

Licensing Sub-Committee – 14 October 2015

Minutes of the meeting of the **Licensing Sub-Committee** held on **14 October 2015** when there were present:-

Cllr N J Hookway
Cllr Mrs C A Weston

Cllr Mrs B J Wilkins

OFFICERS PRESENT

A Woods	- Solicitor
C Todman	- Trainee Solicitor
J Fowler	- Licensing Officer
M Howlett	- Principal Environmental Health Officer
S Worthington	- Committee Administrator

18 APPOINTMENT OF CHAIRMAN

Cllr Mrs C A Weston was appointed Chairman of the Sub-Committee.

19 DECLARATIONS OF INTEREST

Members of the Sub-Committee declared a non-pecuniary interest in item 4, the application for the grant of a premises licence for Smuggler's Den, Hullbridge by virtue of the fact that the applicant's wife is a Member of Rochford District Council and by virtue of being acquainted with the applicant, a Member of Hullbridge Parish Council.

20 PROCEDURE FOR LICENSING HEARING

The Sub-Committee noted the procedure to be followed during the hearing.

21 LICENSING APPLICATION – LICENSING ACT 2003

Smuggler's Den, 315 Ferry Road, Hullbridge

The Sub-Committee considered an application for a premises licence made under section 17 of the Licensing Act 2003 with respect to a premises known as Smuggler's Den, 315 Ferry Road, Hullbridge, SS5 6NA. Members had before them the report of the Assistant Director, Legal Services setting out the details of the application and the representations received from various interested parties.

It was noted that Mr Grant, representing one of the interested parties, Mrs Darling, would be making reference to the Licensing Sub-Committee Minutes of 30 August 2005 and of 3 July 2008 during the course of the hearing. It was further noted that photographs requested by Mr Grant to be shown during the hearing would not be admitted, as the applicant's representative, Mr Murrell, objected to inclusion of material not previously submitted.

In presenting her report, the Council's Licensing Officer confirmed that the applicant had agreed to conditions requested by the Police and the Environmental Protection Unit who had accordingly withdrawn their objections to the application. It was noted, however, that officers from Essex Police and from the Council's Environmental Protection Unit were present at the hearing and all parties agreed that they might be questioned, if that should prove appropriate during the course of the hearing.

The applicant's representative, Mr Murrell, confirmed that this was not a review of the existing premises licence, but was rather a new licence application made without prejudice to the existing premises licence. He emphasised that there had been a licence in operation at the premises since 1927 and the applicant was not seeking to change the hours of the existing premises licence in any way. The changes sought with this application for a new premises licence were in respect of the removal of requirements to operate the premises according to club rules, to change the plan of the premises to include an extended licensed area, extending the boundary to the full extent of the outside area down to the river and amending conditions that would lead to a more restrictive premises licence.

The applicant's representative advised the hearing that CCTV was already in place at the Smuggler's Den, which had been approved by the applicant and the Police were not making any representation to the hearing. The environmental health conditions detailed in an email to the applicant on 28 September 2015 had been agreed by the applicant, but it was noted that there was an error on page 4.22 of the appendices to the officer's report – condition 4 was a duplicate of condition 3 and should be replaced with... 'Prominent signage shall be displayed adjacent to each exit reminding patrons to depart the premises quietly. Announcements to the same effect will be made to patrons during the final thirty minutes of any regulated entertainment and the volume of the entertainment reduced accordingly for the period'.

The applicant's representative emphasised that there were only five representations from interested parties, two from the same household; however there were approximately 3,000 residents in Hullbridge. Patrons of the Smuggler's Den were local people who walked to the premises and were known to the applicant and his staff. The applicant was confident in his ability to control patrons without the need for club membership. He had owned the premises for the past eleven months and during that time a number of people had been banned from the premises for unruly behaviour or on suspicion of drug taking. Historically the premises had benefitted from a licence extending to 0200 hours, but the premises now only opened until 0100 hours towards the latter part of the week.

During the past eleven months the applicant has liaised regularly with the Responsible Authorities and was acutely conscious of his responsibilities; he and his wife wanted to ensure that the premises were well run and that there was constant adherence to the licence.

