

**EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH  
COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON  
WALDEN at 10am on 2 DECEMBER 2015**

Present: Councillor R Chambers (Chairman)  
Councillors J Davey, S Morris and J Parry.

Officers in attendance: A Bonham (Environmental Health Officer) J Jones  
(Licensing Officer), M Perry (Assistant Chief Executive – Legal), A  
Rees (Democratic and Electoral Services Officer) and A Turner  
(Licensing Team Leader).

Also Present: Mr Bardell, Mr Bolden, Mr Shepherd (objectors) Mr Rathore (the  
applicant's solicitor), Mrs Wisbey (the applicant) and Mr Marriage (the  
applicant's husband) in relation to Item 2. Mr Sinkia (the applicant) and Mrs  
Westbury-Barnes (Operator – Diamond Transport) in relation to Item 3.

**LIC51 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

There were no apologies for absence or declarations of interest.

**LIC52 APPLICATION FOR A NEW PREMISES LICENCE – COLVILLE HALL,  
CHELMSFORD ROAD, WHITE RODING, ESSEX, CM6 1RQ**

The Chairman outlined the Committee's procedures for licensing hearings. He  
then invited the Licensing Team Leader to present her report.

The Licensing Team Leader said Colville Hall was situated on the outskirts of  
White Roding. Colville Hall itself was a residential property. Mill Pond Barn  
which formed part of the site would be the main licensed building for wedding  
receptions. Orchard Barn was to be used for wedding ceremonies and the Old  
Dairy was to be used for accommodation.

In accordance with the Licensing Act 2003 an operating schedule had to be  
submitted along with an application for a premises licence. The licensable  
activities being sought were as below:

Plays Monday to Sunday	(Indoors & outdoors) 10:00 – 00:30
Live Music Monday to Sunday	(Indoors & outdoors) 23:00 – 00:30
Recorded Music Monday to Sunday	(Indoors & outdoors) 23:00 – 00:30
Performance of Dance Monday to Sunday	(Indoors & outdoors) 10:00 – 00:30

The sale of alcohol by retail for consumption Monday to Sunday	(on and off the premises) 10:00 – 00:30
Opening Hours Monday to Sunday	(Indoors & outdoors) 10:00 – 00:30

The Licensing Team Leader said the operating schedule also indicated how the four licensing objectives would be met. The application had been served on all statutory bodies and attracted a representation from Environmental Health. The Council's Planning Department had not made a formal representation but had requested the Committee's attention was drawn to the following condition attached to the sites planning permission;

“Events/Function shall take place at the site no more than 180 days per year, of which no more than 140 will involve the use of amplified music. Except from overnight residents, persons attending events/functions as a visitor or guest shall only be on the site between 7.30 hours and 00.30 hours the following morning.

REASON: In the interests of the amenity of the area in accordance with Policies GEN2 and GEN4 of the Uttlesford Local plan (adopted 2005)”

17 representations from interested parties and from White Roding Parish Council had been received which raised concerns related to the prevention of public nuisance. It was feared the nuisance would be caused by; music being played until 12.30am, more traffic on the road, disturbances to quality of sleep, and the general direction of wind causing disturbances to the majority of the village. One letter had been received in support of the application.

The Licensing Team Leader said that the Licensing authority must promote the four licensing objectives as defined by the Licensing Act 2003. These were; the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm.

When determining the application the Committee could either decide to; grant the application, modify the application by inserting conditions or, reject the whole or part of the application. Due regard should be given to the Council's licensing policy and Secretary of State's Guidance issued in accordance with the Act. If the Committee wished to impose conditions they must be appropriate and proportionate to promote the licensing objectives and could not duplicate the effect of existing legislation. In the event an appeal was made, the Committee would have to nominate a Member to represent the authority.

The Environmental Health Officer presented an updated set of environmental conditions which had been agreed with the applicant. These were as follows:

1. A Noise Management plan shall be agreed between the premises licence holder and Uttlesford Environmental Health Service prior to the commencement of operation of the site,

this noise management plan shall be maintained by the premises licence holder and/or DPS whilst licensable activities.

