

Minutes

Licensing Sub-Committee Tuesday, 28th August, 2018

Attendance

Cllr Chilvers
Cllr Haigh

Cllr Mrs Pound

Officers Present

Paul Adams	-	Principal Licensing Officer
Steve Blake	-	Environmental Health Officer
David Carter	-	Environmental Health Manager
Dave Leonard	-	Licensing Officer
Jean Sharp	-	Governance and Member Support Officer
Maria Williams	-	Licensing Officer

106. Appointment of Chair

The Sub-committee resolved that Cllr Haigh should chair the meeting.

107. Administrative Function

Members were respectfully reminded that, in determining the matters listed below, they were exercising an administrative function with the civil burden of proof, i.e. 'on the balance of probabilities'. The matter would be determined on the facts before the Sub-Committee and the rules of natural justice would apply.

108. Licensing Sub-Committee Hearing in respect of an Application to vary a Premises Licence - Licensing Act 2003 - PIVAZ, 90B-92A High Street, Brentwood CM14 4AP

The report before the Sub-Committee provided information relating to an application for a variation to the current Premises License.

Members were requested to determine the application having regard to the operating schedule, the representations received, the Council's Statement of Licensing Policy and the four Licensing objectives.

Members were reminded that an authorisation was required in respect of any premises where it was intended to conduct one or more of the four licensable activities, these being:

- Sale of alcohol
- Supply of alcohol (in respect of a club)
- Regulated Entertainment
- Provision of Late Night Refreshment

Licence holders were required, when offering any licensable activity, to ensure that they promoted the four licensing objectives at all times which were:

- Prevention of crime and disorder
- Prevention of public nuisance
- Public safety
- Protection of children from harm

The application was brought before the licensing sub-committee for determination on 28 August 2018 following representations from Responsible Authorities (the Police, Environmental Health Noise Team and the Licensing Department of the Council) and following representations by three Other Persons (local residents Atkins, Gregori and English). It was noted that the two Other Persons Ms Kate Gregori and Mr John English, who had concerns that the premises were going to 'morph' into a late night bar that would in turn lead to an undermining of the four licensing objectives, that were represented by Dadds LLP, were not in attendance having indicated that they would not be attending but would like the contents of their representation considered.

The sub-committee first heard from the licensing officer who outlined her report.

This premise was currently a restaurant specialising in Mediterranean cuisine on a ground and first floor situated in Brentwood High Street, and it was currently licensed for the Sale by Retail of Alcohol & Late Night Refreshment.

The applicant was seeking to amend Annex 3 condition to:

"All sales of alcohol on the ground floor shall be sold ancillary to table meals, such meals being prepared on the premises and consumed at a table."

The current premises licence Annex 3 condition read:

"All sales of alcohol shall be made ancillary to a table meal service, such meals being prepared on the premises and consumed at a table."

The holding areas which shall be restricted to 20 persons at any one time.”

The sub-committee then heard from Peter Jones, Essex Police, as a Responsible Authority. He outlined their objections to the application that the amendment of the wording of the condition would allow the premises to operate in an entirely different manner without the control measures to which other such vertical drinking High Street establishments would be required to conform. This would increase the likelihood for alcohol related crime and disorder and public nuisance. Essex Police had proposed a number of conditions that if accepted would satisfy their representation.

The Committee then heard from Stephen Blake, Environmental Health Noise Team, that the applicant had not taken sufficient measures to control noise break out from the premises and that no acoustic reduction measures were being proposed. There were nearby residential flats and there was a real potential for public nuisance if these concerns were not satisfactorily addressed. Loud music had already been witnessed emanating from the premises. A meeting between the applicant and Environmental Health was taken prior to this hearing and Conditions had been proposed which if implemented would resolve the representation.

The Committee then heard from Mr Dave Leonard, representing the Licensing Authority who supported the potential crime and disorder and public nuisance concerns of both the Police and the Environmental Health. Reference was also made to the decision-making process of the Sub-Committee when granting the licence in 2016. He agreed that if the conditions proposed were agreed then this would resolve his representation.

The Committee then heard from Mr Bryan Atkins as the owner and resident of 94A High Street, a first-floor flat abutting the very area that the applicant was seeking to amend his business operation. Mr Atkins feared that the increased activity and noise nuisance would affect his quality of life, as the use of this area would likely cause public nuisance, particularly if customers that had not taken meals in the restaurant were allowed use, especially as he had noticed that there was advertising on Facebook that the premises have a DJ stating at 9.00pm.

Following the oral representations made by representatives of the responsible authorities and Mr Atkins, Mr Paul Merry, the applicant's agent, addressed the Sub-committee in support of the application and in response to all the concerns outlined. It was noted that the applicant has 5 other premises, which are all restaurant led businesses, and that customers like additional entertainment before or after a meal.

They have reviewed CCTV on the night where Environmental Health witnessed loud music and the CCTV showed that there were persons in that area having conversations over a table, which demonstrates that the music was not too loud and was only background music.

They were not opposed to accepting the proposed conditions with the exception of the wording of the second police condition “Admission to the first floor shall only be to those who have booked and are going to have, or have had a bona fide substantial table meal on the premises. Service in this area will be by waiter/waitress service only.”

Whilst they agreed with the sentiment of this condition, they were uncomfortable with its wording.

