



**COMMITTEE TITLE: Licensing Sub-Committee**

**DATE** 31 July 2023

<b>REPORT TITLE:</b>	Application for a Premises Licence – Licensing Act 2003 Yiamas, Ongar Road, Pilgrims Hatch, CM15 9SS.
<b>REPORT OF:</b>	Dave Leonard – Licensing Officer

**1. REPORT SUMMARY**

An application has been received by NFS Essex Ltd. for a new premises licence at **Yiamas, Ongar Road, Pilgrims Hatch, CM15 9SS**. The premises, formally known as Dusk, has been closed for over a year and the new proprietors are seeking to re-open the premises as a restaurant and bar and provide live & recorded music, performance of dance and the supply of alcohol on premises. The premises will be open to the public from 1200hrs-0000hrs on Sunday to Thursday and from 1200hrs-0200hrs on Friday and Saturday. Twenty-four (24) relevant representations from thirteen different households have been received together with two further representations from Brentwood Borough Council's Environmental Health team and Essex Police (Licensing) as consulting responsible authorities. Members are requested to determine the application having regard to the operating schedule, the representations received, the Secretary of State's guidance and Brentwood Borough Council's Statement of Licensing Policy and the four Licensing objectives.

**2. RECOMMENDATIONS**

That the Sub Committee:

Considers this report and appendices together with any oral submissions at the hearing and determines the application in line with the options open to the sub-committee under the Licensing Act 2003: The options available are:

- i) To grant the application in full on the terms and conditions contained in the operating schedule along with any applicable mandatory conditions;
- ii) To grant the application, modified to such extent as considered appropriate in order to satisfy any relevant representations and to promote the licensing objectives; or
- iii) To refuse the application in whole or in part

## **SUPPORTING INFORMATION**

### **3.0 REASONS FOR RECOMMENDATIONS**

3.1 These are the options available to the Sub-Committee under the Licensing Act 2003.

### **4.0 OTHER OPTIONS CONSIDERED**

4.1 In line with the Licensing Act 2003 there are no other options to be considered.

### **5.0 BACKGROUND INFORMATION**

5.1 An authorisation is required in respect of any premises where it is 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

5.2 An appropriate authorisation is either, a premises licence, a club premises certificate or a Temporary Event Notice.

5.3 Licence holders are required, when offering any licensable activity, to ensure that they promote the licensing objectives at all times. The operating schedule of the application contains details of the activities applied for and the control measures that the applicant will have in place in order to promote these objectives. Such measures will, where appropriate, be converted into enforceable conditions on any licence issued.

5.4 The four licensing objectives are;

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

5.5 Any representation must be able to demonstrate that on the balance of probability the application in its current form will fail to adequately promote one or more of the licensing objectives. No other matters may be considered

## The Application

- 5.6 This application for a new premises licence was received on 6 June 2023 from Mr Burak Erceci, director of NFS Essex Ltd. in respect of **Yiamas, Ongar Road, Pilgrims Hatch CM15 9SS**. A copy of the application is attached at **Appendix 1**.
- 5.7 This premise is a restaurant and bar. A set of OS Street Maps and images to better identify the location are attached at **Appendix 2**.
- 5.8 The application seeks to provide the following licensable activities;
- Live Music: Monday-Thursday 1600hrs-0000hrs, Friday 1600hrs-0130hrs, Saturday 1300hrs-0130hrs and Sunday 1300hrs-0000hrs
  - Recorded Music: Monday-Thursday 1600hrs-0000hrs, Friday 1600hrs-0130hrs, Saturday 1300hrs-0130hrs and Sunday 1300hrs-0000hrs
  - Performance of Dance: Monday-Thursday 1600hrs-0000hrs, Friday 1600hrs-0130hrs Saturday 1300hrs-0130hrs & Sunday 1300hrs-0000hrs
  - Supply of Alcohol (On premises): Monday-Thursday 1200hrs-0000hrs, Friday & Saturday 1200hrs-0130hrs and Sunday 1200hrs-0000hrs

Hours to be extended until 01:30 on Christmas Eve, Christmas Day, New Year's Eve and New Year's Day and until 01:30 on Bank Holiday Sundays (for the avoidance of doubt, the performance of dance will finish at 01:30 on the Bank Holiday Monday).

The premises will be open to the public; Sunday-Thursday 1200hrs-0000hrs and Friday & Saturday 1200hrs-0200hrs

- 5.9 In addressing the promotion of the four licensing objectives, the applicant has made undertakings within the operating schedule of the application that will be to be attached as the conditions on any subsequently issued premises licence. Where an undertaking has by agreement been replaced by a condition agreed with a Responsible Authority the originally proposed operating schedule condition has not been included.
- Licensed Security Industry Authority staff may be used at the premises to guard against:
    - a) Unauthorised access or occupation (e.g., through door supervision), or
    - b) Outbreaks of disorder, or
    - c) Damage
  - There shall be a second interior door installed at the front entrance.
  - No recorded music shall be played in the outside (lounge) area after 22:30.

