

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Licensing Sub-Committee **Date:** 18 March 2019
Place: Council Chamber - Civic Offices **Time:** 10.00 am - 1.55 pm
Members Present: C P Pond (Chairman), S Heather, D Stocker and J M Whitehouse
Other Councillors:
Apologies:
Officers Present: G Oakley (Managing Legal Executive), J Leither (Democratic Services Officer), H Ibrahim (Licensing Officer), D Houghton (Licensing Compliance Officer) and R Thomason

44. DECLARATIONS OF INTEREST

There were no declarations of interest made pursuant to the Member's Code of Conduct.

45. PROCEDURE FOR THE CONDUCT OF BUSINESS

The Sub-Committee noted the agreed procedure for the conduct of business.

46. NEW PREMISES LICENCE APPLICATION FOR IL BACCIO, 19B FOREST DRIVE, THEYDON BOIS

The three Councillors that presided over this item were Councillors C P Pond (Chairman), J M Whitehouse and D Stocker. The Chairman welcomed the participants and requested that they introduce themselves to the Sub-Committee.

In attendance on behalf of the application Mr A Sini, Director and his representative Mr N Samaroo from NTAD Consultants, also in attendance was Ms N Newnan, supporter of the application.

Objectors to the premises licence application attending were Mr R Thomason, Environment and Neighbourhood Officer from EFDC, Councillor P Gooch, Theydon Bois Parish Council and Mr D Jolly, local resident.

The Chairman introduced the Members and Officers present and outlined the procedure that would be followed for the determination of the application.

(a) Application before the Sub-Committee

The Licensing Compliance Officer introduced the application for a new premises licence for Il Baccio, 19b Forest Drive, Theydon Bois, Epping CM16 7EX. The application had been made by S and F Catering Limited received on the 24 January 2019.

The application was for the following licensing activities:

The Sale by Retail of Alcohol on the Premises only

Monday to Sunday 11.00 – 23.00 hrs

Opening Times of the Premises

Monday to Sunday 11.00 – 23.00 hrs

The operating schedule, attached to the agenda, sets out the conditions which would be attached to the licence if this application was granted.

All responsible authorities had been notified, the application had been advertised at the premises and in a local newspaper. All residences and businesses within a 150 radius of the premises had been individually consulted.

The authority had received three representations, one from Epping Forest District Council (EFDC), Environmental & Neighbourhoods, one from Theydon Bois Parish Council and one from a local resident. The objections all related to the Prevention of Crime and Disorder, Prevention of Public Nuisance, Public Safety and the Protection of Children from Harm.

There had been a previous premises licence held at these premises which lapsed on the 17 January 2019, due to the previous licence holder being the subject of a Bankruptcy Order, which prevented him from remaining as the premises licence holder. The Agent acting on behalf of this application has copied some of the conditions from the previous licence and has submitted them as part of the operating schedule.

When considering an application for a licence the licensing authority must have regard to the steps that are appropriate to promote the licensing objectives, these were:

- (a) the prevention of crime and disorder;
- (b) public safety;
- (c) the prevention of public nuisance; and
- (d) the protection of children from harm.

In determining this application the Sub-Committee may take any of the following steps as it considers necessary for the promotion of the licensing objectives, namely:

- (a) to grant the licence as applied for subject to:
 - the conditions mentioned in the Operating Schedule modified as the Sub-committee considers necessary for the promotion of the licensing objectives; and
 - the mandatory conditions specified in the Licensing Act 2003; or
- (b) to exclude from the scope of the licence any licensable activities to which the application relates; or
- (c) refuse to specify a person as the premises supervisor; or
- (d) reject the application.

(b) Presentation of the Applicant's Case

Mr N Samaroo advised that the previous license holder was not aware that by being the subject of a Bankruptcy Order that he could not continue to hold the premises

licence and when he was advised he thought that the licence could be transferred to Mr A Sini. A new application was submitted and it hadn't been envisaged that there would be any objections to the application.