2. During period of regulated entertainment a member of staff will check the perimeter of the premises to the nearest residential property every 60 minutes to ensure noise levels are kept to a minimum, in accordance with the acoustic survey conducted.
  - (i) A record of observations shall be kept in a management log, such a log shall be completed immediately after the observation detailing the time, location and duration of the observation and any action needed to reduce noise breakout.
  - (ii) Such records must be made available at all times upon request to a police officer or an officer of the local authority.
3. The Designated Premises Supervisor (DPS) or nominated person shall have control over the sound levels of the music/entertainment
4. A Noise limiting device (the specification and design to be agreed with Uttlesford District Council's Environmental Health Service) shall be fitted so that all regulated entertainment is channelled through the device(s). The maximum noise levels will be set by agreement with the Uttlesford District Council's Environmental Health Service and will be reviewed from time to time as appropriate.
  - (i) The noise limiting device shall be kept at the settings approved by the Council through an authorised officer of the Uttlesford District Council's Environmental Health Service.
  - (ii) The Premises Licence Holder or nominated person shall ensure that the noise limiting device is sealed after commissioning, so that sound operators cannot override the system during the performance of live and recorded music.
  - (iii) If deemed necessary, the noise limiting device shall only be reset to a level approved by the Council through an authorised officer of the Uttlesford District Council's Environmental Health Service within 7 days of notification.
5. All doors and windows shall be kept shut during regulated entertainment except for immediate access and egress.
6. The Designated Premises Supervisor (DPS) or nominated person shall ensure that suitable signage that is agreed with Uttlesford Environmental Health Service is positioned at exits to request the co-operation of patrons, in particular to make as little noise as possible when leaving the premises.

7. Members of staff shall remind patrons (in responsible manner) prior to closing, of co-operation in leaving the premises and vicinity as quickly and quietly as possible.

The Assistant Chief Executive – Legal said the second part of the conditions needed to reference the date of the noise assessment. In response, the Environmental Health Officer said the noise assessment was carried out in December 2014 and was submitted alongside the planning application.

The Chairman invited Mr Bardell, Mr Bolden and Mr Shepherd to speak against the application.

Mr Bardell spoke about the two planning permissions which had been granted for the site. He said residents had been disappointed that planning permission had been granted, but some of the disappointment had been mitigated by the noise restrictions which had been imposed and the requirement for all visitors to have left the site by 0.30am.

The licensing application now allowed for unrestricted noise outdoors which would cause significant public nuisance. This would be exacerbated by the prevailing wind direction, which was towards White Roding.

Mr Bolden was then invited to speak on the application. He said his property was the one closest to Colville Hall. It was apparent that the licensing objectives to prevent noise nuisance and ensure public safety would not be met if the licence was granted. He asked that if the Committee were minded to grant the licence, the conditions were amended so that music was played no later than midnight.

Mr Shepherd then spoke on the application. He said that having worked in the city for long period of time, he had become aware of the danger that persistent background noise had to young children, particularly to their sleep patterns. Additionally, White Roding had a number of elderly residents who would also be amongst those most significantly adversely affected if the premises licence was granted.

In response to questions by the Committee, the Environmental Health Officer said that the applicants did not intend to have loud, bass driven music played outside and would only play background music. Any noise limits would be based on the acoustic report.

The Assistant Chief Executive – Legal asked whether the property nearest to the site in the direction of the prevailing wind had been identified and monitored. In response it was explained that the property had not been monitored as it had been decided that regardless of wind direction, the property nearest the site would be the most affected by noise from Colville Hall.

The Chairman invited Mr Rathore to speak in support of the application. He began by stating that there were no legal grounds for refusing the application as applied for. The Committee could not consider any highways or planning

matters when considering whether to grant a premises licence as they were separate domains.

He then outlined the background to the application. The application itself was for private events and the sought after licensable activities did not extend beyond the terminal hours set out in the planning conditions.

Mr Rathore noted the Police, which was the statutory body with regard to crime and disorder, had not raised any objections. Furthermore, Environmental Health had reached an agreement with the applicant which overcame the initial representation.

He then sought to address points made by residents, both in their written representations and the oral presentations made to the Committee. Firstly, he said the Planning Department had not made any representations with regard to the application. Planning and licensing were separate areas and the Committee were not bound by any conditions which had been imposed by the Planning Committee. He noted that in planning the noise consideration was based on amenity value and not public nuisance. The threshold for amenity value was lower than for public nuisance.

Objections to licensing applications had to be substantiated by evidence. Although residents' concerns were important, they were not grounded in evidence and were therefore not something which could be considered by the Committee when determining the application. A one off wedding event had been held at Colville Hall and no complaints had been received about the event.

Finally Mr Rathore said the applicants were prepared to make concessions based on some of the comments made by residents at the meeting. The applicant was prepared to no longer have entertainment outside of the premises. Furthermore, amplified music and the sale of the alcohol would only take place until midnight.

The Assistant Chief Executive – Legal advised the Committee that if they were minded to accept the concessions made by the applicant he did not need to provide any legal advice regarding the use of amplified music outdoors. If the Committee did not accept the concessions he would need to provide further legal advice.