The applicant's representative advised that the applicant and his wife sought to run the premises well, aiming to attract families and children and older clientele, by means of a food-led business. To this end a new chef and two waitresses had recently been employed. They had introduced entertainment, primarily on Friday and Saturday evenings, with an open mic night every other Thursday. The applicant was working with the Police to try and set up a Behave or be Barred (BOBB) scheme in Hullbridge and undertaken relevant training in. An incident log was kept by the premises.

He further emphasised that the new licence would promote the four licensing objectives as the conditions were more rigorous than those on the current premises licence. The conditions proposed by Mrs Darling's representative, Mr Grant, in his email of 13 October 2015 were unreasonable, particularly that relating to the restriction of the outside area to 8.00 pm when the outside areas of five other licensed premises, e.g., the Anchor, were licensed until 11.00 pm. The Environmental Protection Unit, in addition, had not requested restricting outside use to 8.00 pm. He also stressed that insisting on the closure of windows and doors during the daytime when noise wasn't generated was also unreasonable.

The applicant's representative emphasised that the representations from interested parties contained generalised concerns. In addition, issues relating to parking, planning and public rights of way were not relevant to this licensing application.

The applicant's wife confirmed that she was aware of the previous history Mrs Darling had with the club and emphasised that the club rules had been enforced by her husband and herself to ensure that members behaved correctly and were respectful to Mrs Darling and did not retaliate if she was aggressive. She provided the hearing with three examples of confrontations involving Mrs Darling at the premises, on 9 June, 5 July and 20 September, which all appeared to involve an historical right of way dispute, and had caused patrons to leave the premises.

The applicant's wife disputed the content of page 4.26 of the appendices to the officer's report, which claimed that noise emanates from the licensed premises after 0200 hours. She stressed that the Smuggler's Den stops serving drinks at 0100 hours and that customers leave the premises at 0130 hours. There was generally a maximum of a dozen customers at the premises during the daytime, so it was quiet during that time. She advised that there was a common problem with cars parking inconsiderately in Ferry Road, which she found frustrating. She emphasised that there was a nature reserve, access to the river and rose garden all in close proximity, which could account for cars parked in Ferry Road; there was no evidence that vehicles parked there belonged to patrons of the Smuggler's Den. She further stressed that members of the Smuggler's Den were given verbal warnings that they would not be served at the premises if they parked illegally in Ferry Road and she herself had put notices on the windscreens of vehicles parked there.

She stated that any court order relating to public rights of way, etc., was an historical one against the previous proprietor, rather than the premises, or indeed her or her husband. She made reference to the content of page 4.29 of the appendices to the officer's report and confirmed that external drinking took place on the decked area, half of the area shown on the map. When discos took place on Friday nights the applicant and herself checked the noise levels from this decked area and the music was inaudible.

The applicant's wife advised that she and her husband wanted the premises to become a gourmet pub. A zero tolerance policy to drugs was operated, with, for example, new CCTV installed in the bathrooms, and membership bans for anyone accused of drug-taking. Given the concerns raised by three other residents, she confirmed that she and her husband would do anything possible to comply with any reasonable requests.

The following responses from the applicant's representative to questions raised were noted:-

- A disco takes place every Friday night.
- The applicant would not find a full restaurant condition acceptable.
- The intention was that the new licence, the subject of this application, would result in a more regularised licence, with more restrictive conditions attached.
- Any issues relating to historical boundary or public right of way disputes were not relevant to this licensing hearing and should more appropriately be referred to a county court.
- None of the windows within the premises could be opened. The location of the windows was indicated on the plan to all those present.
- Children were expected to leave the premises at 2100 hours.
- The establishment of a BOBB scheme in Hullbridge/Hockley was supported by the Police; anyone barred from one premises that was a member of the scheme would automatically be barred from all other member premises.
- The applicant and his wife owned the flat upstairs, but the land immediately in front of the entrance to the flat was owned by Mrs Darling, and it was therefore not possible to use the flat currently.
- There was air conditioning at the premises.
- There was no designated smoking area; customers could smoke anywhere outside, but were encouraged to go as close as possible to

the river, to reduce any potential noise impact on Mrs Darling.

- There were approximately 300 club members.
- There was a noise limiter at the premises, and expert advice had been followed in respect of the placement of speakers, to further mitigate against noise and the applicant and his wife also monitored noise from the shared drive and decked areas.

