

**EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH
COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON
WALDEN at 2pm on 19 SEPTEMBER 2016**

Present: Councillor R Chambers (Chairman)
Councillors J Davey and J Parry

Officers in attendance: M Chamberlain (Enforcement Officer), T Cobden (Principal Environmental Health Officer), S Pugh (Interim Head of Legal Services), A Rees (Democratic and Electoral Services Officer), A Turner (Licensing Team Leader) and M Watts (Principal Environmental Health Officer)

Also present: Mr B Martin, Mrs Kam Yeoman, the applicant in relation to Item 3 and his manager.

LIC35 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

There were no apologies for absence or declarations of interest.

LIC36 APPLICATION FOR A NEW PREMISES LICENCE – MIX, 18 LOWER STREET, STANSTED, CM24 8LP

The Chairman read out the procedures for determining applications for premises licences. He then invited the Licensing Team Leader to present her report.

She explained that Mix was situated in the middle of Stansted. The premises had never previously held a premises licence and had previously been a shop. The venue planned to operate as an upmarket champagne cocktail wine bar which served light bites to accompany drinks.

The licensable activities being sought were as follows:

Live music (indoors only)	Thursday to Sunday 8pm – Midnight
Recorded music (indoors only)	Monday to Sunday 12 noon – Midnight
Late night refreshment (indoors and outdoors)	Monday to Sunday 11am to Midnight
Supply of alcohol for consumption on the premises	Monday to Sunday 12 noon – Midnight
Opening hours of the premises	Monday to Sunday 12 noon – Midnight

The Licensing Team Leader said that notices had been served on all the statutory bodies and had attracted a representation regarding noise/nuisance from the Council's Environmental Health department.

The applicant had agreed to withdraw the live music element from her application and had agreed a noise management plan with Environmental Health to ensure that recorded music was at a background level to avoid causing a public nuisance. Five objections had originally been received to the application. Following these concessions, three of the objectors had withdrawn their objections.

Two objections remained from interested parties and had raised concerns regarding the licensing objective the prevention of public nuisance. The concerns raised were; that noisy patrons in the smoking area and music until midnight everyday was excessive; already suffered from weekends of noise and people leaving other bars and pubs; recorded music being played loudly at all levels would create a public nuisance.

The Licensing Team Leader informed the Committee that the licensing authority had to promote the four licensing objectives as defined in the Licensing Act 2003. These were; the prevention of crime and disorder; public safety; the prevention of public nuisance; the protection of children from harm.

The Committee could decide to grant the licence, modify the application by inserting conditions, reject the all of, or part of the application. Due regard had to be given to the Council's licensing policy as well as the Secretary of State's Guidance issued in accordance with the Act.

The Committee could only impose conditions which were appropriate and proportionate in order to promote the licensing objectives relative to the representations received. Additionally, the conditions could not replicate the effects of existing legislation.

The Chairman invited Mr Martin to speak on behalf of the applicant and outlined further amendments to the conditions which were as follows;

Supply of alcohol for consumption on the premises	Monday to Saturday 11am – Midnight
	Sunday and Bank Holidays 12pm – 11.30pm
Opening Hours	Monday to Saturday 11am – 12.30am
	Sunday and Bank Holidays 12pm – Midnight

He then added that provision of outside seating would cease at 9pm. This brought the application in line with the other premises licence his client held within Stansted which she had held for the previous 10 years.

In response to the Chairman, the Principal Environmental Health Officer said that he was satisfied with the amended conditions. Initially there had been concerns about the provision of outside seating but these had now been adequately addressed.

The Licensing Team Leader, The Principal Environmental Health Officers, Mrs Yeoman, Mr Martin left the room at 2.15pm so the Committee could consider its decision. They returned at 2.25pm.

LIC37

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

This application is dated 27th July 2016 and is made by Kam Yeoman for the grant of a premises licence at 18 Lower Street, Stansted. We have read the Licensing Team Leader's report and are mindful of the provision of both the Council's Licensing Policy and Guidance issued by the Secretary of State.

The application relates to a two storey premises in the centre of Stansted village. It was previously a retail shop and has never been licensed. It is intended that the venue will become an upmarket champagne/cocktail bar serving light bites to go with drinks, the target market is professional people and especially women, and it is intended that a strict "No Under 18s" rule is to apply.

