

LICENSING PANEL HEARING held at COUNCIL CHAMBER - COUNCIL OFFICES, LONDON ROAD, SAFFRON WALDEN, CB11 4ER, on MONDAY, 14 NOVEMBER 2022 at 2.00 pm

Present: Councillor P Lavelle (Chair)
Councillors G Smith and M Tayler

Officers in attendance: A Bonham (District Environmental Health Officer), T Cobden (Environmental Health Manager - Commercial), J Duffy (Environmental Health Officer), K James (Licensing Support Officer), S Mahoney (Senior Licensing and Compliance Officer), C Shanley-Grozavu (Democratic Services Officer), E Smith (Solicitor) and R Way (Licensing and Compliance Manager)

Also Present: N Bryant (Essex Police District Licensing Officer), J Coombs (Objector), S Forway (Applicant), Councillor M Lemon (Objector) and R McManus (Essex Police District Licensing Officer)

LIC29 REPRESENTATIONS

Councillor Lemon and Ms Coombs made their representations to the Panel against the application.

Councillor Lemon raised the following concerns:

- His main concerns were regarding noise, especially when played outside in the open air. There were houses in the vicinity of the premise and it would be unacceptable for the noise to affect those residents. There were a couple of similar venues in Hatfield Heath and White Rodings, which were used for weddings, and due to the concerns around noise, they were not allowed to play music in the open air or open windows at night if they were playing music.
- There were no car parking facilities on site, so cars were parking on the narrow rural roads nearby. This was causing obstructions for residents and other drivers as well as noise disruption when customers were leaving at night.
- He had received a complaint of noise by a resident during a recent Halloween Party at the venue. When the resident called the police, they were referred to the Council's Environmental Health emergency number, but they did not receive have a response. He was concerned about how noise would be dealt in future with if the venue was being too noisy.
- Signs had been erected which were blocking the view of the traffic.

Ms Coombs, on behalf of Ms North and Mr and Mrs McNamara, made the following points:

- Affinity Water and Essex Highways had both opened formal investigations against the applicant due to potential criminal activity.
- The light pollution emitted by the venue was a nuisance to the community.
- There were concerns around the erection of road signage which could cause serious injury or death.

- The Essex County Fire and Rescue Service were conducting an emergency inspection, following recent complaints from residents about possible risks to public safety.
- Another complaint had been made around the noise from a party at the venue on 5th November 2022.
- The applicant had removed a balancing pond on the property, which had increased the flood risk to nearby homes.
- Neighbouring properties had concerns around the traffic which the venue had caused on nearby roads.

Ms Coombs requested an adjournment until she had received responses from the Essex County Fire and Rescue Service, Essex Highways and Affinity Water in relation to potential criminal charges against the applicant.

LIC30 **APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

There were no apologies for absence.

All members declared that they knew Councillor Lemon through their capacity as District Councillors.

LIC31 **APPLICATION FOR A PREMISES LICENCE**

Members considered Ms Coombs' request for an adjournment whilst she awaited a response from the relevant authorities regarding the alleged criminal activities with the balancing pond and water supply. The Senior Licensing Compliance Officer confirmed that they had not received any new representation from consultees, alleging this behaviour.

Following deliberation, the Chair said that they were minded not to approve the request, as they had not seen documentation to back up the allegations. Furthermore, the points raised by the objector were not directly linked to the Licensing Objectives which were under consideration by the Panel.

The Licensing Support Officer provided their report for an application by Stone and Coal for a Premise License. The proposed licensable activities were as follows:

- Recorded Music
- Late night Refreshment
- Supply of Alcohol

In response to questions, the Licensing Support Officer confirmed that the applicant had offered the opportunity for a mediation meeting to those who were opposing his application, however this was rejected.

The applicant, Mr Forway, made his representation to the Panel. He explained that he felt there was a lot of confusing around both the intention and concept of

his business, and as a result, individuals were rejecting the application without an understanding of what it was for.

He said that he had worked in the hospitality for 17 years and Stone and Coal was an offshoot of his business. He had been running a coffee bar on his parents' property for several months and had recently expanded to also open a pop-up restaurant. To date, he had held seven events using Temporary Event Notices (TENs), and had received a good response from customers.

He was applying for a Premises Licence for the pop-up restaurant so that he wouldn't have to keep applying for temporary licenses. Due to the premise being outdoors, its operation would be seasonal, and the applicant had no intention of being a late-night venue.

He said that anyone opposing the application was invited to speak to him, however residents had chosen to oppose it without giving it a chance.