Mrs Darling's representative, Mr Grant, in presenting her representation to the application, emphasised that the Smuggler's Den was the wrong type of premises in that location. Late night operation of the premises would lead to public nuisance. He further stressed that changing the condition relating to club rules would result in a dilution of existing controls of club members. The club rules were important, given that the premises was adjacent to residential properties. He further stated that, even with the current club rules, there were problems with the premises. Members were accountable to the club and had to abide by the rules in order to remain a member.

Mr Grant emphasised that the outside licensed area already caused considerable nuisance to residents; extending this area would inevitably lead to more of a nuisance.

He drew attention to the fact that the condition requiring doors and windows to be kept closed at all times, except for exit and egress, removed as a result of an earlier licensing hearing on 3 July 2008, was re-imposed by magistrates when appealed. He stressed that a condition that doors and windows should be kept closed at all times at the premises should be attached to any premises licence, particularly in the event of more regulated entertainment taking place at the premises, which would lead to more noise nuisance.

He drew attention to the new plan on page 4.20 of the appendices to the officer's report, which detailed a disco and dance floor, in effect an establishment for vertical drinking and music, which would inevitably lead to further noise.

Mr Grant emphasised that his client had never complained about other licensed premises in the vicinity, including the Anchor public house, but had had to complain regularly about the Smuggler's Den. He pointed out that there were other residents making similar representations. He drew particular attention to the Council's Statement of Licensing Policy, and paragraphs 5.1 to 5.3 on page 26 relating to the prevention of public nuisance. He stressed that this was clearly a noise sensitive area and that the application sought to dilute, rather than strengthen, existing controls. He claimed that the Environmental Protection Unit had not conducted weekend or night time inspections of the premises, whereas noise evidence submitted by residents was real evidence.

Mr Grant asked that the application be rejected, as it would result in a dilution of existing controls, which in themselves failed to adequately manage the premises. He emphasised that the building was, effectively, an old timber cow barn sited too close to the 18th century cottages.

The following responses from Mr Grant and his client to questions were noted:-

- It should be possible to enforce a condition restricting the number of people smoking outside to 5 persons, given that smoking was closely linked to licensable activity, e.g., drinking.
- During the past eleven months residents have complained and kept diaries. His client had written to complain to the Chief Executive of the Council about issues relating to trespass, the parking of lorries along the drive and disorder.
- His client had not made the applicant and his wife aware of noise nuisance during the past eleven months as she felt that she was not permitted to talk to them.
- His client had had to move out of the house at weekends to escape the noise and bass vibration, but found it noisy during the daytime on week days with people talking outside and swearing.
- In the past Mr and Mrs Darling had both visited the Smuggler's Den and been friends with the tenants some years ago. When they first moved into their property the premises did not have any outside use.
- There were tenants in the first floor flat at the premises in the past, but tenants were told that the door was for fire exit purposes only.
- Mrs Darling had lived at her property for 36 years.
- There had been issues with the premises over the years, as it was hard to contain noise within the building and Mrs Darling's property wraps around the premises; the situation had not improved over the past eleven months.

Mr Foster, a resident who had also sent in a representation in respect of the application, confirmed that he had lived in his property for 30 years. It appeared to him as though the Smuggler's Den was operating as a public house. In his view the noise nuisance during the past eleven months was the worst he had experienced. When functions were held at the premises he could hear music, and particularly the bass, amplified speech, people talking outside, with occasional swearing, and the noise of vehicles leaving the car park. He had written to the Council about these issues as it was impairing the quality of his life and dominating it.

In response to questions, the following points were noted:-

- It had been worse during recent months because the premises appeared to be operating until later hours and there also appeared to be more people entering and leaving the club; from his cottage he could feel the vibration from the bass until very late at night.

Mr Darling pointed out that the outside area had been extended; this had been permitted in the past by a Planning Inspector, for private garden use by the occupants of the flat, not for use by the licensed premises. He claimed that the raised decked area breached the area that was to be used solely by occupants of the flat. He confirmed that he now lived outside the district and was in attendance to support his wife.

