

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at  
COMMITTEE ROOM - COUNCIL OFFICES, LONDON ROAD, SAFFRON  
WALDEN, ESSEX CB11 4ER, on MONDAY, 30 SEPTEMBER 2019 at 10.30  
am**

Present: Councillor P Lavelle (Chair)  
Councillors A Armstrong, V Isham and P Lees

Officers in attendance: A Bochel (Democratic Services Officer), M Chamberlain  
(Enforcement Officer), J Jones (Licensing Officer), E Smith  
(Solicitor) and A Turner (Licensing Team Leader)

Also present: A Clayton and R Walker (Felsted School), the driver in relation  
to Item 4

**LIC28 APPLICATION FOR A PREMISES LICENCE - FELSTED SCHOOL**

The Licensing Team Leader gave a summary of the report, which set out an application for a new premises licence in respect of Felsted School, Braintree Road. Representations had been received in respect of this application so the matter had been referred to the Committee for determination.

R Walker said the main reason for the school's application was to consolidate three existing licenses, while adding three additional buildings onto the license. This would allow more flexibility than the use of Temporary Event Notices. The new licence would also allow the school to have events attended by over 499 people. Two events were likely to go over this number of attendees. Only two events were likely to run past midnight, and the school made a point of carrying out sound checks regularly throughout the night at different areas of the site.

In response to a Member question, R Walker said the school did leaflet drops to inform neighbours of upcoming events.

In response to a Member question, R Walker said many of the events were run outside of term time or on a weekend so that there was as much available parking as possible.

In response to a Member question, R Walker said the school would be prepared to accept a cap on the number of outdoor events.

At 10.55, the Committee retired to make its decision.

At 11.40, the Committee returned. The decision was read.

**DECISION NOTICE – FELSTED SCHOOL CAMPUS, BRAINTREE ROAD, FELSTED.**

The application before the Panel today is for a new premises licence to cover more or less the entirety of the school campus. The application is dated 26<sup>th</sup> July 2019 and is made by the school governing body. Representations have been made by Felsted

Parish Council on the grounds of potential noise nuisance, and they are supported by 3 local residents (Interested Parties). We have also received a letter supporting the application from Essex Police, who state they were consulted by the applicant and are satisfied all four licensing objectives are satisfied. Accordingly the matter has been referred to us for determination.

We have had sight of a detailed report and have considered the extensive background papers, including:-

- Application form.
- Current licences
- Letter in support from Essex Police
- Bundle of letters and emails from Interested Parties.
- Plan of premises
- Location map of premises

Our attention has also been drawn to the Home Office Revised Guidance issued under section 182 of the Licensing Act 2003 (April 2018 version) and to Uttlesford District Council's Statement of Licensing Act 2003 Policy 2017-22

By way of background facts, Felsted School, Braintree Road, Felsted CM6 3LL is situated in the village of Felsted. The applicant is a large independent school consisting of both preparatory and senior sections, set on a campus site and not particularly close to any residential dwellings in the village itself. The school has multiple buildings and outside spaces and two of the buildings (Lord Richie Hall Appendix 3 and The Cromwell Centre – Appendix 4 of our document pack) have held their own individual premises licences with this authority since November 2005. The school are finding that due to its size they would like more buildings in the school available for licensed activities so have applied for one new premises licence to cover all six buildings. The areas they would like to be covered are outlined in red on the plan before us.

In accordance with the Licensing Act 2003 where an applicant submits an application for a premises licence then an operating schedule must accompany the application. This demonstrates how the licensing objectives will be met and also outlines what licensable activities are sought. These can be read on part M of the application form (appendix 1). The licensable activities and time being sought on the application can be found in Appendix 1 under sections B, E, F, I, J and L.

Copies of this application have been served on all the statutory bodies for the 28 days period and no statutory consultees other than the police have made any representations relating to this application. Essex Police state that after close liaison with the applicant they feel all licensing objectives are adequately covered. This letter is attached as Appendix 7.

The application was advertised in the Dunmow Broadcaster on 8 August 2019 and notices were placed by the applicant on the premises on 5 August for 28 days. The Licensing Authority itself has no statutory obligation to notify local residents of applications of this type, but as a matter of courtesy UDC does contact the occupants of the properties most closely adjacent to the premises: Applicants, however, are obliged to a) place a statutory notice on the premises for 28 days and b) to place an advertisement in a publication circulating in the area in which the premises are situated and this was done. As a consequence, four representations have been received from interested parties (which include Felsted Parish Council) in Felsted raising concerns based on the licensing objectives that relate to the prevention of public nuisance and crime. It is feared by local residents that disturbance to neighbours would be occasional noise from the music events and cars leaving the premises. We have read these letters carefully but have to note the Police do not agree with them.