In response to questions from the Panel, the applicant clarified the following:

- He was applying for the provision of music and the sale of alcohol up to 23:30 on Monday to Thursday, 00:00 on Friday and Saturday and 22:30 on a Sunday. Should an event be intended to go beyond these hours, then he would seek to apply for a TENs to temporarily extend the licensing hours.
- He was currently taking legal advice in relation to a Planning dispute so was unable to comment as to why a Planning Application had not come forward and if he intended to submit one. Licensing Officers confirmed that they had no opinion as to whether a Planning application would be required.
- There were no parking restrictions on the roads around the premises and he believed that the venue was not currently causing any obstructions. Based on the feedback from their previous seven events, he had no intention to amend their car parking provisions.

To summarise, the applicant said that they were surprised by the opposition to the application, given that the business was a good thing for the local area and community. He felt it was unfortunate that he was not contacted by those objecting to have discussed their concerns.

The meeting close at 14:40

DECISION NOTICE – STONE AND COAL, WARWICKS, WHITE RODING, DUNMOW.

The application before the panel today is for the grant of a Premises Licence for Stone and Coal. The application is dated 30 September 2022 and is made by New Horizon Events Co. We have before us a comprehensive report setting out details of that application, which includes plans showing the location and configuration of the premises, and representations have been made in response to this application by: a number of members of the public whose names are listed in the report. These include Cllr Mark Lemon. For the sake of transparency, it is confirmed all members of the Panel know Cllr Lemon but he is not a personal friend of any of us. As a consequence of these responses the matter has been referred to the Committee for adjudication.

The options open to the Committee are set out by law, and are:

- To grant the application
- To modify the application by inserting conditions
- To reject the whole or part of the application

We have had the opportunity of reading the officer's report in this case, a copy of which has been served on the applicant, the objectors, the supporters and the statutory consultees. Essex Police requested additional conditions which are set out in the email correspondence between Licensing Officer Bryant and the Council, at Appendix N. These additional conditions have been accepted by the applicant and a noise management plan acceptable to Environmental Health was submitted to us (Appendix O), but were not sufficient to allay the concerns of the individual objectors and so this matter comes before us on the basis of those objections only, though the Police are present this afternoon. Finally, and for the sake of completeness, Planning confirms to actually trade in accordance with the terms of the licence requested, planning permission is also required. Again, this is set out in Appendix O but we stress that the fact that a further permission would be required to trade does not prevent us from consideration of the application before us today.

These premises are situated in the grounds of a residential home. The applicants trade as a café during the day and an outdoor restaurant during the evening. Seven previous events involving the sale of alcohol have been covered by Temporary Event Notices, which all took place without incident or any contemporaneous complaint to either the Police or Environmental Health. The applicant would also like to be able to facilitate occasional private events, and any additional licensing activities/times required would be covered by applying for a Temporary Event Notice.

The premises would be open from 08:00 every day till the evening 7 days a week. They are situated in the rural village of White Roding, Dunmow, and there are no immediate residential properties bordering the restaurant site, though there are other residential premises in the vicinity.

The proposed licensable activities and times are set out on page 5 of the application form. (Appendix A). The applicant offered the opportunity for a mediation meeting to those individuals opposing his application, to try and resolve some of the issues raised, and the Licensing Team were willing to facilitate this, but this offer was rejected.

The proposed licensable activities are below:

- i. Recorded Music
- ii. Late night Refreshment
- iii. Supply of Alcohol

Copies of this application have been served on all the statutory bodies and this did attract correspondence from Essex Police based on the Crime and Disorder and Protecting Children from Harm objectives. An agreement was reached to add conditions (Appendix N) and similarly comments from Uttlesford Environmental Health (Appendix O) led to the provision of a noise management plan. The applicant is in no doubt but that they must also secure planning

permission in order to trade but the fact that this remains outstanding does not prevent us granting a licence today.

Environmental Health have also requested a further condition in the following terms:-

“Any event involving amplified music shall not take place without Licensing Authority approval of the noise management plan.

The noise management plan shall include details on measures, controls and actions to ensure that the playing of amplified music does not cause a public nuisance. Measures, controls and actions will include an approach to monitoring that also assesses the impact of any noise on neighbouring premises.

The management plan shall ensure a telephone number is made available for local residents to contact in the case of disturbance from noise or anti-social behaviour by persons or activities associated with the premises. The telephone number will be a direct number to the management who are in control during opening hours. A record will be kept by management of all calls received, including the time, date and information of the caller, including action taken following the call. Records will be made available for inspection by any relevant responsible authority throughout the trading hours of the premises.

The Premises License Holder must comply with the agreed noise management plan at all times during the playing of regulated live or recorded amplified entertainment.

The Premises Licence Holder shall within 28 days of receiving instructions by the Licensing Authority install a noise limiting device to the approval and satisfaction of the Licensing Authority. 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 Uttlesford District Council's Environmental Health Service and will be reviewed from time to time as appropriate. 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. 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. 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.

They add that for the avoidance of doubt these two requirements are sequential and if the noise management plan is efficacious then the noise limiting device will not be required. It is therefore up to the applicant to make this work.