All parties present agreed that the Police could be questioned by a Member of the Sub-Committee in respect of incidents that had taken place at the premises since the applicant and his wife had taken over. The Police officer advised that some incidents shouldn't be recorded as negative if they were reported, rather than called in, by the licence holder. The number of incidents at the Smuggler's Den was no different to incidents at other licensed premises in the locality. There had been twelve incidents at the club, some of which had been reported by the applicant and his wife, and some related to intelligence received about the site. There had been one call in August relating to nuisance and other incidents that used the club as a reference point. The Police had no cause for concern in respect of the Smuggler's Den.

Mr Grant concluded by reiterating that the evidence presented by his client was supported by representations from other residents, all of whom confirmed consistently that the situation had not improved for residents since the applicant and his wife had taken over the club. There had been a long period of nuisance and disturbance caused by this premises. Nevertheless, this application sought to relax some of the controls already in place, which failed to prevent noise and nuisance for neighbouring residents. His client objected to the removal of club membership rules from the licence conditions and to any extension to the outside seating area.

The applicant's representative concluded by emphasising the modest nature of the application, which did not seek to dilute any existing controls. The applicant had not received any complaints from residents during the past eleven months. The club patrons were all known to the applicant and his wife and were all local residents. The applicant had banned any problematic patrons when they first took on the premises and were proactive, working closely with the Police and Environmental Protection Unit in order to promote the licensing objectives.

He further stressed that the Police and Environmental Protection Unit were satisfied that the conditions they had requested, agreed by the applicant, would promote the licensing objectives.

He also drew attention to the fact that the premises had previously held a licence for licensable activities to 0200 hours. He confirmed that the applicant opposed the conditions that had been proposed by Mrs Darling and emphasised that Section 182 of the Home Office Guidance issued under section 182 of the Licensing Act 2003 required that the Sub-Committee did not impose onerous conditions on licensed premises. He further emphasised that an extension of the licensable area, as proposed, related to an area further away from residential properties, which should mitigate disturbance and nuisance to residents.

Finally, the applicant's representative confirmed that, in the event of a new premises licence being granted, the applicant would assess whether to operate under the existing licence or any new licence and appropriate confirmation would be communicated to the Licensing Authority.

The Licensing Sub-Committee retired from the Chamber with the Legal and Member Services officers to consider the decision, returning for its announcement.

All evidence including written and oral was considered by the Licensing Sub-Committee (LSC). All submissions made during the course of the hearing were considered. The LSC also considered the Licensing Act 2003, the Section 182 Guidance issued under the Licensing Act 2003, the Rochford District Council Policy and the four licensing objectives. The applicant's submission that this was a new licence application made without prejudice to the existing licence was accepted as was the submission made by the applicant that it was an attempt to tidy up the licence.

The LSC noted paragraphs 5.1 and 5.3 of the Rochford District Council statement of licensing policy and in particular that the licensing authority "Wishes to maintain and protect the amenity of residents...from the consequence of the operation of licensed premises whilst recognising the valuable cultural, social and business importance that such premises provide".

At paragraph 5.3 it was noted that "Applicants need to be clear that the licensing authority will normally apply stricter conditions, including controls on licensing hours, where licensed premises are in residential areas and where relevant representations have been received".

The LSC found that the application premises were in a residential area and in fact were very close to houses and that in accordance with their policy strict conditions needed to be applied to prevent public nuisance. The LSC would only impose conditions which were appropriate and proportionate and the LSC accepted the submissions made by Mr Murrell that the Section 182 Guidance was clear in that conditions must be enforceable and should not be burdensome.

The LSC found that the written evidence of those who made representations was clear evidence of a nuisance being caused to the residents by the premises in the past and during the last eleven months. This was supported by the oral evidence in particular of Mr Foster who was speaking on behalf of himself and other residents and who described the last eleven months as “the worst”. There was no reason not to accept Mr Foster’s evidence, which was accepted. The LSC did not take into account historical evidence of nuisance which may or may not have been caused by other operators in charge of the Smuggler’s Den and did not take into account any matters which were not relevant to these proceedings, including planning, parking and rights of way. There was no evidence presented to the LSC which could lead it to any other conclusion than that Mr Foster and the other residents had been caused a nuisance during the last eleven months.

It was accepted that the applicant and his wife had been working with the authorities and that they were trying to attract families and local people to the premises. It was accepted that they had liaised with the Police, been on training courses and had worked closely with the Police to set up a BOBB scheme. It was noted, however, that during the course of her submission to the LSC Mrs Hale specifically stated that the club rules were used by her as a tool to ensure that members behaved themselves at the premises and that she often added to the written rules by her own verbal rules in an attempt to ensure that customers promoted the licensing objectives.

