

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

Present: Councillor P Lavelle (Chair)
Councillors C Day, R Freeman and L Pepper

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

Also present: P Li (Translator), Mei Y W (Manager), Xue H C (Licence Holder)

LIC38 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

Councillor Freeman declared a personal non-pecuniary interest as a member of Saffron Walden Town Council.

LIC39 APPLICATION FOR A PREMISES LICENCE - SAFFRON WALDEN CHINESE

The Licensing Team Leader gave a summary of the report, which set out an application for a new premises licence in respect of Saffron Walden Chinese. One representation had been received from an interested party living next door to the premises raising concerns based on the licensing objectives that relate to the prevention of public nuisance and crime and disorder.

In response to Member questions, Xue H C confirmed through P Li that the intention was for the restaurant to stop serving both food and alcohol at 11pm. She confirmed that she knew this would have the effect of pushing last food orders back to 10.30pm.

At 11.10, the Committee retired to make its decision.

At 11.30, the Committee returned. The decision was read to those present.

DECISION NOTICE – 1-3 EAST STREET SAFFRON WALDEN.

The application before the Panel today is for a new premises licence for the above address. The application is dated 1st August 2019 and is made by Saffron Walden Chinese Ltd. Representations have been made by a neighbouring resident on the grounds of potential nuisance. We have also received copy correspondence from Essex Police, indicating they wished additional conditions to be placed upon the licence. The applicant has agreed to this and therefore the Police are content for the application to proceed. These are the circumstances under which 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.
Correspondence from Essex Police
Bundle of letters and emails from the Interested Party.
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

Historically, a licence for this premises was first granted on 7 October 2005. The premises was then known as "China China". No representations were made in respect of the application and it was granted as asked. The Council received an application for the review of this licence from Essex Police dated 16 October 2018 on the grounds of the prevention of crime and disorder relating to immigration offences. The premises licence was surrendered a few days prior to the hearing date on 11 November 2018. The restaurant has remained closed since November 2018. Ownership has been changed and we assume that the Police are satisfied that this change is genuine, and internal refurbishments have also been taking place. An application for a new premises licence has now been submitted.

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 I and J, and we note the opening hours sought are slightly shorter than those under the previous licence.

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 liaison with the applicant, who has agreed to their requirements, they feel all licensing objectives are adequately covered. Their correspondence is before us..

The application was advertised in the "Walden Local" on 11th September 2019 and notices were placed by the applicant on the premises on 10th September for 28 days. As a consequence, a representation was received from an interested party raising concerns based on the licensing objectives that relate to the prevention of public nuisance and crime. A lengthy letter has been sent to the Council, which we have read, carefully but have to note the Police do not agree with the writer.

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 the applicants through their interpreter, Penny Li. They do not want the provision for late night refreshment included late in the application at the suggestion of the Police and accordingly we grant this application with the provision removed. This has the practical effect of pushing the time forward for last food orders to 10.30PM. The additional conditions to the licence required by the Police, accepted by the applicants and set out at pp 48/9 of our document pack will be added to the licence.

We do, however, intend to add an additional condition to the licence on our own account. This will read as follows:-

Before any person is employed at the premises in any capacity sufficient checks will be made of their bona fides to ensure they are legally entitled to employment in the UK. All documents will be retained for a period of 12 months post termination of employment and will be made available to the Police, Immigration and Licensing officers upon reasonable request, but in any event within 48 hours of the request. Such checks will include:-

Proof of identity (such as a copy of their passport)

Nationality

Current immigration status

Details of their full name and address

Date of birth

Responsibility for the said checks shall rest jointly and severally with the premises licence holder and the designated premises supervisor.

The effect of this is to require that robust checks upon the right of anyone seeking employment at the premises to work in the UK are made. Both the premises licensee and the designated premises supervisor will be under an obligation to see that these checks are carried out and what they have to do is set out in the notes to the application form found at pp 33-7 of our documents.

The Interested Party has not attended before us today. We have read what she has to say and note that the deletion of the provision for late night refreshment should address her concerns.

We therefore grant the application as set out in the preceding paragraphs. 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. All parties will receive notification from the Legal Department explaining this.

The meeting ended at 11.40.