In carrying out its statutory functions, the Licensing Authority must promote the licensing objectives as defined in the Licensing Act 2003:-

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

There is no hierarchy of objectives and all have equal weight/importance.

The decisions available to the Committee 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 we have to give due regard to the Council's Licensing Policy. The relevant parts thereof state, inter alia,

5.1 Licensed premises have a significant potential to adversely impact on communities through public nuisances that might arise from their operation. The Licensing Authority wishes to proactively maintain and protect the amenity of residents and other businesses from the potential consequence of the operation of licensed premises whilst recognising the valuable cultural, social and business importance that such premises provide.

5.2 The Licensing Authority intends to interpret "public nuisance" in its widest sense, and takes it to include such issues as noise, light, odour, litter and anti-social behaviour, where these matters impact on those living, working or otherwise engaged in normal activity in an area.

5.3 Applicants need to be clear that the Licensing Authority may apply stricter conditions, including controls on licensing hours, where licensed premises are in or near residential areas and where relevant representations have been received. Conversely, premises which can demonstrate that they have effective controls and measures in place or proposed to prevent public nuisance, may be suitable for 24-hour opening.

5.6 If representations are made applicants will be expected to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained to prevent public nuisance, relevant to the individual style and characteristics of their premises and events.

5.7 When addressing the issue of prevention of public nuisance, the applicant should consider those factors that impact on the likelihood of public nuisance. These may include:

- the location of premises and proximity to residential and other noise sensitive premises, such as hospitals, hospices and places of worship

- the hours during which the licensable activities will be carried out particularly between 23.00 and 07.00

- A "wind down period" between the end of the licensable activities and closure of the premises the nature of activities to be provided, including whether those activities are of a temporary or permanent nature and whether they are to be held inside or outside premises

- the design and layout of premises and in particular the presence of noise limiting features

- the occupancy capacity of the premises

- the availability of public transport

- A last admission time

We must also consider the Home Office Guidance issued under S182 Licensing Act 2003. The most recent edition of this is dated April 2018, and the relevant sections of that Guidance state as follows :

2.15 The Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.

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. It is important to remember that the prevention of public nuisance could therefore include low-level nuisance, perhaps affecting a few people living locally, as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.

2.17 Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from the premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or more sophisticated measures like the installation of acoustic curtains or rubber speaker mounts. Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of specific premises. Licensing authorities should be aware of the need to avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are very expensive to purchase and install and are likely to be a considerable burden on smaller venues.

2.18 As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and where their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate.

2.19 Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late-evening or early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. In certain circumstances, conditions relating to noise immediately surrounding the premises may also prove appropriate to address and disturbance anticipated as customers enter and leave.

2.21 Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area and to respect the rights of people living nearby to a peaceful night.

If this Committee in its discretion wishes to impose conditions, the only conditions that can be imposed are those that are appropriate and proportionate to promote the licensing objective relative to the representations received, in this case public nuisance.

We cannot, however, impose conditions that duplicate the effect of existing legislation and we bear this in mind in considering some of the representations that have been made to us this afternoon.

We have heard today from Ms Walker on behalf of the Applicant and have read correspondence from the four Interested Parties and from the Police. None of them have attended today and no other statutory consultee has made any representations. Ms Walker has answered our questions fully and frankly, and we grant the application in principle, subject, however to a number of caveats regarding both noise and traffic. The school has agreed to accept restrictions upon the holding of outdoor events, both in terms of the number of events and in terms of the locations upon the campus where they may be held. We will therefore add a condition to the licence prohibiting outdoor events in locations 4, 5 and 6 on the plan to be found at page 31 of our bundle of papers. Furthermore, we propose to limit the number of outdoor events that may be held at the venue in any one calendar year to ten per annum, which Ms Walker indicated they were willing to accept, and we trust that the School's current practices regarding publicising such events, noise monitoring, traffic management and so forth will continue. WE are mindful that the nature of the premises is such that no-one who is not local or who otherwise has no connection with the school – staff or alumni – is likely to use it for a private event and we note that this is an applicant that values its reputation and is embedded in the local community. This is not a “pubco” liable to sell its interest in the premises and move on: they have behaved responsibly in the past, have engaged with both Essex Police and the Licensing Authority. This application has been years in the preparation, and this is a responsible applicant.

We therefore grant the application as asked, subject to the two additional conditions set out herein, and the Applicant will receive a new licence in due course. Any party aggrieved by this decision has a right of appeal against it to the Magistrates Court. This must be exercised within 21 days of the date of service of this decision notice, hence the appeal window will close on 24<sup>th</sup> October. All parties will receive notification from the Legal Department explaining this.