The LSC found therefore that there was a nuisance being caused, even during the last eleven months when the club rules had been a useful tool in Mrs Hale’s attempt to promote the licensing objectives. Mrs Hale also presented evidence that there were over three hundred members of the club and the LSC noted the terms of the club rules which were presented to the hearing. The LSC did not accept the submission made on behalf of the applicant that the overall impact of the proposed new licence would make the licence more restrictive. The LSC did accept that some of the conditions proposed by the Police and agreed by the applicant would be additional conditions to those currently operating at the premises, but some of those conditions were already being complied with at the premises, such as the CCTV condition. The LSC found that not to impose a “club rule” condition on a new licence would be less restrictive and would remove what Mrs Hale herself had described as a useful tool in dealing with customers. At all times the LSC were conscious of their finding that the premises was situated in a residential area.

In considering the evidence before them, both written and oral, and only the evidence relevant to the licensing objectives and to Mr and Mrs Hale, the LSC concluded that it would be appropriate to grant a premises licence for these premises, subject to conditions which were required to promote the licensing objectives and which would be in accordance with the Council’s Policy. The LSC then went on to consider what conditions would be appropriate and proportionate.

The LSC was mindful at all times of Mr Murrell's submission that conditions should not be burdensome and must be enforceable and proportionate and that the intention of the application had been to tidy up the licence and remove conditions which were not appropriate or enforceable.

The LSC resolved that all conditions agreed by the applicant and the police at page 4.24 to 4.25 were appropriate and proportionate.

The LSC considered the conditions agreed by the environmental health officer and the applicants which were set out at page 4.22 of the brochure pack, although it was noted that condition 4 on page 4.22 was in fact a repeat of condition 3 and should be worded as previously set out in this decision. It was resolved that the final three conditions which related to the noise limiter, checking for potential disturbance and signage should be conditions as agreed. Full consideration was given to the wording of the first condition relating to windows and doors being closed during regulated entertainment and the argument put forward by Mr Grant that the existing licence condition which stated that windows and doors should be kept shut except for access and egress at all times the premises were open and trading. Having accepted the evidence of Mr Foster and the other residents that a nuisance had been caused by these premises the LSC decided that it was appropriate and proportionate to impose the existing licence condition that all doors and windows should be kept shut whilst the premises are open and trading except for access and egress. The licensing sub-committee were aware that Mr Hale had confirmed that the premises were air conditioned in any event and that Mrs Hale had said that there were very few windows at the premises in any event and none that could be opened. It was the evidence of the residents which persuaded the licensing sub-committee to impose the existing condition and not the condition agreed by environmental health and the applicant.

The LSC considered fully all of the conditions proposed by Mr Grant in his email of 13 October 2015. It was proposed by Mr Grant that there should be no outside drinking after 20:00. The LSC did not feel this was appropriate or proportionate but did feel that it would be appropriate and proportionate to have a restriction preventing outside drinking after 23:00 which it was felt would prevent nuisance but not be a burdensome condition. The LSC found that requiring a condition for no more than five customers to be allowed to smoke outside the premises was not enforceable and was not appropriate and the LSC also found that it would not be appropriate, proportionate or enforceable to impose any conditions relating to the parking of vehicles.

Consideration was given to the conditions proposed by the applicant on page 4.18 and as agreed by the applicant a number of those conditions were not being imposed. The applicants had argued that one of the purposes of the application was to tidy the licence up and to remove conditions which should not be on the licence. The licensing sub-committee agreed with those submissions and noted that Mr Murrell had agreed with the points made by Mr Woods, their legal adviser. In all of those circumstances the licensing sub-committee decided to impose conditions 1, 3, 11, 12, 13 and 15.

The plan submitted with the new licence application showed an area greater than the current licensed area outside of the premises. The LSC noted that the additional area was further away from the public house and from residential properties and did not find that it did not promote the licensing objectives to grant this additional area. The LSC noted the discussion with regard to “smoking areas” and accepted that there was no requirement for a designated smoking area. The LSC hoped that the applicant may use the additional area as a possible designated smoking area to take it further away from the licensed building and residential properties.

