

**LICENSING PANEL held at COUNCIL CHAMBER - COUNCIL OFFICES,
LONDON ROAD, SAFFRON WALDEN, CB11 4ER, on THURSDAY, 29 JUNE
2023 at 1.00 pm**

Present: Councillor G Driscoll
Councillors S Barker and A Reeve

Officers in attendance: A Bonham (Environmental Health Officer), S Bartram (Licensing Support Officer), J Livermore (Senior Licensing and Compliance Officer) and C Shanley-Grozavu (Democratic Services Officer)

Also Present: M Chater (Applicant), R McManus (Essex Police), S Riley (Objector), E Smith (Legal Representative, Birketts) and S Ulph (Objector)

LIC8 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

There were no apologies for absence or declarations of interest.

Introductions were made by all.

**LIC9 APPLICATION FOR A FULL VARIATION OF A PREMISES LICENCE -
CHATER'S GENERAL STORE, CAFÉ AND APERITIVO BAR, 17 CHURCH
STREET SAFFRON WALDEN**

The Licensing Support Officer presented their report which asked the Panel to determine an application for a full variation of a Premises Licence at Chater's General Store, Café and Aperitivo Bar, 17 Church Street, Saffron Walden.

The variations sought were as follows:

- To remove condition Annexe 2 Condition 3 (*At all times no persons shall be permitted to take bottles, glasses or drinking vessels from the premises into the outside area and conspicuous signage (of a minimum size of 200mm x 148mm) shall be displayed, at each ingress/egress point explain this policy*)
- To remove condition Annexe 2 Condition 4 (*No tables, chairs or furniture in the outside area*)
- To remove condition Annexe 2 Condition 5 (*The outside area to the side of the premises is only to be used as a smoking area*)
- To expand the current licensed area to incorporate the area detailed in the new proposed floor plan.

In response to questions from the Panel, the Licensing Support Officer clarified the following:

- The proposal included tables and chairs which would be placed on private land located outside of the premises doors. The Licensable area would remain the same, but customers would be permitted to use the outside space to enjoy their refreshments.

- The alleyway to the premises was not used to access the neighbouring residential properties.
- There had been several noise complaints about the operation of the premises which had all been made by one of the objectors.

The Environmental Health Officer addressed the Panel to raise their objections on the grounds of public nuisance.

In response to questions for the Panel, he clarified that his concerns were around the impact which drinking outside would have on generating a noise nuisance for residents, especially if done up to 11pm.

Mr McManus addressed panel, on behalf of Essex Police, and raised his objections on the grounds of public nuisance.

He said that his immediate concern was the impact of an outside area. Under the applicant's initial proposal, expanding the licensable area would allow the service of alcohol and deregulated music outside.

He had undertaken negotiations with the applicant and had requested that the outside area not be licensable. As the consumption of alcohol itself was not a licensable activity, and the premises was on private land, the applicant would still be permitted to place table and chairs outside for customers and a compromise had been reached for a 9pm cut-off.

He concluded that there was nothing to bring under crime and disorder as there were no reported issues at the premises.

Mr Ulph, owner of 17 Church Street, addressed the Panel and raised his objections on the grounds of public nuisance.

He said that the premises were located in a lightly clad, steel-framed industrial unit which had previously been used as a warehouse. Since the business had opened, the occupiers of the nearby flats had made noise complaints to the Council and the matter was being investigated by the Environmental Health Officer.

He explained that the restrictions imposed on the current Licence were applied to reduce the risk of a noise nuisance, however residents have continued to be affected by noise. By allowing customers to seat outside until potentially 11pm, there would have no way of controlling the noise which would be amplified from the three walls which enclosed the area.

Mr Riley, a neighbouring resident, addressed the Panel and raised his objections on the grounds of public nuisance.

He explained that he had lived at his property for three and a half years, before the premises had opened, and had chosen the flat as it was central but quiet for his three children.

He said that the warehouse was attached to his property and there was no soundproofing which meant that they were frequently affected by the noise. This included, but not limited to, a constant bass from the music, footfall through the alleyway, customers talking and doors closing. They were particularly affected between Thursday to Saturday when the business operated into the night.

In addition, his family were affected by the bin collection between 5.30 and 6.15am.

He was concerned with the introduction of an outside area, and the impact on additional sound. He outlined an occasion when he was able to hear just one person's conversation clearly from his property.