Three representations in objection to the application were received, one from Epping Forest District Council (EFDC), Environmental & Neighbourhoods, one from Theydon Bois Parish Council and one from a local resident. Mr Samaroo stated that as far as he was aware these were historical objections back from when the restaurant first opened and that he believed none had been received since 2016.

Mr Samaroo advised that after receiving the representations he had consulted with his client, contacted Theydon Bois Parish Council and R Thomason, Environment and Neighbourhoods Officer, Epping Forest District Council to propose some conditions to the operating schedule as below:

- (i) The use of the outside area for the consumption of alcohol is under strict guidance that alcohol can only be consumed with a substantial meal and must be served by waiter/waitress;
- (ii) The outside area will be in use between the hours of 11.00-16.00;
- (iii) An area of the terrace will be designated as a smoking area but will be restricted to 5 persons;
- (iv) All entrance and exit doors will be fitted with automatic self closing mechanisms and the doors will not be propped open at any time;
- (v) The licence for the sale of alcohol would be Sunday to Thursday 11.00-22.30 and the restaurant would close at 23.00, Friday and Saturday 11.00-23.00 and the restaurant would close at 23.30 hours;
- (vi) All relevant conditions from the previous licence would be replicated and attached to the operating schedule; and
- (vii) A warden would be employed to supervise the outside area on Friday and Saturday nights from 21.00-23.30.

Mr Samaroo highlighted that no representations had been received from the Police or any other regulated authority.

(c) Questions for the Applicant from the Sub-Committee

Cllr C P Pond asked if the Designated Premises Supervisor (DPS) would be on the premises at all times during opening hours.

Mr Samaroo advised that the DPS would be at the premises most of the time but in his absence there would be a licenced supervisor on the premises.

(d) Questions for the Applicant from the Objectors

Cllr P Gooch stated that the premises were fitted with bi-fold doors and was there any intention to use them.

Mr Samaroo advised that previously a customer had opened the doors for air but they have now been sealed shut.

Councillor Gooch suggested air conditioning could be a way forward.

Mr A Sini advised that they were looking to put air conditioning in the premises.

(e) Presentation of the Objectors

Mr R Thomason advised that there had been 3 public nuisance complaints received in 2018 and since the restaurant opened in 2013 there had been a total of 65 complaints received. In principal he agreed with extra conditions put forward and stated that the warden should be employed on a Friday and Saturday night to supervise the outdoor area, making sure customers do not take drinks outside and that they leave the premises in a quiet and orderly manner. This was not to be a restaurant employee who would wait on tables and supervise the outside area when they were not busy.

Councillor Gooch advised that Theydon Bois Parish Council wanted to support the restaurant. The patio area had been the problem with the noise as it gets amplified and many complaints have been addressed to the Parish Council. He also stated that the Parish Council would also agree in principal to the operating schedule if the outside area ceased to be used at 16.00 and all tables and chairs were removed by 16.30 hours. They would also be happy to see the outside area being supervised on Friday and Saturday evenings and smokers not being allowed to take their drinks outside with them.

Mr D Jolly stated that he had no objection to the restaurant, in fact he had visited there on several occasions but the noise emanating from the outside terrace affected the residents. He highlighted that previously the restaurant had promised to monitor the outside but to his knowledge this had never happened.

(f) Questions for the Objectors from the Sub-Committee

The Sub-Committee stated that 65 objections received since 2013 was rather a lot but noted that the complaints had dropped in the last 2/3 years. They asked Mr Thomason if he was prepared to accept the new conditions to the operating schedule suggested by the Applicant. Mr Thomason agreed in principal that he would agree to the extra conditions.

(g) Questions for the Objectors from the Applicant

Mr Samaroo said that 65 complaints did seem rather a lot but stated that there was no evidence that they all came from Il Baccio as there were other late night premises in the vicinity namely a fish and chip restaurant, a Turkish restaurant and at the end of the road there was a Public House, therefore what substantive proof was there that these complaints were all in relation to Il Baccio.

