

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at  
COMMITTEE ROOM - COUNCIL OFFICES, LONDON ROAD, SAFFRON  
WALDEN, ESSEX CB11 4ER, on THURSDAY, 30 AUGUST 2018 at 10.30 am**

Present: Councillor R Chambers (Chairman)  
Councillors G Barker and J Davey

Officers in attendance: M Chamberlain (Enforcement Officer), B Ferguson (Democratic Services Officer), J O'Boyle (District Environmental Health Officer), E Smith (Solicitor), A Turner (Licensing Team Leader) and S Williams (Enforcement Officer).

Also Present: T Atkinson (Applicant); Mrs Blows, Mr Christou and Mr Kryzevicius (speaking in relation to item 2); the driver in relation to item 4.

**LIC41 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

There were no apologies for absence.

**LIC42 APPLICATION FOR A PREMISES LICENCE - FAIRYCROFT HOUSE  
SAFFRON WALDEN**

The Chairman introduced the Panel and explained procedure to those present.

The Licensing Team Leader gave a summary of the report.

Fairycroft House, Saffron Walden had historically been a youth centre serving the town for over thirty years. The venue was now being used as a community arts and media centre with a bar and hall that hosted live music events. The premises owners had decided to apply for a premises licence as they were running out of temporary event notices.

The Chairman invited those who had submitted representations to address the Panel.

Mr Kryzevicius said he lived next door to Fairycroft House and was concerned that if a premises licence was granted there would be an increase in noise and disruption to neighbouring properties. He said he was particularly worried for his children who had found it difficult to sleep at night when events were hosted in Fairycroft House, especially during the summer months when windows were left open.

Mrs Blows said she lived across the road from Fairycroft House but was still disturbed late at night when people were leaving the venue, particularly when they came and sat on her ground floor window sill. She could also hear the music as windows had been left open during the summer months. She was concerned that if a licence was granted, this would provide an opportunity for the premises owners to open every night.

In response to a question from Mr Atkinson, Mrs Blows said she heard the music on Sundays, up to 10pm.

Mr Atkinson said this was not live events but rehearsals, which were not related to the conditions of a premises licence.

Mr Christou, speaking on behalf of Mrs Christou, said he lived next door to Mrs Blows and was also disturbed by the noise pollution emanating from Fairycroft House. He said any events after 8pm would cause a public nuisance in such a built up and residential area and these concerns had not been addressed in the application. He highlighted a number of elements that could be conditioned to mitigate the impact on residents. He supported the continued community use of Fairycroft House but was worried about the effects such a licence would have on neighbouring residents if granted.

The Chairman invited the applicant to address the Panel.

Mr Atkinson said he wanted to reassure those present that he would work with local residents to find a solution for all. He said he was not opening a bar or nightclub and the majority of people working at the venue were volunteers. He had only applied for the full allowance of hours in his application as that had been the advice he had been given; he stressed that there was no intention of opening every day. He said a range of events were hosted for the community at the venue, such as music school concerts and jazz nights, and 90% took place on a Friday or Saturday night. He said the intention was to create a community resource for the town.

He said it was clear from the comments of those in attendance that most of the music heard by neighbouring residents was from rehearsals, not live events. He said he would deal with the issue of rehearsals separately, but said he would address the noise spillage that was disturbing residents. He said an application for a lottery grant to improve the soundproofing of the venue had already been submitted.

In response to a number of questions relating to the floor plan and security of the building, Mr Atkinson said the stairwell to the upper floor officer was secured and staff would be present in the main hall to ensure drinking was monitored.

Councillor Barker asked what type of music was played at live events and what was the typical demographic.

Mr Atkinson said he wanted all types of music to be played at the venue but in the recent past the concerts had been predominantly jazz. The hall was used by all ages, from pre-school children to the elderly.

In response to a question from the Chairman, Mr Atkinson said work would be commencing in twelve weeks' time on soundproofing the upstairs windows.

The Solicitor said Mr Atkinson had applied for a premises licence as no lesser type of licence was available; if Fairycroft House was to continue to host events, he had no alternative.

The District Environment Health Officer added that whilst rehearsals were not a licensable activity, associated noise pollution was covered by Environmental Health legislation and measures could be enforced if necessary.

*The Panel retired at 11.40am to make a decision.*

*The meeting was reconvened at 12.25pm.*

*The Chairman read the decision to those present.*

## **Decision Notice**

The application before the Panel today is for the grant of the premises licence in respect of Fairycroft House, 37 Audley Rod, Saffron Walden. The premises have never been licensed before and are now a community and arts centre with a hall and bar area. The application is attributable to the fact the proprietors are “running out” of TENs notices.

We have the following documents before us:-

Premises licence application (Appendix 1)

Plan of premises (Appendix 2)

Representation from Statutory consultee (noise/nuisance)( Appendix 3) agreeing condition with applicant (Appendix 3A)

Representations from Interested parties (Appendix 4A – 4E)

Location of premises (Appendix 5)

We have also considered the provisions of the Licensing Act 2003, the most recent Home Office Guidance and the Council’s policy statement.