He concluded that he was particularly passionate on the matter as it affected his children and their enjoyment of the property.

In response to questions, the objectors raised the following:

- The entrance to the flats was beside the alleyway which was used to access Chater's.
- There were two flats at 17A Church Street and only one was directly adjoined to the premises; but the other was at a limited distance. The back of the lounge was attached to the distillery and the bedrooms were attached to the warehouse.
- The entrance to the alleyway to Chater's was secured by a gate which was locked at the end of each night.
- The property was originally used for Ford distribution before being converted to flats and shops in the 1980s. The premises itself was an industrial unit attached to the brick structure which was never intended for public gatherings.
- The Landlord did not, and had never, owned any part of the warehouse in which the premises was located.

The Applicant, Mr Chater, addressed the Panel and raised the following points:

- The complaints referenced at the hearing were made by only one complainant. It was highlighted that the complainant's flat was located in the middle of the town centre, surrounded by other businesses and on a street where there often were disturbances on the peak evenings.
- The complainant's flat was above the distillery and not the café.
- The applicant had recently had discussions with the police on the use of outdoor seating and agreed to a 9pm cut-off time, however the current licensing hours were up until 11pm.
- The intention of the outside area was for earlier use, such as lunches, and not for late night drinking.
- The warehouse had been insulated with the installation of internal walls and suspended ceilings. Other measures had been taken to reduce noise including lifting the speakers to cancel out the bass and placing them away from the adjoining walls.
- The applicant had been consulting with an urban designer around noise insulation in the alleyway outside.
- The conditions imposed on the current license were due to issues around access, and not noise disturbance. However, they had put in additional

measures to reduce the risk of public nuisance to residents. This included no smoking at the premise, no glassware outside, asking customers to leave quietly and not permitting parties over 8.

- Saffron Walden had a culture of independent businesses, and the external furniture was a reflection of the restaurant scene.
- An objector of the initial application, whose property directly overlooks the business, was now a keen customer.
- The applicant had asked their contractor to amend the waste collection time, but they were unable to offer a later route.

In response to member questions, the applicant clarified that:

- One member of staff started work at approximately 6.30am to do food preparation for the day.
- The warehouse had been fitted with fire boarding and internal insulating walls as a soundproofing measure.
- They had investigated noise reducing measures for the alleyway, including using plants to absorb sound, but they had not currently invested anything.
- They were willing to work alongside the freeholders of the residential property to control the sound, if there were solutions identified.
- The noise investigation was still ongoing, however the Environmental Health Officer had visited on one of the busiest nights on record and had not reported an issue with the sound.
- The applicant was unable to control the level of noise in the morning, as the waste collectors were not able to offer a later route. However, they were able to control the noise in the evening; for example, by ending their service at 10pm and not allowing large groups to leave at once.
- The outside furniture would be bistro style which could be easily packed away at the curfew time to stop customers from lingering.
- The gates to the alleyway were locked after the premise had closed and the staff were leaving.

Meeting adjourned at 13:50 for the Panel to retire to make their decision. The meeting was reconvened at 14:51

The meeting ended 14:56

DECISION NOTICE – CHATER'S GENERAL STORE, CAFÉ AND APERITIVO BAR, 17 CHURCH STREET, SAFFRON WALDEN, CB10 1JW

The application before the panel today is for the grant of a variation to the current licence 22/1279/LAPREM in respect of Chater's General Store, Café and Aperitivo Bar, 17 Church Street, Saffron Walden. The applicant is Chatersco Ltd and the variations sought are as follows:-

1. To remove conditions 3, 4 and 5 of Annexe 2 of the existing licence. A copy of the document is among our papers and has been served upon all involved.
2. To expand the current indoor licensed area as set out in the new floor plan, a copy of which is among the papers before us.

The application is dated 10th May 2023 and the premises have been licensed since 29th June 2022. In brief, the proposal is to place tables and chairs upon a piece of private land outside of the premises entrance, away from the top of the alley accessing Church Street and away from residential properties. The aim is to attract customers who may wish to sit outside and in particular customers with pushchairs and dog walkers. Notices have been displayed in accordance with statutory requirements and the consultation period ended on 8th June.