In light of the concessions made by the applicant, the Chairman invited Mr Bardell, Mr Bolden and Mr Shepherd to speak again. In response to a question by Mr Bolden, the Assistant Chief Executive – Legal said use of the highway alongside Mr Bolden's house was not a matter that the Committee could consider.

The Assistant Chief Executive – Legal advised the Committee that there were some instances where through common sense it could be assumed there would be public nuisance due to noise. However, there was a presumption in favour of an application if there was no substantive evidence which demonstrated that a public nuisance would be caused if an application was granted. Decisions made by the Planning Committee did not bind the Licensing Committee or visa-versa.

There were instances where the planning and licensing conditions were different. In these cases the more restrictive threshold applies.

Mr Rathore drew attention to the Thwaites case which he said demonstrated a presumption in favour of granting a premises licence if there was an absence of evidence that any of the licensing objectives would not be met. The law was permissive to the grant of premises licences as there were safeguards in place if the licensing conditions were not being adhered to, or that the four licensing objectives were not being promoted. Point 2ii of the licensing conditions should be amended so that records only needed to be available for inspection for a minimum of 12 months. The Environmental Health Officer agreed this amendment was appropriate.

The Committee left the room at 11.15am so they could consider their decision. They returned at 12.45pm.

LIC53

### **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.

### **DECISION**

The Committee have today considered an application for a premises licence for Colville Hall in the light of representations received from Uttlesford District Council's Environmental Health Department as a responsible authority and from White Roding Parish Council and local residents. The application was drawn in very wide terms. Essentially it covered the sale of alcohol and the provision of regulated entertainment both indoors and outdoors 365 days a year until 12.30 am. Objections were made on the basis of all four of the licensing objectives. The only representation regarding the crime and disorder objective was a statement that the operating hours would result in increased consumption of alcohol with the potential for alcohol related disorder. This was unsupported by any evidence and no-one making representations today advanced this argument. The Committee therefore reject it.

Representations on the public safety objective related to the road on which the site is situated. Road safety issues are not a licensing matter and would have been dealt with at the planning application.

The only written representation concerning the protection of children from harm concerned school proms which may be held at the venue. This argument was not pursued today and the Committee do not consider that this representation carries any significant weight. An additional point on this licensing objective was raised today based upon perceived impact upon educational achievement but as this had not been raised as a written representation it amounted to a new point and as it was also not supported by any evidence members felt unable to accept this submission.

The vast majority of representations concerned the licensing objective of the prevention of public nuisance arising from noise it is perceived will arise from the premises. During the planning application process the applicant commissioned an acoustic survey which was submitted as part of the application. That survey informed the planning conditions which were imposed and conditions suggested for the licence by the Council's Environmental Health Department which have been agreed by the applicant.

The main concerns expressed by the objectors appeared to be that the application for the licence did not mirror the conditions attached to the planning consent. For example one of the planning conditions requires all guests not staying at the venue to be off of the site by 12.30 am which is the terminal hour applied for licensable activities. Objectors say that if licensable activities carry on until 12.30 am then compliance with the planning condition will be impossible. The planning condition also limits the events to 180 per year of which only 140 can feature amplified music whereas the licence applied for is for 365 days per year. Although the issue has not been commented upon by the Council's planning department it appears from the objectors that conditions on the planning consent effectively limit the playing of music to sound proofed buildings whereas the licence application is for regulated entertainment both inside and outside buildings at the venue.

The Committee accept that the licensing and planning regimes are different. Licensing is concerned with public nuisance, planning is concerned with amenity which is a much lower threshold. It is not unusual for different conditions to be imposed on licences and planning consents. Where that occurs the stricter of the two regimes prevails. Where a planning permission is less generous than a licence then notwithstanding that there is no breach of any conditions attached to the licence the planning department may enforce planning conditions if it is expedient to do so.

The Committee were concerned at the potential for public nuisance arising from regulated entertainment outdoors and the terminal hour suggested for licensable activities. Members would have considered the imposition of additional conditions on the licence to address those concerns, in particular with regard to the audibility of noise at Colville Cottages which would have been the location chosen for a decibel specific noise condition. However the applicant today made concessions which are welcomed by the Committee namely that the terminal hour for licensable activities should be midnight and that there shall be no licensable activities carried on outdoors. In the circumstances the Committee feel able to accept the application in that modified form.

