

**LICENSING PANEL held at COUNCIL CHAMBER - COUNCIL OFFICES,
LONDON ROAD, SAFFRON WALDEN, CB11 4ER, on TUESDAY, 12 MARCH
2024 at 1.00 pm**

Present: Councillor A Armstrong (Chair)
Councillors S Barker and G Driscoll

Officers in attendance: A Chapman (Licensing Support Officer), I Hunt (Legal Advisor),
J Livermore (Senior Licensing and Compliance Officer) and
C Shanley-Grozavu (Democratic Services Officer)

Also

Present: S Ames, V Saunders and A Wise

LIC47 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

There were no apologies for absence or declarations of interest.

LIC48 APPLICATION FOR A PREMISES LICENCE

The Licensing Support Officer presented the report which asked the Panel to determine an application for a premises licence in respect of Little Barn Café Ltd, Little Barn, Park Road, Little Easton, CM6 2JH.

The application sought to carry out the following licensable activities:

- Supply of Alcohol for consumption both on and off the premises between the hours of 0800 and 2300 Monday to Saturday and 0800 and 2000 on a Sunday.

The Licensing Support Officer confirmed that Essex Police had attended the site and had agreed a number of conditions with the applicant regarding CCTV and Challenge 25. No Statutory Authority had raised any objections.

Victoria Saunders, a resident of Little Easton, addressed the Panel and raised her objections on the grounds of all four licensing objectives. The following comments were made:

- The existing Swim School was a thriving business in the village, and residents were not against it being there.
- There were concerns with an alcohol licence being granted for hours which were outside the Swim School operating schedule.
- The membership of the café and coffee shop was brought into question, as it was allegedly not open to the general public, but social media advertisement stated that members could be accompanied by a guest.
- The site was not accessible by public transport and there were no pavements. Park Road, a 60mph road, was already busy due to the nearby Gravel Pit, Manor House, Taxi Firm, Farm and Football Club, as well as children on bikes and dog walkers.

- There were safety concerns around customers accessing and departing from the site due to the low visibility at the entrance. This would be made worse where a driver has consumed alcohol and had a slower reaction time.
- The car parking provision was located at the old tennis court with poor visibility to see children running around. It was already a dangerous situation.
- The surrounding shrubs and trees had been cleared to make space for climbing frames, which ultimately removed natural soundproofing.
- Adding alcohol into a children-centred business was not appropriate; parents did not need alcohol whilst watching their children swim.

Andrew Wise, a resident of Little Easton, addressed the Panel and raised his objections on the grounds of all four licensing objectives.

The following comments were made:

- Nine agencies had been sent the application. As of 9pm on 11th March, the Parish Council had not received the risk assessments for the premises and Essex Police were not aware of any issues regarding Planning enforcement. Mr Wise questioned whether all the other agencies were also aware of the breach.
- The proposed licensing hours extended outside the operating hours of the Swim School business.
- Essex Fire and Rescue Service would be expected to inspect the business. Mr Wise asked if this had taken place.
- The site included a petting zoo, under investigation by the Council's Planning Department. This would mean that any Insurance was invalid.
- The business had a 20-year commercial lease.
- The entry to the property was a hole in the fence and did not have a dropped kerb. Therefore entering and existing was illegal as it was driving over the existing kerb.
- Animals from the Petting Zoo had escaped into neighbouring gardens.
- Dogs had been killed in the village as a result of speeding vehicles.
- Should the business look to operate later into the day, there would be greater light pollution and noise nuisance from engine revving.
- He had called Companies House, who advised him that the company was nearly closed down twice, due to overdue documentation.
- They were unaware if mandatory checks had taken place, such as CRB checks for staff, as well as a Licence from DEFRA obtained for the petting zoo.
- Alcohol, water and children was a bad mix.
- It would only take one large glass of wine to be over the drink driving limit.

Mr Wise concluded to say that the Council had a poor reputation, due to the recent waste collection disruption and it would be foolish if members were minded to approve the licence without consideration of Planning. He urged the Panel to consider the recommendation of Little Easton Parish Council to pause the proceedings in order to ensure the correct checks had been undertaken.

At the request of the Panel, the Legal Advisor provided clarification to some of the points raised by the Other Persons, particularly how they integrated within the framework which the Panel operated under.

He explained that the Panel could only take into account matters under the 2003 Licensing Act, and they were not empowered to consider the wider issues. Matters such as fire, health and safety, planning and highways were those considered by different agencies, which did include other parts of the Council.

He was aware that the Council were looking into potential planning breaches, however could not comment on this further as it was not relevant to the considerations of the Panel. Moreover, as a matter of law, a licence could still be obtained without planning permission, although this would limit the premises' ability to utilise it. It was not extraordinary for a business to seek a licence before having planning permission if needed and vice-versa.

In regard to the request from the Parish Council to defer in order to seek clarification on wider matters raised, this was not something which the Panel could do within the framework of the regulations as those wider matters were not part of their consideration. The Legal Advisor also confirmed that the Parish Council was not a statutory consultee in the Licensing process.

In response to questions from Mr Wise regarding the relationship between Planning and Licensing, the Legal Advisor confirmed that, as a general principle, a licence could be implemented at the point of being granted. However, if the premises did not have appropriate planning permission, enforcement could be undertaken under the Planning regime which could impact the premises operation.

Should in the future there be concern that a premises was not operating in accordance with one of the licensing objectives, then a Responsible Authority or Other Person has the right to request a review of the License. As part of the process a future Panel would make a decision based on the supporting evidence put before them, as to whether it was appropriate to either modify or revoke a licence.

Steve Ames, the applicant, addressed the Panel in support of his application.