We have imposed a condition in these terms on previous occasions and are content to do so here. During the course of the hearing we asked the applicant about the hours for which he required permission for recorded music. He stated that he would like the same hours as for the supply of alcohol, namely until 11.00PM Mondays to Thursdays, 12.00 midnight on Fridays and Saturdays, and 10.30PM on Sundays. He further stated that if at any time he wished to open for longer then an application for a TEN would be made

The statutory notices also attracted representations from a number of individuals listed in the background papers. None of those supporting the application chose to address us today and we have heard from Cllr Lemon, primarily regarding noise, and from Ms Coombs, on behalf of the objectors. Many of the matters raised by some of them, particularly the objectors, fall outwith our remit and we disregard them as we are obliged by law to do. The planning position is but one example.

In carrying out its statutory function, the Licensing Authority must promote the licensing objectives as set out in the Licensing Act 2003. These are:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance

- The protection of children from harm

There is no hierarchy of importance among the objectives, and all must be given equal weight.

The decisions that the Committee can make in respect of this application are to:

- Grant the application
- Modify the application by inserting conditions
- Reject the whole or part of the application

When determining an application, due regard should be given to the Council's Licensing Policy and the Secretary of State's Guidance issued in accordance with the 2003 Act. Copies of these documents are before us and our Legal Advisor has reminded us of the requirements of the statutory regime under which we operate.

The Secretary of State's Guidance provides at paragraphs 10.8 and 10.10 the following assistance for members:

10.8 "The licensing authority may not impose any conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives. In order to promote the crime prevention licensing objective conditions must be included that are aimed at preventing illegal working in licensed premises."

10.10 "The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided. Conditions that are

considered appropriate for the prevention of illegal working in premises licensed to sell alcohol or late night refreshment might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check is retained at the licensed premises. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions.”

Further, the Committee’s decision is to impose conditions, the only conditions that can be imposed are those that are necessary and proportionate to promote the licensing objective relevant to the representations received. Furthermore, the Committee should not impose conditions that duplicate the effect of existing legislation.

We have considered the application carefully and have read the documents before us, including the letters submitted by neighbouring residents and business owners, both in support of and against the application and listened carefully to all of those who have spoken before us this morning. We remind ourselves that the Police and Environmental Health objections were resolved by the acceptance of additional conditions and that a planning application has been submitted. We understand a grant of a premises licence will not be a material consideration in the mind of anyone considering that application. We have considered only those matters we are required to consider and give no weight whatsoever to the extraneous matters raised by a number of individual objectors.

We have heard from the applicant, from Cllr Lemon, who addressed us upon the subject of noise and from Ms Coombs who raised a variety of matters which included a number of allegations of illegality. She provided no evidence in support of those matters, the most serious of which, if founded in truth, would be prosecuted by the Police, and they are included among the statutory bodies who can request a review of a premises licence. Our experience is that if they deem it necessary to do so, then they will. They did not speak before us today and officers advise that they have heard nothing from any statutory consultee not already included within our bundle.

The applicant clarified the hours for which he wanted to be licensed for the playing of recorded music. These are set out in this decision, ante, and will form part of the conditions of his licence. We also asked him about the planning position and he told us he was seeking legal advice: however, the response of the Council's Director of Planning, to consultation was that planning permission would be required and we prefer that view...

We have considered what they have all said very carefully and our decision is to grant the application subject to the conditions required by the Police and Environmental Health, agreed by the applicant and set out in our papers, together with the additional condition set out earlier in this decision that will address, we hope, any potential noise nuisance issues emanating from the premises.

Finally, we turn to the question of whether or not planning permission is required. The applicant apparently does not think it is but the Council's Director of Planning disagrees and says it is required. We cannot make our decision today conditional upon the grant of planning permission as that is not a condition that specifically addresses one of the licensing objectives, but we can, since they are discrete regulatory regimes, require the applicant to refrain from trading under this licence until that permission is in place. He can secure the discharge of that requirement by producing a satisfactory grant of planning consent: if, however, he is advised that he does not need planning permission then the reasoning behind it must satisfy Planning Services that a grant is not required.

We therefore grant this application subject to

1. the conditions already agreed in correspondence with the Police and Environmental Health, together with the additional condition required by the latter and set out in full earlier in this decision,
2. Recorded music may only be played during the times at which alcohol may be served.

The premises may not trade under the authority of this licence until the requirement set out above is satisfied.

This requirement may be administratively discharged upon production of a grant of planning permission, or an explanation as to why the applicant does not require planning permission that is satisfactory to Planning Services.

All parties have a right of appeal against this decision to the Magistrates Court. This must be exercised within 21 days of the date of service of this decision notice. All parties will receive notification from the Legal Department explaining this but in the circumstances, we feel it right to add that we have given our decision anxious consideration and it is the policy of the Council to defend the decisions of this Committee. All respondents to an unsuccessful appeal are entitled to seek their costs of defending, and caselaw suggests they will receive them.