Mr Thomason said they were allegations that the complainants said they had witnessed, which included taxis tooting their horns whilst picking up customers from Il Baccio.

(h) Closing Statement from the Objectors

Cllr Gooch advised that Theydon Bois Parish Council were happy with the amendments to the operating schedule and that the terrace would only be open from 11.00-16.00 daily.

Mr Thomason had nothing further to add.

Mr Jolly had nothing further to add.

(i) Closing Statement from the Applicant

Mr Samaroo stated that the extra and amended conditions to the operating schedule seemed to appease all of the objectors and that he hoped Il Baccio could go forward as a family business.

(j) Consideration of the Application by the Sub-Committee

The Chairman advised that the Sub-Committee would withdraw from the Council chamber whilst they considered the application in private.

During their deliberations the Sub-Committee received no further advice from the Officer's present.

RESOLVED:

That the decision of the Sub-Committee was that the application for a premises licence in respect of Il Baccio Restaurant be granted subject to the following conditions which the Sub-Committee considered were reasonable and proportionate for the promotion of the licensing objectives.

For the prevention of public nuisance the licensable hours shall be:

Sunday to Thursday from 11.00 – 22.30 hrs
Friday and Saturday from 11.00 – 23.00 hrs

The following conditions as contained in the Operating Schedule shall be amended and read:

15. The Bi-fold doors were to be kept closed at all times and the main entrance door to remain closed at all times except for entry and exit, with a door stopper installed to prevent the door remaining open.
16. The Premises licence holder shall employ a dedicated supervisor on Fridays and Saturdays between the hours of 21.00 until 23.30 hours to ensure that any patrons smoking outside the premises do so in an orderly manner and so as to ensure that there is no public nuisance or obstruction of the public highway. The member of staff will remind customers, should it be necessary, to keep their voices down and when leaving to do so quietly and be respectful of the neighbours.
19. The outside area must be cleared of customers by 16.00 daily save for smokers using the bona-fide smoking area and all tables and chairs be removed from the outside area by 16.30 hours.
20. No food or drink to be consumed on the patio area after 16.00 hours.
21. No drinks or glassware will be permitted in any outside area after 16.00 hours.

47. REVIEW OF THE PREMISES LICENCE FOR WO FAT, 270-272 HIGH ROAD LOUGHTON

The three Councillors that presided over this review were Councillors C P Pond (Chairman), J M Whitehouse and S Heather. The Chairman welcomed the participants and requested that they introduce themselves to the Sub-Committee.

In attendance on behalf of the premises were Ms N Beck solicitor for the premises and the Manager Mr Chi Kwong Wu.

In attendance on behalf of the application were Mr G Ashford, Mr D Colwell and Mr P Jones from Essex Police.

The Chairman then introduced the Members and Officers present and outlined the procedure that would be followed for the determination of the review.

The Licensing Compliance Officer advised the Sub-Committee that an application had been received from the premises license holder advising that they were applying to transfer the license from Mr Chi Chiu Wu to his brother Mr Chi Kwong Wu. This could not be considered at this meeting as it was a separate application and would be heard at a later date.

(a) The Application before the Sub-Committee

The Licensing Compliance Officer introduced the application which had been made by Essex Police to review the premises licence for Wo Fat, 270-272 High Road, Loughton IG10 1RB on the grounds of the Prevention of Crime and Disorder.

The grounds for the review were that in December 2018 Immigration Compliance and Enforcement Officers of the Home Office attended the premises and discovered disqualified persons working illegally at the premises. The statutory crime prevention objective 2003 Act includes the prevention of immigration crime and the prevention of illegal working in licensed premises.

A review application had been made by Essex Police Licensing Officer Mr D Colwell on behalf of Essex Police, under Section 51 of the Licensing Act 2003 and to be determined under Section 52 of the Licensing Act 2003.