#### **LIC29      EXCLUSION OF THE PUBLIC AND PRESS**

RESOLVED to exclude the public and press for the following items on the grounds that they contained exempt information within the meaning of s.1 etc

#### **LIC30      DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE**

The Enforcement Officer gave a summary of the report. The Council had received an email from the General Manager at ACME who gave an update into their internal investigation into the driver. The driver had offered his resignation on 19 June and was placed on gardening leave until 19 July, when his employment was due to terminate. They took his private hire/hackney carriage driver's badge and later returned it to the Council. This was due to number of allegations about him when he was a licensed driver.

The driver said allegations he had made a parent smell his arm were untrue. He had suggested they smell his arm to demonstrate that their child had left traces of a smell of urine on his arm. This was because the child had fallen asleep on his arm while he was driving.

In response to a Member question, the driver confirmed ACME had informed him that the parent had made a complaint about him, but he did not contact the parent after he had been told this.

In response to a Member question, the driver said he used to arrive between five and ten minutes before he was due to take the children to school, as had been suggested by his employer. He parked down the road and then used to drive up to the house when he was due to collect the children.

In response to a Member question, the driver confirmed the only safeguarding training he had completed was an e-learning course with the Sea Cadets.

*The driver passed around a character reference from the Christian drop-in group he volunteered with, and a long service medal from the Sea Cadets.*

The driver said he deeply regretted what had happened. He would not put himself in the same situation again.

At 1.00, the Committee retired to make its decision.

At 1.20, the Committee returned. The decision was read to the driver.

#### DECISION NOTICE –

The application before the Panel today is for the suspension or revocation of the driver's joint private hire/hackney carriage licence number PH/HC2949 under S61 (1) (b) Local Government (Miscellaneous Provisions) Act 1976.- any other reasonable cause. The licence is due to expire on 31<sup>st</sup> July 2021 and the driver was first licenced by this authority on 23 August 2018. He formerly drove for ACME Transport Services but his employment was terminated by them on 19<sup>th</sup> July 2019 and they returned his badge to the Council. He therefore is not driving at this present moment.

We have had the opportunity of reading the officer's report in this case, a copy of which has been served on the driver. The bundle incorporates correspondence received from a parent and from Powers Hall School. The story begins with an email received from ACME Transport Services on 28<sup>th</sup> June who as his employer were investigating a number of allegations made by the parents of children being driven by him to and from school. Briefly, the driver would allegedly talk about his earnings from his taxi work in front of staff and children, which is not acceptable. However, of considerably more concern to us is that the mother of a child passenger called Reuben, started to bring the child to school herself as she was concerned about the driver. She alleged that she wanted the child to sit in the back of the vehicle with a full car seat but that the driver had insisted on putting the child in the front seat using a booster cushion. He had also given nicknames to the children and talked about taking them for a drink and cake at the end of term: further he had actually asked to take both children (Reuben and Riley) out for a drink and cake at the end of term but this was declined by the parents. He had also given a child a breakfast biscuit without the parent's knowledge. Additionally, the driver picked up one of the children very early before school, and there were times when the driver had been late bringing the child home, the parent had asked the child about it and they had claimed that the driver had pulled the car over and was swearing. All of these matters had led to ACME suspending him pending a disciplinary investigation; as a result of this he had tendered his resignation and his notice period

expiring on 19<sup>th</sup> July was spent on garden leave. ACME were concerned enough to take possession of his badge and they have since returned it to the Council.

The driver met with the Enforcement Officer on 18<sup>th</sup> July. In a lengthy discussion he provided the following background information. He said that he been in the Sea Cadets for 30 years and had reached the rank of Chief Petty Officer. In his view, over this period he has had a positive impact on children's lives: Sea Cadets are between 10-18 years of age and some of them had "problems". He was promoted and took charge of two Sea Cadet units and therefore was responsible for some 25 children and 5-6 members of staff at any given time. He had also been a special constable in London for two and a half years, and still engages in voluntary work around three times a month with children at a drop in centre run by a Christian group.

The driver explained that he had never undergone any safeguarding training or any other form of instruction in dealing with children when he was employed at ACME, though he had done an e-learning safeguarding course with the Sea Cadets; ACME had only provided him with a "list" of rules and no other group had provided any formal training.

The driver then told the Officer that licensed driving is his only form of paid employment. With ACME his basic pay was for a 13.75 hour week which he explained was the basic contract: however, because he was transporting two children from Earls Colne he managed to boost his hours to 21 per week. Firstly, the driver was transporting seven children on a regular basis, though this number dropped to four, and he had no Passenger Assistant throughout this time. He had raised concerns with ACME in the past about this. He confirmed the two of the children upon whom the allegations against him primarily centre (Riley and Reuben) were considerably younger than Sea Cadets, being four and six years old respectively.