- A written noise management policy which is acceptable to Brentwood Borough Council Environmental Health Team shall be put in place and adhered to. The Policy shall include noise attenuation measures to minimise noise emanating from the outside (lounge) area.
- No persons under the age of 18 shall be permitted on the premises without being accompanied by a responsible adult.

5.10 Two valid representations have been received from the Responsible Authorities. Officers from Brentwood Council's Environmental Health Team and Essex Police (Licensing) have submitted representations that include recommendations that complement the applicant's undertakings and are agreed by all parties.

5.11 The Environmental Health Team at Brentwood Borough Council is fully aware of historical concerns & the previous tenants' disregard for sound attenuation caused, primarily from the playing of music in the outside areas and patrons' causing public nuisance in the car park when leaving the premises at the end of the evening.

Mr Zach Byrne, Environmental Health Officer covering this ward, has already agreed a noise management plan with the new applicants which, if adhered to, is hoped to abate many of the prior issues. If this noise management plan is conditioned into the licence it would be very helpful to reduce the chance of nuisance caused to nearby residents.

However, it is also Mr Byrne's contention that, with the proposed hours of operation, what is considered reasonable at 6PM will differ from 1AM. Regulated entertainment potentially taking place into the early hours of the morning together with traffic management & customer dispersal could lead to public nuisance being caused.

Mr. Byrne's representation, together with the agreed noise management plan, is attached at **Appendix 3**.

5.12 Essex Police Licensing Officer, Mr Simon Barnes, also makes representation on the grounds that, if granted, as per the conditions the application currently sets out, the prevention of crime & disorder and public nuisance objective of the Licensing Act 2003 is likely to be undermined.

Mr Barnes relates to the venue's semi-rural location in vicinity of several private residences. As no application has been made for late night refreshment it is logical to draw a conclusion that the premises will likely be a function/event premises after 2300hrs and/or a nightclub or similar environment. This is drawn from the principle that the premises will cease trading as a restaurant at 2300 as it will no longer be able to serve hot food or drinks from this time under the applied for licence.

Mr Barnes has consulted with the applicant & reached agreement that the following recommendations are to be attached as conditions on the premises licence should it be granted;

1. The premises shall have installed and maintain a closed-circuit television surveillance (CCTV) system which at all times complies with the below requirements:
  - a. CCTV will be provided in the form of a recordable system, capable of providing pictures of evidential quality {in all lighting conditions} particularly facial recognition;
  - b. CCTV cameras shall cover all entrances, exits and the areas where alcohol sales take place;
  - c. Equipment must be maintained in good working order, be correctly time and date stamped, recordings must be kept in good working order and kept for a minimum period of 31 days;
  - d. Upon the reasonable request of the police or licensing authority staff, within 48 hours viewable copies of recordings will be provided.
  
2. Signs must be displayed at all entrances {and exits} advising customers that CCTV is operating at the premises and shall be a minimum size of 200 x148mm and clearly legible at all times when the premises conducts licensable activities.
  
3. An incident log shall be kept at the premises and made immediately available to police or licensing authority staff upon reasonable request. The log must be completed as soon as is possible and within any case within 4 hours of the occurrence and shall record the following:
  - a. all crimes reported to the venue
  - b. all ejections of patrons
  - c. any complaints received concerning crime and disorder
  - d. any incidents of disorder
  - e. all seizures of drugs or offensive weapons
  - f. any faults in a CCTV system, searching equipment or scanning equipment mandated as a condition of the licence

The incident log shall either be electronic or maintained in a bound document with individually numbered pages and be retained for at least {12} months from the date of the last entry.

4. Where SIA licensed door supervisors are used at the premises a record shall be maintained (on the premises) which is legible and details:
  - a. The day and date when door supervisors were deployed;
  - b. The name and SIA registration number of each door supervisor on duty at the premises; and
  - c. 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.

5. Clear and legible notices must be prominently displayed at all exits requesting customers to respect local residents & to leave the area quietly.
6. A Challenge 25 scheme shall be operated, whereby any person who appears to be under the age of 25 years of age is required to produce on request an item which meets the mandatory age verification requirement (photo, name, date of birth and either a holographic mark or ultraviolet feature) and is either a:
  - a. Proof of age card bearing the PASS Hologram;
  - b. Photocard driving licence;
  - c. Passport; or
  - d. Ministry of Defence Identity Card.
7. The premises shall clearly display signs at each point of sale and in areas where alcohol is displayed advising customers that a 'Challenge 25' policy is in force. At the point of sale such signs shall be a minimum size of 200x 148mm.
8. A refusals record shall be maintained at the premises that details all refusals to sell alcohol. Each entry shall, as a minimum, record the date and time of the refusal and the name of the staff member refusing the sale.