They have no intention for this part of the premises to become a vertical drinking establishment, or for them to provide any form of regulated entertainment, the music played in this area will be as background music only.

When asked acceptance of the proposed conditions, it was stated by the applicant’s representative that the police conditions on pages 64 and 65 of the report are agreed with the exception of condition 8 which would be replaced with “Except when being used for access and egress, all external doors and windows of the licensed premises are to be kept closed when amplified music entertainment is taking place.”. Condition 10 to also be removed.

The parties then summarised their respective positions.

The applicant’s representative made comment that there was only one area that was not agreed and are mindful how conditions need to be enforceable. They would like for this condition that allows for people to come into the venue without having a meal, but reflect that it’s not their intention to have a vertical drinking establishment.

Committee then retired to consider its decision.

The committee considered carefully all the information that had been presented to them both in the report and verbally at this hearing

Because of the locality next to Mr Atkins residential Premises, and the increased use of this area by customers that have not taken a meal in the restaurant would likely cause public nuisance, the committee felt that the use of this area should be for customers of the restaurant only.

The conditions that were proposed and agreed did not satisfy this particular concern. The Committee therefore felt that with the addition of a condition to restrict the use of the upstairs area to restaurant customers only would likely prevent the public nuisance, as this would reflect the applicant’s intention for the venue not to be a vertical drinking establishment.

On that basis, the application to vary the premises licence would be granted, subject to the additional condition:

“All sales of Alcohol shall be made ancillary to a table meal that has been prepared on the premises and consumed at a table or by customers that have during that food service period consumed such a meal”

And the conditions that were agreed by the applicant, namely:

1. On any occasion where the premises conducts licensable activities past 00:00 hours, at least 3 SIA licensed door supervisors must be on duty from 20:00 hours until at least 30 minutes after the premises closes.
2. Where SIA licensed door supervisors are used at the premises a record shall be maintained (on the premises) which is legible and details:
 - i. The day and date when door supervisors were deployed;
 - ii. The name and SIA registration number of each door supervisor on duty at the premises; and
 - iii. The start and finish time of each door supervisor's worked duty period.

This record shall be retained on the premises for 31 days and be immediately provided to police or licensing authority staff upon reasonable request.

3. When SIA licensed door supervisors are used all persons entering or re-entering the premises shall be searched by a SIA licensed door supervisor for drugs and concealed weapons.
Prominent signs (minimum size 200 x 150 mm) to this effect shall be displayed at all entrances and be legible to prospective patrons whilst the premises is open for licensable activities.
4. During the period in which the premises is open for licensable activities, toilets shall be checked on at least an hourly basis for the purpose:
 - a) of detecting and deterring the use of controlled drugs and psychoactive substances; and
 - b) maintaining public safety.

A record of these checks shall be maintained with the date, time, and condition of the toilets and staff member conducting the check. These records shall be made contemporaneously, retained at the premises for at least 3 months and made available immediately upon demand to police or licensing authority staff.

5. The premises shall have in place and operate a zero-tolerance policy with regard to the use/possession of controlled drugs and psychoactive substances and advertise the same within the premises on posters and similar means. This policy shall specifically include but not be limited to:
 - i. Searching practices upon entry;
 - ii. Dealing with patrons suspected of using drugs on the premises;
 - iii. Scrutiny of spaces including toilets or outside areas;

- iv. Clear expectations of staff roles (including the DPS, managers/supervisors and door supervisors);
- v. Staff training regarding identification of suspicious activity and what action to take;
- vi. The handling of items suspected to be illegal drugs or psychoactive substances
- vii. Steps taken to discourage and disrupt drug use on the premises
- viii. Steps to be taken to inform patrons of the premises drug policy/practices

A copy of this policy document shall be lodged with the police and licensing authority.

6. There shall be no events at the premises that are organised, promoted or advertised by an external promoter (i.e. by an individual/organisation not directly related to the management of the premises).
7. A written dispersal policy will be formulated and provided to the police and licensing authority which amongst other things details:
 - How patrons leaving the premises shall be directed away from the premises;
 - How patrons will be informed of the services of taxi and private hire operators;
 - What staff will be responsible for supervising those leaving the premises and how they will supervise such persons;
 - Any 'wind' down periods;
 - Methods to prevent re-entry to the premises;
 - How bottles and glasses will be prevented from being removed from the premises at closing time.
8. After 23:00 no persons shall be re-admitted unless from a designated smoking area.
9. Customers will not be permitted to remove from the premises any drinks supplied by the premises in open containers.
10. Except when being used for access and egress, all external doors and windows of the licensed premises are to be kept closed when amplified music entertainment is taking place.
11. There should be no charge for admission to the premises when it operates under this licence.
12. A sound limiting device shall be fitted to any musical amplification system and set at a level determined by and to the satisfaction of the

authorised officer of the Environmental Health Authority to ensure that no noise nuisance is caused to local residents. The operational panel of the noise limiter shall then be secured to the satisfaction of the authorised officer. The keys securing the noise limiter cabinet shall be held by the licence holder or authorised manager only and shall not be accessed by any other person. The limiter shall not be altered without prior agreement of the Environmental Health Authority.

The applicant was reminded that he has a right to appeal against the decision to the Magistrates' Court.