The application is supported by Essex Police after some discussions, & Environmental Health object to the variation of the conditions upon the licence but have no objection to the increase in the licensed area. Discussions with the Service have led to the updating of the noise management plan and the applicant is well aware of its responsibilities. Of note is the fact one of the supporters of this variation objected to the original application for a licence.

Finally, there are a number of individual objectors and supporters, some of whom have addressed us today. We have also received an email from someone who could not be here today and we have read this carefully.

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. We have heard from Mr Bonham of Environmental Health, Mr McManus of Essex Police, Mr Ulph, the freehold owner of the two residential flats above the premises, and Mr Riley, one of the residents of those flats. The occupier of the second flat did not attend today but wrote in to say he had no objection to the application provided customers were not allowed to sit outside too late. We were addressed by the DPS, Mr Chater and have read all the written submissions from individual supporters and objectors, and were pleased to see how many people have come to listen to the proceedings before us today

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 Licensing Act 2003 and delegated legislation made thereunder, the Secretary of State's Guidance issued in accordance with S182 of the 2003 Act (most recent version January 2023) and the Council's Statement of Licensing Policy. Copies of these documents are before us, and our Legal Advisor has reminded us of the weight of some of those documents and of the requirements of the statutory regime

under which we operate. The Council has no policy requirements additional to those of the legislation.

Our attention has been directed towards Chapter 9 'Determining applications' and Chapter 10 'Conditions attached to premises licences and club premises certificates' and Chapter 16 'Regulated Entertainment' in the January 2023 Section 182 Guidance. The relevant sections are set out below:-

Para 2.16 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning...

Para 9.4 ...There is no requirement for a responsible authority or other person to produce a recorded history of problems at premises to support their representations, and in fact this would not be possible for new premises.

Para 9.37 As a matter of practice, licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person may choose to rely on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation and should be allowed sufficient time to do so, within reasonable and practicable limits.

Para 9.42 Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be.

Para 9.43 The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.

Para 9.44 Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters...

Para 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 may be included that are aimed at preventing illegal working in licensed premises. This provision also applies to minor variations.

Para 10.9 It is possible that in some cases no additional conditions will be appropriate to promote the licensing objectives.

We add that if the Committee's decision is to impose conditions other than those requested, 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 listened carefully to all of those who have spoken before us this afternoon. We remind ourselves that the Police are content this application should be granted subject

to them regarding operating hours. We also note that Environmental Health are investigating a complaint made by Mr Riley regarding loud music from the premises though when he visited the premises in person Mr Bonham did not consider any immediate action to be appropriate.

We have considered what everyone has said to us and we have decided to treat the two limbs of the application separately. We grant the application to expand the current indoor licenced area in accordance with the plans before us and say no more about this part of the application.

The second part of the application causes us more concern. We have heard what Mr Riley had to say and note he feels very strongly about it, but among those people who have written in we observe there is a resident living directly opposite the premises who supports the application, and we have already alluded to the view of the occupant of the second flat, namely that he does not object provided that customers are not allowed to sit outside too late in the evening.

We are therefore prepared to amend the conditions of which the applicant complains rather than discharge them. We amend Annexe 2 Condition 4 by removing the absolute prohibition on tables, chairs and furniture in the outside area. However, we replace it by a condition that outdoor tables and chairs be limited to four tables in number each seating two persons, and that the furniture shall be removed and placed into storage each evening after a specified time. We understand that the Police would be content for this to be 9.00PM but given the proximity of residential dwellings to the premises we consider 7.00PM to be a reasonable end time. The other two conditions in Annexe 2 complained of, namely numbers 3 & 5 fall away as being inconsistent with this amended condition.

We note that the applicant states that he constantly monitors customer behaviour and we expect him to do so. The installation of outdoor lighting and heating is prohibited, and we trust the applicant will abide by his comment that he had explored means of mitigating noise using planting measures.

Finally, we repeat that Mr Riley has made a complaint to Environmental Health regarding noise nuisance in the form of music from the premises. We understand

that is in the course of investigation. We cannot defer the coming into operation of this licence as varied until the conclusion of that investigation, but we do expect the applicants not to instal their tables and chairs without consultation with Environmental Health and to implement any recommendation made. We also request that the applicants actively encourage customers to leave the vicinity and to lock the gates immediately after they have departed, and not defer this until they themselves leave. We also request that they explore alternative refuse collection providers of their current contractor cannot attend later in the day.

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 Licensing 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.