In relation to the allegation that he discussed his earnings in front of the children he admits that he may have done this as a passing comment but there was nothing intended by it. He denied using the wording "he's my biggest earner" although he admits he is an open man which he now realises to be a mistake.

Turning to the specific parental complaints, the driver explained that he had asked Riley's mother if the child could sit in the front of the vehicle so he didn't feel all alone with a new driver. He alleged she had been "alright" with him sitting in the front. He then claimed that Reuben initially stayed in the front of the vehicle after getting consent from his mother. However, it became apparent that the child was falling asleep in the vehicle on the return journey and would fall onto the driver as a result. The driver therefore asked the parent for the appropriate child seat and the mother provided it.

The driver admits that he did give the children nicknames but this was in order to be friendly and to bond with them. He was aware that the journeys were long for children and did not want them to be bored. He dubbed himself "Dave the Dinosaur" and would call the boys "Riley Piley" and/or "Riley the Rhino" and the other child was "Reubs". Other children were called "Peter the Parrot" and "Sophia the Snake", and he alleged that they found this amusing.

On the allegation of the drink and cake, the driver was asked at the beginning of the term by the children would he take them to McDonalds, and he apparently agreed that he would. However, he asserted that he never intended to actually do this and said he would consult their parents in the hope that the children would forget. The driver did admit on one particular occasion there were two girls moving school and they wanted to spend a bit of time with him without other children present before they left that particular run; on that occasion the driver had apparently stopped for about 10-15 minutes, when he bought them one cake each, a bag of crisps and a drink. The driver further confirmed that he did buy the girls chocolate because they left his run because their parents had bought him chocolate. He claimed that he had obtained verbal permission off all the parents prior to this; he thought this would be a nice gesture for the girls and nothing untoward happened. It was wholly inappropriate in our view whether or not there was parental consent.

The driver did admit that he did point out to the mother of Reuben that the child did smell of urine occasionally, but this was as a concern about his welfare; he also admits that he did arrive at the child's house at about 7.10am as this was on the job sheet given to him from ACME. He thought this was prudent as the route he would travel along would often get congested. Furthermore, the driver accepted that he did buy a drink for Riley as he would not remove his coat and he was worried the child might dehydrate. When the child left he gave him some yoghurt biscuits and a good luck card because he had been with the child for a while. The mother accepted the gesture with no issues. On another occasion, the driver had concerns about a child's welfare so raised it with a welfare officer at the school. This was because he believed the child to be being bullied and he recognised this as the driver had been abused as a child: because of this, he would never hurt a child and provided the Enforcement Officer with background information on his own experiences..

The driver then explained that whole episode has caused stress to him. He accepted that he had made mistakes but everything that he had done was with the best of intentions. He also asked the Council to note that because of his disability he would struggle to find other employment, and said that he would be prepared to undergo safeguarding training if he was to keep his licence if this satisfied the Council.

We have read the papers before us and we have heard from the driver. We have also, at his request, read a document prepared by him by way of rebuttal of the statements of Reuben's mother and of the Deputy Head of Powers Hall School, and a character reference provided by the Braintree Youth Project Charity. We have also seen his long service medals awarded in respect of his time served in the Sea Cadets. He has expressed profound regret for what has happened, and says that were he to be given another chance, we would never see him before us again.

However, we have enormous concerns. Essex County Council investigated the allegations against the driver, and though they are apparently taking no further action themselves, without doubt they are relying upon the facts that ACME have taken disciplinary action leading to the ending of his employment with them, and that ACME have referred the matter to ourselves. Having read everything before us, we prefer the accounts of Reuben's mother and of the school, and we believe he did contact after disciplinary action had been taken against him by his employer. All in all, we are very concerned about his naivety and his lack of insight, even after we had announced our decision, and so we find ourselves unable to give him the benefit of the doubt. The primary function of this Committee is the protection of the public and we note the seriousness of the allegations. Children are among the most vulnerable members of our society and anyone employed to work with them, particularly lone workers, holds a position of great trust. It is our view that the driver has breached that trust, and as a result we feel that we have no option but to revoke his drivers' licence with immediate effect in the interest of public safety under S61(1) ( b) Local Government (Miscellaneous Provisions) Act 1976 – any other reasonable cause.

There is a right of appeal against this decision which must be exercised within a period of 21 days. During that period the licence would ordinarily remain in force, and would continue thereafter until the conclusion of the appellate process, but this does not apply in this case since the revocation is with immediate effect in the interests of public safety. The driver will receive a letter from the Legal Department explaining this.

The meeting ended 1.30.