He said that there was some missing context which was overlooked within the objections. The Licensing application was submitted by the Little Barn Café, a Farm Shop and café which was registered with the Council. Whilst the café was co-located next to the Swim School, and the clientele was limited to their membership for safeguarding reasons during the operating hours of the school, they were entirely separate legal entities.

By obtaining a premise licence, he hoped to expand the operations of both the bistro, which would operate outside of the Swim School hours, and the Farm Shop. He emphasised that the alcohol privilege would be for the bistro and farm shop, and not the adjacent Swim School.

He addressed each of the licensing objectives in turn:

- Prevention of Crime and Disorder: Staff would be trained to be fully compliant with the law.
- Public Safety: The premises would have policies in place to reduce the risk of customers drink driving. These included a cap on the number of drinks, age verification checks, “cutting off” any customer showing signs of intoxication and the nomination of a designated driver.
- Prevention of Public Nuisance: Alcohol would only be available for selected hours and primarily served to compliment the existing food menu. The indoor seating area could hold up to 24. There was also ample parking available on-site.
- Protection of Children: There was a number of policies in place, including ID checks and preventing minors from accessing the premises unaccompanied.
- There had been speculative comments made around irresponsible parenting and parents drinking around children; proper protocols were in place to stop intoxication and the nuisance this could cause, however the applicant felt that they had no place to judge parenting habits.

Mr Ames concluded by saying that his business was committed to being a value to the community. Whilst he understood the concerns of residents, the objections raised did not provide any verifiable evidence as to why he should not receive a licence.

Members commented on the difference between the scenarios presented within the objections and the intentions which the applicant had put before them.

In response to questions from Cllr Driscoll, the applicant confirmed that they were the owner of both the Swim School and café, but they were separate legal entities. The Swim School was independent and the staff were employed directly by them and not the café.

Meeting adjourned for Members to consider their decision at 13:42. The meeting reconvened at 14:38

Meeting ended 14:49

DECISION NOTICE

The application before the panel today is for the grant of a Premise Licence in respect of Little Barn Café Ltd, Little Barn, Park Road, Little Easton, Dunmow, CM6 2JH. The application is dated 9th December 2023 and has been made by Little Barn Café Ltd.

The application has sought to grant the following as set out in the application form in Appendix A.:

- Supply of Alcohol for consumption both on and off the premises between the hours of 0800 and 2300 Monday to Saturday and 0800 and 2000 on a Sunday.

We have had the opportunity of reading the officer's report on this case, a copy of which has been served on the applicant, the objectors, the supporters and the statutory consultees.

A plan of the premises can be found in Appendix B of the officers report.

The application had been advertised, as required, by way of a public notice displayed at the premises and by advertisement in a local newspaper as well as on the Council's website. 13 valid representations were received from members of the public, which are contained in Appendix C to O of the report. Copies of the application had been served on all the statutory bodies and no objections were received.

A copy of the Police's response is included in Appendix P as they requested conditions, which were agreed by the applicant.

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 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... that it is appropriate to impose conditions to promote one or more of the four licensing objectives. ...*
- 10.9 *It is possible that in some cases no additional conditions will be appropriate to promote the licensing objectives*
- 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.... Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions. These could be a deterrent to holding events that are valuable to the community or for the funding of good and important causes. Licensing authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives.

Furthermore, if 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. 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 written submissions. We have also listened carefully to all of those who have spoken before us this afternoon and remind ourselves that no objections have been received by the statutory authorities.

Comments have been made both in the written representations and before us today which are not directly relevant to the four licensing objectives. These particularly relate to:

- The planning history of the premises and whether there is sufficient planning permission for all the activities which are occurring on the wider site.
- Highways matters including the nature of the local road network.
- Concerns relating to fire, health and safety and other statutory frameworks.

Although recognising the importance of these issues for the community, where they are not of direct relevance to the licensing objectives they have been disregarded for the purpose of this decision and we are not empowered to give weight to these. The Council more widely and other enforcing bodies may well take action, however it is not for this decision to make comment on this. The applicant is reminded that a licence under the Licensing Act 2003 does not give permission under any other statutory framework. The Applicant must comply with any applicable duties that may be imposed by other legislation relevant to their operation (e.g. in areas such as crime and disorder, fire, health and safety, noise, nuisance and planning) although this is not a matter for the Licensing Authority to enforce.

We have heard from the applicant and from Victoria Saunders and Andrew Wise, who raised a variety of matters which included concerns in respect of noise nuisance, vehicular movements and the interaction with children, and light

pollution, nuisance related to vehicles and movements, and concerns related to the interaction between children and parents who are purchasing alcohol.

The applicant clarified that the licence was being applied for by Little Barn Café Ltd which is a separate legal entity from the swimming school. He confirmed that the two businesses operate separately and the café operates as a restaurant/ bistro with an associated farm shop. He confirmed that the operator has appropriate policies to manage the serving of alcohol to patrons as well as refusals of service in appropriate circumstances.

Having carefully considered the relevant representations we therefore grant this application subject to the additional conditions previously agreed with Essex Police by the applicant.

However having considered the impact of the proposed licence on the prevention of public nuisance objective and the representations we have received from residents. We are restricting the operating hours of the premises to:

- Supply of Alcohol for consumption both on and off the premises between the hours of 0900 and 2200 Monday to Saturday and 0900 and 2000 on a Sunday.

The panel is mindful of the interaction of the premises with the nearby swimming pool. Whilst not making this a condition the panel asks the operator to be considerate to patrons of the pool and consider using plastic glassware on the Outdoor Decking Area to mitigate the risks of breakages. Equally to be mindful that staff working in the pool ought not to be supplied alcohol for consumption prior to or during working in the pool area.

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. We feel it right to add that we have given our decision careful 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.