Copies of this application have been served on all the statutory bodies.

Environmental Health were the only statutory consultee to raise a representation regarding noise/nuisance, which they withdrew upon the Applicant agreeing to a condition on his licence (confirmed in writing on 5th July 2018) addressing issues surrounding the public nuisance objective. Details of this condition can be found in Appendix 3. However, five representations have been received from interested parties in Saffron Walden raising concerns based on the licensing objectives that relates to the prevention of public nuisance and crime and disorder. They are concerned that disturbance to neighbours would be caused by:

(a) Disturbance to property, bottles/cans thrown into gardens and congregation of people outside drinking.

(b) Live and Recorded music being played loud at all levels to create a public nuisance.

(c) Insufficient acoustic insulation when music is being played.

The matter has therefore come before us today. We are required to promote four statutory objectives in the exercise of our functions, namely:

- The prevention of crime and disorder
- Public safety

- The prevention of public nuisance
- The protection of children from harm

The decisions open to the Committee in determining this application are to:-

- Grant the application; or
- Modify the application by inserting conditions; or
- 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 of the Act. This we have done.

The relevant sections of the Council's Licensing Policy are as follows:

5.1 Licensed premises have a significant potential to adversely impact on communities through public nuisances that 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 measures planned to prevent public nuisance, may be suitable for 24-hour opening.

5.5 The Licensing Authority does recognise that in some circumstances flexible licensing hours may help to avoid concentrations of customers leaving premises simultaneously and could reduce the potential for disorder. It also recognises that licensing hours should not inhibit the development of safe evening and night-time local economies. However, the Authority will always seek to balance their decisions with the duty to promote the four licensing objectives and the rights of residents to peace and quiet.

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:

- (a) the location of premises and proximity to residential and other noise sensitive premises, such as hospitals, hospices and places of worship
- (b) the hours during which the licensable activities will be carried out particularly between 23.00 and 07.00
- (c) 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
- (d) the design and layout of premises and in particular the presence of noise limiting features
- (e) the occupancy capacity of the premises
- (f) the availability of public transport
- (g) A last admission time

5.8 The following examples of control measures are given to assist applicants who may need to take account of them in their operating schedule, in the event that representations are received, having regard to their particular type of premises and/or activities:

- (a) Effective and responsible management of premises
- (b) Appropriate instruction, training and supervision of those employed or engaged to prevent incidents of public nuisance, e.g. to ensure customers leave quietly
- (c) Control of operating hours for all or parts (e.g. garden areas) of premises, including such matters as deliveries and clearing up
- (d) Provision of effective CCTV in and around the premises
- (e) Adoption of best practice guidance (e.g. Good Practice Guide on the Control of Noise from Pubs and Clubs, produced by Institute of Acoustics, Licensed Property: Noise, published by BBPA)
- (f) Installation of soundproofing, air conditioning, acoustic lobbies and sound limitation devices
- (g) Management of people, including staff, and traffic (and resulting queues) arriving and leaving premises
- (h) Liaison with public transport providers
- (i) Siting of external lighting, including security lighting
- (j) Management arrangements for collection and disposal of litter
- (k) Effective ventilation systems to prevent nuisance from odour

For the sake of completeness, I also quote the relevant sections of the most recent Guidance issued by the Home Office in April of this year. They are:-

2.15 The 2003 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 may 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 premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or persons are not permitted in garden areas of the premises after a certain time. More sophisticated measures like the installation of acoustic curtains or rubber speaker mounts to mitigate sound escape from the premises may be appropriate. However, conditions in relation to live or recorded music may not be enforceable in circumstances where the entertainment activity itself is not licensable (see chapter 15). Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises and its licensable activities. Licensing authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are expensive to purchase and install and are likely to be a considerable burden for 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 when 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, the most sensitive period for people being disturbed by unreasonably loud music is at night and into the early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. This is why there is still a need for a licence for performances of live music between 11 pm and 8 am. In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave.

2.20 Measures to control light pollution will also require careful thought. Bright lighting outside premises which is considered appropriate to prevent crime and disorder may itself give rise to light pollution for some neighbours. Applicants, licensing authorities and responsible authorities will need to balance these issues.

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, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night.

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.

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.

We have heard from the Applicant, Mr Atkinson, and from three of the interested parties, Messrs Kryzevicius, and Christou, and Mrs Blow. We have also heard from Mrs O'Boyle of Environmental Health and we note that the Applicant agreed to that department's additional requirements by return email. We also note that Mr Atkinson is running a community organisation in a building that has been a youth/educational facility since the Second World War and that the business mechanism under which he operates restricts his ability to dispose of the undertaking to anything other than another community enterprise: we also take note of his wish to be a good neighbour, his attempts to secure funding to secure further soundproofing works to a two hundred year old building, and his offer to provide interested parties with a mobile phone number upon which they may report concerns.