As required by the 2003 Licensing Act, the application contains within it a draft operating schedule. We have read this with care and note that the licensable activities sought by Ms Yeoman were as follows: _

1. Live music, indoors only, from 8.00PM to midnight on Thursday through to Sunday. This element of the application has been withdrawn.
2. Recorded music, indoors only, from 12.00 noon to midnight Monday through to Sunday. Following discussions with the Council's Environmental health Department a noise management plan will be agreed to ensure that this will be at background level only.
3. Late night refreshment, both in and outdoors, Monday to Sunday, 11.00 to midnight
4. Supply of alcohol for consumption on the premises, Monday to Sunday, 12.00 noon to 12.00 midnight.
5. Opening hours, Monday to Sunday 12.00 noon to 12.00 midnight

At the meeting the terms of the licence sought were varied as follows:

- Sale of alcohol: Mondays to Saturday, 11.00 am to 12.00 midnight; Sundays and bank holidays, 12.00 noon to 11.30 pm.
- Opening hours: Monday to Saturday, 11.00 am to 12.30 am; Sundays and bank holidays, 12.00 noon to 12.00 midnight.
- Use of tables and chairs and consumption of alcohol outdoors to cease at 9.00 pm.

Notice of the application has been served on the statutory bodies, which have attracted a representation from Environmental Health. Discussions have led to the withdrawal of the application in respect of live music and the acceptance of the need for a plan to address the level of background music. This has resolved the concerns of 3/5 of the individual objectors who have withdrawn their objections.

This Committee is mindful of the four licensing objectives, namely :-

1. The prevention of crime and disorder
2. Public safety
3. The prevention of public nuisance
4. The protection of children from harm.

The outstanding objections are based upon concerns regarding public nuisance, and in particular noisy patrons in the smoking area, and the playing of loud music. There are already licensed premises in the area and residents are concerned regarding weekends of noise and sleep disturbance.

There are three alternatives available to the Committee:-

1. Grant the application
2. Modify the application by the insertion of conditions.
3. Reject the whole or part of the application.

It is understood that there remain some issues requiring clarification with the Council's Planning Department. It is not the function of this Committee to resolve these matters.

We therefore grant the application as amended at the meeting, with a condition that a noise management plan will be agreed with the Council.

LIC38

DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS' LICENCE

The Chairman read out the procedures for determining drivers' licences. He then invited the Enforcement Officer to present his report.

The Enforcement Officer said that the driver had been licensed by the authority until 31 March 2016 when his licence expired. The driver completed his renewal form on 24 March. One of the questions asked "have you in the last year been convicted of, or cautioned for, any offence (including motoring offences), been

issued with a fixed penalty notice or is there any prosecution pending against you?" The driver answered this by stating "no".

The Council carried out an online driver check as part of the renewal process. This revealed that the driver committed an SP30 offence on 21 June 2015, which he was convicted of on 9 February 2016. Making a false statement was an offence under the Local Government (Miscellaneous Provisions) Act 1976.

The Enforcement Officer told the Committee that the driver attended the Council Offices for an Interview Under Caution on 13 April 2016. At the interview the driver said he was not aware he had points on his licence, or of the Court case. Therefore officers decided to abandon the interview.

The Enforcement Officer explained that he submitted a data request regarding the conviction to Essex Police. The Police responded and stated that there was no record on the Police National Computer relating to the drivers' driving offences.

Following this the Enforcement Officer made enquiries with Essex Magistrates Court who supplied a copy of the court result for the driver. This showed that he was convicted on 9 February 2016 in his absence.

Currently no decision had been made as to whether to take further action against the driver for the alleged offence of making a false statement to obtain a licence. However, concealment of the offence would be grounds for revocation so Members should consider this aspect.

The Enforcement Officer said that as the driver was convicted of a speeding offence less than 12 months ago his conviction was not spent under the Rehabilitation of Offenders Act 1974 and did not meet paragraph 7 of the Council's licensing standards. However, did meet paragraphs 1 and 2 as he did not have more than 9 points within the last three years, and had not received six or more points within the last three years for a single offence.

In response to a question by the applicant's manager, the Enforcement Officer said that he had not been informed as to why the penalty points did not appear on the Police National Computer.