All entries must be made as soon as possible and in any event within 4 hours of the refusal and the record must be made immediately available to police trading standards or licensing authority staff upon reasonable request. The refusals record shall be either electronic or maintained in a bound document and retained for at least 12 months from the date of the last entry.

9. All staff engaged in the sale or supply of alcohol on the premises shall have received training in relation to the protection of children from harm (including under-age sales), how to recognise drunkenness and the duty not to serve drunk persons. Refresher training shall be carried out at least every six months. Training records shall be kept on the premises (or otherwise be accessible on the premises) for a minimum of 12 months and made immediately available to police, trading standards or licensing authority staff upon reasonable request.

Mr Barnes' representation, together with the agreement to attach these conditions, is also attached at **Appendix 3**.

- 5.13 There have been twenty-four (24) representations from thirteen (13) households against the application received from Other Persons. The concerns raised by local residents relate to historical fears of late-night licensed venues playing music in the outdoor smoking area and the subsequent dispersal of patrons into the early hours of the morning in an otherwise quiet, semi-rural location. These representations have been attached at **Appendix 4**.

## **Statement of Licensing Policy**

5.14 The following Brentwood Borough Council Statement of Licensing Policy control measures relate to the prevention of public nuisance state:

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

*22.2 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.*

*22.5 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.*

*22.6 When addressing the issue of prevention of public nuisance, the applicant must demonstrate that those factors that impact on the likelihood of public nuisance have been considered. These may include-*

- (a) The location of premises & proximity to residential and other noise sensitive premises, such as hospitals, hospices and places of worship*
- (b) The hours of opening, particularly between 23.00 and 07.00.*
- (c) 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*
- (e) The occupancy capacity of the premises.*
- (f) The availability of public transport.*
- (g) A 'wind down period' between the end of the licensable activities and closure of the premises.*
- (h) A last admission time.*

## **Relevant Sections of the Secretary of State’s Guidance**

5.15 The following sections of the guidance may be relevant to this application:

*8.44 It is expected that enquiries about the locality will assist applicants when determining the steps that are appropriate for the promotion of the licensing objectives. E.g., premises with close proximity to of the licensing objectives, and where there are no known concerns, acknowledge residential premises should consider what effect this will have on their smoking, noise management and dispersal policies to*

*ensure the promotion of the public nuisance objective. Applicants must consider all factors which may be relevant to the promotion this in their application.*

## **6.0 FINANCIAL IMPLICATIONS**

**Name & Title: Tim Willis, Director – Resources & Section 151 Officer**  
**Tel & Email: 01277 312500 / tim.willis@brentwood.rochford.gov.uk**

## **7.0 LEGAL IMPLICATIONS**

Conditions may be attached to the grant of any licence, the hours or activities may be amended as appropriate, or in some cases the application may be refused. However, any action taken must be appropriate and relevant to promotion of the licensing objectives having considered the full details of the application and representations including testimony from any interested party present at the hearing.

The justification behind any decision to grant or refuse a licence application or the attachment of conditions, or variation of terms applied for must be recorded and given to the applicant and any person that has made representation.

There is a right of appeal to Magistrates Court by any person or party aggrieved by any decision made by the Sub-Committee.

**Name & Title: Claire Mayhew, Joint Acting Director –  
People & Governance & Monitoring Officer**  
**Tel & Email 01277 312500 / claire.mayhew@brentwood.gov.uk**

## **8.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS**

8.1 None

## **9.0 RELEVANT RISKS**

9.1 None

## **10.0 ENGAGEMENT/CONSULTATION**

The application has been consulted on in accordance with the requirements of the Licensing Act 2003.

Officers from the Licensing Authority have made checks on the display of public notices and in a local newspaper and are satisfied that these requirements have been met.



### 13.0 EQUALITY IMPLICATIONS

None applicable

**Name & Title:** Kim Anderson, Corporate Manager –  
Communities, Leisure and Health

**Tel & Email** 01277 312500 kim.anderson@brentwood.gov.uk

### 14.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

None applicable

**Name & Title:** Phil Drane, Director - Place

**Tel & Email** 01277 312500 / phil.drane@brentwood.rochford.gov.uk

#### REPORT AUTHOR:

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**Title:** Licensing Officer

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#### APPENDICES

- Appendix 1 - Application Form & Supporting Statement
- Appendix 2 - OS Street Plans & Images
- Appendix 3 - Representations from Responsible Authorities  
Mr Zach Byrne - Environmental Health Officer  
Mr Simon Barnes - Essex Police Licensing Officer
- Appendix 4 - Representations from Other Parties

#### BACKGROUND PAPERS

None

#### SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Not Applicable	