The Committee therefore grants a licence in the terms applied for amended by the concessions made today with regard to the terminal hour and all regulated entertainment being carried on indoors, subject to conditions consistent with the operating schedule accompanying the application and conditions agreed with Environmental Health with two amendments. The first amendment is to condition 2 by adding at the end of the first paragraph of this condition "in December 2014 submitted with the planning application". This amendment is necessary to identify the acoustic survey referred to. The second amendment is

to condition 2(ii) which will be amended to read "Such records shall be retained for a minimum period of 12 months and during that period shall be available for inspection by a police officer or an officer of Uttlesford District Council upon request". This is to avoid imposing an unduly onerous burden on the applicant to retain records in perpetuity.

The Committee realise that these conditions may not meet all of the residents' concerns but based upon the evidence before the Committee, the Council's Statement of Licensing Policy and the government's statutory guidance to which the Committee has had regard it would not be reasonable or proportionate to impose any further conditions. If problems do arise then the appropriate way of dealing with these is either through an approach to the Environmental Health team or an application for a review of the licence.

The Assistant Chief Executive – Legal informed all interested parties of their right to appeal the decision within 21 days of being deemed to receive a notice of the decision.

LIC54

#### **DETERMINATION OF A PRIVATE HIRE HACKNEY CARRIAGE DRIVERS LICENCE**

The Licensing Officer presented her report to determine a private hire/hackney carriage driver's licence for Mr Sinkia. On his application form Mr Sinkia disclosed he had a conviction for driving with excess speed, after he was stopped after being caught driving at 68mph in 40mph zone. The offence was committed in October 2013 and he was convicted in May 2014 His licence was endorsed with six points and he was fined £300.

Mr Sinkia said the offence was committed at 1.30am on an industrial estate. He had been driving a private hire minibus and had just dropped off some passengers. His wife was pregnant with their third child. He explained his wife had difficulties with the first two pregnancies and telephoned him to explain she was experiencing pains. Mr Sinkia said he exceeded the speed limit to go home and take his wife to hospital. He was stopped en route by the Police. He explained the situation to the Police who dealt with the matter as quickly as possible to allow him on his way.

The Licensing Officer explained that Mr Sinkia did not meet the Council's licensing standards as he had received six points for a single offence. Apart from this one offence Mr Sinkia had a completely clean driving licence.

The Magistrate's Court sentencing guidance for excess speed stated that for an offence of driving at 68mph in a 40mph zone, the starting point was a band B fine and disqualification for 7-56 days or six penalty points. A band B fine was between 75%-125% of the offender's weekly income. Details of Mr Sinkia's income at the time of the hearing show he was fined less than 75% of his weekly income. The sentencing guidelines were that disqualification was the first option and the matter should only be dealt with by points if there were mitigating factors. The only mitigating factor was when a genuine emergency



was established. It was clear from the sentence that the Magistrates considered Mr Sinkia's offence to be at the lower end of the scale.

If Mr Sinkia's licence was granted he would be employed by Diamond Cars on school contract runs.

The Chairman invited Mr Sinkia and Mrs Westbury-Barnes to speak about Mr Sinkia's application. In response to a point by Mrs Westbury-Barnes, the Assistant Chief Executive – Legal said it was not relevant whether Mr Sinkia was licenced by another authority as different authorities had different licensing standards and the Committee was not bound by any decision made by another authority.

The Assistant Chief Executive – Legal advised the Committee that it was rare for the magistrates' court to stray outside of its sentencing guidelines. The sentence imposed was less severe than the minimum recommendations in the guidelines, so it seemed the magistrates considered there to be mitigating circumstances.

The Licensing Officer, Mr Sinkia and Mrs Westbury-Barnes left the room at 1.05pm so the Committee could consider its decision. They returned at 1.15pm

## **DECISION**

Mr Sinkia has applied to the Council for a joint private hire hackney carriage driver's licence. Unfortunately he does not meet the Council's licensing standards as he has had 6 points endorsed on his licence within the last 3 years for a single motoring offence, namely excess speed. Mr Sinkia was stopped travelling at 68 mph in a 40 mph limit.

At face value this was a serious offence. However the circumstances are that he was exceeding the speed limit in response to a genuine emergency. The offence occurred on an industrial estate in the early hours of the morning when there would have been little or no traffic or pedestrians. The magistrates courts sentencing guidelines recommend a disqualification for this level of speed unless there are mitigating factors. The fact that a disqualification was not imposed and a fine below the minimum recommended level was imposed indicates that the magistrates accepted Mr Sinkia's explanation.

The Committee is satisfied that the circumstances do justify a departure from policy. It is satisfied that even though he does not meet licensing standards Mr Sinkia is a fit and proper person and his licence will be granted.

The meeting ended at 1.20pm.