Councillor Parry asked whether the costs which followed the applicant's conviction had been paid, who had paid them and when they had been paid. In reply, the applicant's manager explained that the costs had been paid by the company. This had been done as soon as the conviction had been brought to the company's attention.

The Chairman invited the applicant's manager to speak on behalf of the applicant. Firstly he provided a character reference for the applicant. He explained that the applicant was responsible for between 12-20 employees on any given day. The company was customer focussed and it was a requirement that all employees were trustworthy and honest.

The applicant's manager then outlined the requirements of the applicant's role. The applicant did not work full time as a driver for the company and only acted as a driver when necessary. For example, when there were a number of customers waiting. The applicant did not gain any material financial gain by holding the licence, beyond occasional overtime.

The applicant was genuinely unaware of the points on his licence and had therefore not lied whilst completing his renewal form. Once he and the company had been made aware of the points and fine they were paid.

The Enforcement Officer asked for details of the circumstances which surrounded the offence. The applicant's manager explained that the offence had taken place in a customer's car. The company had mislaid the car's key and as the customer had a spare set was driven home by the applicant. The customer had then been contacted by the Police over the speeding offence and said that the company had been responsible for the car at the time. The company's record indicated that the applicant had been driving the car at the day of the offence, however the applicant said that he had dropped off the car and was on the train at the time of the offence.

The applicant's manager explained that ordinarily the Police required photographic evidence in order to prove who was driving. Had the company and the applicant been aware of the court case they would have attended.

In response to a question by Councillor Parry, the applicant's manager said that the company gave the applicant's details to the Police as part of the initial investigation process.

The Enforcement Officer, the Principal Environmental Health Officer, the applicant and the applicant's manager left the room at 2.50pm so the Committee could consider its decision. They returned at 2.55pm.

DECISION

The applicant's application dated 24th March 2016 is for the renewal of his Private Hire/Hackney Carriage Driver's licence, expiring on 31st March 2016. He was first granted a licence on 20th April 2015. He remains employed by "I Love Meet and Greet" in a non-driving capacity.

The Council's standard renewal application form, completed by the applicant on 24th March 2016 contains the following question:-

"Have you in the last year been convicted of, or cautioned for, any offence (including motoring offences), been issued with a fixed penalty notice, or is there a prosecution pending against you?"

To which, the applicant replied, "No".

However, a routine online DVLA check dated 30th March revealed an SP 30 offence which is a speeding offence. The offence in question took place on 21st June 2011, the date of conviction was 9th February 2016, and further enquiries

of Essex Magistrates revealed that the conviction was in Grantham, that the case was proved in the applicant's absence, and he was ordered to pay a fine of £220, a victim surcharge of £22 and prosecution costs of £85. At all material times, including under interview by UDC Enforcement Officers, the applicant denied all knowledge of the offence.

It is an offence under S57(3) Local Government (Miscellaneous Provisions) Act 1976 for a person "knowingly or recklessly" to make a false statement or omit any material particular when applying for a licence. It carries a fine of up to £1000 upon conviction. A decision regarding prosecution has not been made but this Committee has been mindful of this matter in arriving at its decision.

The conviction was less than 12 months ago and accordingly the applicant cannot claim the benefit of the Rehabilitation of Offenders Act 1974 and therefore does not meet para 7 of UDC's Standards for Drivers, which states:-

"No other criminal convictions which are not deemed to be spent within the meaning of the Rehabilitation of Offenders Act 1974."

However, he has only three points on his licence and therefore does not fall within either para 1 of the Council's Standards, namely "No more than 9 points endorsed on a driver's licence within the last 3 years" or para 2, namely "No convictions or fixed penalty notices endorsed on a driver's licence within the last 3 years where 6 or more points have been endorsed in respect of a single offence."

Having heard from the applicant and his representative, the Committee is satisfied that the applicant was not aware of the 21st June offence and subsequent conviction dated 9th February 2016 and therefore did not knowingly make a false statement in his 24th March renewal application. The decision of the Committee is therefore that the applicant's licence should be granted.

The Chairman said that the Democratic and Electoral Services Officer was leaving the Council in the next few weeks. On behalf of the Committee, he thanked him for his work during his time at the Council.

The meeting ended at 12.05pm.