to agree to the addition of the provision of live music, the performance of dance and recorded music permitted from the premises subject to those conditions and subject also to the addition of two conditions and a reduction in hours on a Sunday as follows:

- Premises supervisor or representative shall regularly assess noise from the premises during amplified music events . Steps shall be taken to reduce the level of noise where it is likely to cause disturbance to residents
- Where regulated entertainment events continue after 2300 the premises supervisor or representative shall take a decibel reading outside the premise with their decibel meter equipment and record the level, and made the record available for inspection by the Licensing Authority
- Prominent and clear signage shall be displayed near exits and around the site requesting patrons and guests to leave the premises and area quietly
- The premises supervisor or representative shall ensure that providers of live or recorded music announce at least twice before the end of their act a request that patrons and guests leave quietly and quickly
- External doors and windows to be kept closed after 2300hrs except for access and egress when live or recorded music is being played or performed
- The premises supervisor or representative shall monitor the car park for noise from customers. Steps shall be taken to encourage customers to leave quietly and quickly
- A Personal Licence holder, or person with a personal licence qualification to be on the premises during any regulated entertainment events.

The hours for regulated entertainment as applied for shall be granted subject to the reduction to 2330 hours on a Sunday.

With regard to the application to vary the hours for the sale of alcohol for consumption on and off the premises to 12.00 am Monday to Saturday and to

midnight on Sunday, the application is granted with the reduction of hours on a Sunday to 2330. The hours of opening are also granted, save that it be reduced on a Sunday to midnight. The removal of the embedded conditions is also agreed.

Parties present were reminded of the right to appeal against the Council's decision to the Magistrates Court within 21 days.

LIC50

APPLICATION FOR GRANT OF A PREMISES LICENSE– THE PLOUGH INN RADWINTER

The Committee considered an application for a premises license at the Plough Inn, Radwinter

The Licensing Officer presented the report and explained that this application had come before the committee because representations had been received. The previous license had been issued under the Licensing Act 2003 and the report explained the previous licensable activities. The new request was as follows, the showing of film, live music inside and outside from 10 am to 11.30pm Monday to Wednesday, to midnight on Thursday, until 1 am on Friday and Saturday and until 10 30 on Sunday. Recorded music (inside and outside) and supply of alcohol to start at 9 am other than Sunday when it would be 10am, and to finish at the same times as for live music. The premises opening times were proposed to be from 9 am until 30 minutes passed the finish times for the licensable activities. There were proposed to be additional hours on Bank Holidays

The application had been served on the statutory bodies and an objection had been received from the Principal Environmental Health Officer on the grounds of public nuisance. As a result of this objection the applicant had agreed to remove outside live music and films from the application, and for the committee to consider the application on this basis. The Licensing Officer reported that at 9.00am that morning he had received a phone call from applicant who stated that he now wished to include the outdoor activities and for the Committee to consider the original application.

The Chairman asked the Environmental Health Officer to state her views on the application. She said the application, as originally submitted, could not be seen to prevent public nuisance due to noise disturbance, which was likely to affect the 15 to 20 properties near the premises. Playing live music outside or in a marquee would cause noise nuisance, particularly if it was after 11pm and also if it occurred regularly before 11pm. Any outdoor events should be limited in number, extend no later than 11.00pm and be dealt with through a Temporary Event Notice.

To prevent noise breakout from the premises, it had been suggested that the noise levels should not exceed 45dB after 22.00 at the boundary with Plough Cottage. She had also recommended a noise management plan detailing measures to control noise from external areas.

The Committee then heard from the interested parties.

Mr Rex Howling said that until the recent announcement from the Licensing Officer the residents had understood that the issue of the live music and film outdoors had been addressed. The change of stance was a sign of bad faith on the part of the applicant. He said that as the pub was at a high point in the village the outdoor activities would undoubtedly cause a noise nuisance.

He explained that following the email exchange between the applicant and the Council and subsequent discussion between himself and the Applicant, the residents had been informed, via the village magazine, of the withdrawal of the outdoor activity elements of the application. The magazine had been distributed before the end of the representation period, and many local residents could well have decided not to submit representations based on this information and in fact he was specifically aware of people who had not commented who would have otherwise done so. He requested that the meeting be deferred to allow residents to make representations on the full application.

The Chairman agreed to adjourn the meeting at this point to check the process and relevant dates in relation to this issue.

At 2.00pm the Committee returned and the Chairman announced that in the interests of fairness and transparency, and for the Committee to be in full possession of the facts he would adjourn the meeting. The meeting would be reconvened on either 16, 17 or 20 December 2013, the date to be advised as soon as possible.

The Solicitor said that this action had been taken under Regulation 12 of the Licensing Act 2003 (Hearings) Regulations 2005, where an authority could adjourn a hearing to a specified date where it considers this to be necessary for its consideration of any representations or notice made by a party. The Solicitor advised that there would be no re-consultation on the application.

The meeting ended at 2.35pm.

Addendum

On Thursday 5 December the applicant advised the Licensing Officer of his intention to withdraw this application.