Mr Atkinson has made it clear that he is not running a pub or a bar, and that he has made the application he has, for the hours that he has, upon advice: there is no option other than a premises licence open to him. We find him to be a conscientious and careful man and we believe that he will continue to be a good neighbour and will carry out the undertakings he has made today.

We therefore grant this application and he will receive the paperwork in due course. If there are any problems it is open to the statutory authorities to bring the question of the licence back before us and as Mrs O'Boyle has said, noise issues may also be raised with Environmental Health. We do hope that this will not be necessary and that these premises will not come to our attention in future.

However, the interested parties do have a right of appeal against this decision which must be exercised within a period of 21 days. They will receive a letter from the Legal Department, with a copy of this decision notice, explaining this.

LIC43      **EXCLUSION OF THE PUBLIC AND PRESS**

*RESOLVED that under section 100I of the Local Government Act 1972 the public be excluded for the following item of business on the grounds that it involved the likely disclosure of exempt information as defined in paragraphs 1 and 2 part 1 of Schedule 12A of the Act.*

LIC44      **DETERMINATION OF AN APPLICATION FOR A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE**

The Chairman introduced the Panel and explained procedure to those present.

The Enforcement Officer gave a summary of the report.

On 12 June 2018, the driver applied to this authority for the grant of a private hire/hackney carriage driver's licence. A standard driver check was carried out which identified two speeding offences from 2016 which had not been declared on the driver's application form. The driver attended a meeting with the Enforcement Officer on 10 August 2018 and said he had forgotten the two motoring offences from 2016 as they had not been written down.

The driver was invited to address the Panel.

The driver said he had simply forgotten the two offences from 2016 as they had not been written down on his paper licence. Previously he had been an operator and knew the importance of declaring such information when applying for a licence.

In response to a question from Councillor Barker, the driver said he was acutely aware that the Council would carry out a driver check, and he knew what would happen if an offence was not declared, due to his experience as an operator. He said it was a simple mistake and he really had just forgotten to list the two offences.

*The Panel retired at 11.40am to make a decision.*

*The meeting was reconvened at 12.25pm.*

*The Chairman read the decision to those present.*

**Decision**

The driver's application dated 12th June 2018 is for a Private Hire/Hackney Carriage Driver's licence. If successful, he has an offer of employment from 24 x 7 Ltd carrying out school contract work.

The Council's standard application form asks a number of questions about an applicant's antecedent history. A copy of the form completed by the driver is before us and he has been provided with a copy prior to the hearing today.



One of the questions is “Has your licence ever been endorsed for a fixed penalty offence within the last four years?”

The driver answered no to this.

Another is, “Have you ever been convicted of ANY offence (including motoring offences) including spent and unspent convictions in any Court or received a police caution?”

The reply to this was that in February 1973 the driver was convicted of indecent exposure at common law for which he received an admonishment and in December 2003 he was convicted of knowingly making a false entry in a book/registration document for which he was fined £100. The driver also advised that he had two endorsements on his licence for motoring offences, one was an SP30 offence in June 2009 for which he received 3 penalty points on his licence and the second was an SP30 offence in June 2014 for which he received 3 penalty points on his licence. These points are no longer live.

However, as part of the due diligence process a standard driver check was carried out by the Council on 24 July 2018 and this identified two undisclosed motoring offences for which the driver had received penalty points on his driving licence. The first was in June 2016 which was an SP60 offence (speeding) for which he received 3 penalty points on his licence and the second was in August 2016 and was an SP30 offence (speeding) for which he received 3 penalty points on his licence. These six points are all current.

The driver was invited to a meeting with the Enforcement Officer on 10th August to discuss this non-disclosure. He explained that in completing the application form he had included the endorsements on his counterpart licence even though these convictions were spent, but he had forgotten the two motoring offences from 2016 because they were not written down.

The details behind the SP60 offence are that the driver was working as a courier driver at the time and believes he was driving somewhere around the M14/M1 area where he recalls there was numerous road works and believes that there must have been a temporary reduction in vehicle speed to 50 mph going through the roadworks and the driver advised he was doing just over the 50 mph speed limit at the time. The offence was caught by a speed camera. The SP30 offence also occurred in the course of the same employment, near Ipswich; the speed limit for the road was 30 mph and the driver was again caught by speed camera doing around 35 mph.

The driver advised the Officer that up to 2012 he was an operator of his own company licensed through Braintree District Council where he managed a fleet of 25 vehicles carrying out school contract work and transportation of children with special needs.

Making a false statement to obtain a licence is an offence under section 57(3) Local Government (Miscellaneous Provisions) Act 1976, but although the Environmental Health Manager (Protection) has deemed it not in the public

interest to prosecute The driver, his application was referred to this Committee for determination.

We have listened to what the driver has had to tell us and we accept that it was a genuine oversight and that he is truly sorry. We accordingly grant his application and he will receive the paperwork in due course.

LIC45 **DETERMINATION OF AN APPLICATION FOR A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE**

The driver in relation to this item had not received the Enforcement Officer's report or correspondence. The Panel therefore agreed to defer this case.

The meeting ended at 1.00pm.