The Sub-Committee **RESOLVED**

That the premises licence applied for by the applicant be granted on the basis of the plans submitted with the application, which include both the internal layout of the premises and the external layout with the additional area outside, and subject to the following conditions:- .

1. The licensee shall ensure that a Challenge 25 Scheme is operated and promoted within the venue whereby any person who appears to be under twenty five years of age is required to produce means of identification proving they are over eighteen years of age. The only authorised means of identification shall be passport, UK photo driving licence or PASS accredited card.
2. The licensee shall ensure that a refusal book is maintained at the premises to record any refusals of alcohol. The refusals book shall be made available to the police/local authority upon request.
3. The licensee shall ensure that all employees receive training on preventing sales of alcohol to under age and drunken persons and on the operating schedule/policies adopted by the premises. Training records shall be maintained by the licensee and shall be available for inspection by the police or licensing authority upon request.
4. The licensee shall ensure that an incident log is maintained on the premises to record any incidents or occurrences relating to crime or disorder issues. The incident book shall be made available for inspection to police/local authority officers upon request.
5. The licensee shall install and maintain a close circuit television surveillance (CCTV) system to the reasonable satisfaction of Essex Police (Home Office Standards). The coverage must include all licensed buildings including the beer garden (terraced area opposite the entrance). Images shall be retained for a minimum of thirty one days and made available to Essex Police on request. A member of staff shall always be on call during opening times that is able to download and burn off images from the CCTV system.

6. Only toughened glass or polycarbonate drinking vessels are used in the licenced area. The DPS will assess the use of polycarbonate drinking vessels on certain occasions based on a risk assessment or when the police (inspector or above) have requested that polycarbonate drinking vessels are used.
7. The DPS will risk assess the number and use of door staff or where the police (inspector or above) have requested that door staff are used. Where door staff are utilised at the premises the DPS shall ensure that a proper record is kept to show full details of all door staff on duty.
8. Aside from access and egress all doors and windows are to be kept shut whilst the premises are open/trading. All regulated entertainment except for acoustic elements will be routed through the premises noise limiter. For clarity this excludes recorded background music but includes all incidences of amplified speech etc.
9. A noise limiter will be installed and set to a level to be agreed in writing with a member of the environmental health team within two months of the grant of the licence. The limiter will be maintained at that level thereafter unless agreed in writing with a member of the environmental health team. Records of the servicing and calibration of the limiter will be kept for at least two years and be available for inspection by officers from responsible bodies at all times. Informative: It is recommended that the applicant secures the noise limiter so that it cannot be tampered with by performer or patrons.
10. During all performances of regulated entertainment the applicant or representative will monitor the potential disturbance to neighbouring residential properties. These checks will be recorded with a note of any observations and remedial actions taken. They will be kept for at least two years and be available for inspection by officers from responsible bodies at all times.
11. Prominent signage shall be displayed adjacent to each exit reminding patrons to depart the premises quietly. Announcements to the same effect will be made to patrons during the final thirty minutes of any regulated entertainment and the volume of the entertainment reduced accordingly for the period.
12. After 23:00 there shall be no outside drinking permitted and no glasses or bottles shall be permitted to be taken outside except for off sales.
13. All regulated entertainment to take place indoors only.
14. No bottles/glasses are allowed outside the licensed area except bona fide off sales.

15. All children under eighteen years must be accompanied by adults on the premises and supervised by them.
16. No person under the age of eighteen years are permitted to remain in or on the premises on occasions when adult entertainment is provided.
17. To avoid noise breakout and potential odour problems from the property the kitchen window to the rear of the premises must be a permanently sealed, non-opening, obscured double glazed unit.
18. The licence holder/premises supervisor shall ensure that the external areas are monitored on a frequent basis to prevent noise disturbance or other nuisance being caused.
19. The Club shall operate in accordance with its rules.
20. The club rules must be revised as soon as reasonably practicable to meet the necessary criteria of a bona fide club.

Informative: It is recommended that the applicant may use the additional licensed area outside as a possible designated smoking area to take it further away from the licensed building and residents. (ADLS)

The meeting commenced at 10.00 am and closed at 2.42 pm.

Chairman

Date

If you would like these minutes in large print, Braille or another language please contact 01702 318111.