The application for review had been advertised as required by the Licensing Act 2003 and six letters were received opposing the review and in support of Wo Fat Restaurant.

Having considered the representations from all parties the Sub-Committee had to determine the application for the review of the premises licence as it considered necessary for the promotion of the licensing objectives which were:

- Prevention of crime and disorder;
- Public safety;
- Prevention of public nuisance; and
- Protection of Children from Harm.

In coming to a view about whether such steps were necessary for the promotion of the licensing objectives, the Licensing Sub-Committee would need to take into account the review application, any relevant representations, the evidence given at the hearing, the representations made by the premises licence holder, the Guidance issued by the Secretary of State and the Council's Licensing Policy.

Where it was considered necessary for the promotion of the licensing objectives, the options available to the Licensing Sub-Committee were under Section 52 (4) of the Licensing Act:

- to modify the conditions of the Licence;

- to exclude a licensable activity from the scope of the licence;
- to remove the designated premises supervisor;
- to suspend the licence for a period not exceeding three months;
- to revoke the licence;

and for this purpose, the conditions of the licence were modified if any of them were altered or omitted or any new conditions added.

(b) Presentation of the Applicant's Case

Mr G Ashford, Essex Police stated that the six letters opposing the review should not be taken into consideration as they did not relate to licensing objectives.

Mr D Colwell, Essex Police advised that in early October 2018, Immigration Enforcement had received an allegation that illegal workers were working at Wo Fat, 270-272 High Road Loughton, Essex IG10 1RB. The allegation specified that the illegal workers had been working at Wo Fat for the past 12 months and lived in the accommodation above the business.

On the 6 December 2018, Immigration Compliance and Enforcement Officers attended Wo Fat and entered using their powers under Section 179 of the Licensing Act 2003. They encountered seven persons working at the restaurant who had no leave to remain in the UK and no right to work in the UK. All 7 were subsequently detained.

It was established that six of the seven persons encountered had entered the UK illegally by boat in 2009. At the time of the visit from Immigration Mr Chi Chiu Wu was the designated premises supervisor and premises licence holder.

On entry to the premises a number of persons were detained by Immigration Compliance and Enforcement Officers, moved to a sterile area of the restaurant and questioned by separate Officers.

Mr P Jones, Essex Police Licensing Officer spoke with the manager Mr Chi Kwong Wu who stated that he had been the manager for approximately 10 years and was the brother of the Premises Licence Holder and Designated Premises Supervisor Mr Chi Chiu Wu.

Mr Chi Chiu Wu then arrived at the restaurant and produced his personal licence to Mr Jones. He was asked whether he carried out any right to work checks on his employees and he replied that they were at his home. He left the premises and returned 30 minutes later and presented payroll paperwork but the paperwork did not relate to the individuals detained by Immigration.

The premises above the restaurant were then attended by Mr P Jones who found them to be dirty and in a poor state of repair. It was believed that the seven individuals were not paid the national Living Wage and therefore were being exploited as they could not go to the authorities to complain about pay and living conditions and whose employment lines the pocket of their exploiters. In short, this was an example of modern day slavery.

This flagrant disregard of employment and revenue legislation has allowed this employer to absolve himself of liability for employer pension and National Insurance contributions and by employing these subjects it had enabled them to remain in the UK unlawfully.

Wo Fat and its management were already known to Immigration and Compliance Officers as on the 13 September 2013 a similar enforcement visit was carried out where seven different people were arrested as immigration offenders. Mr Chi Chiu Wu has been the Premises Licence Holder and Designated Premises Supervisor since 9 September 2008 and therefore this was the second such incident during his tenure at Wo Fat.

Mr Colwell highlighted points of the Guidance to the Sub-Committee.

Paragraph 11.26 of the guidance states:

'Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective..... The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder'.

Paragraph 11.27 of the Guidance states:

'There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises for..... employing a person who is disqualified from that work by reason of their immigration status in the UK'.

Essex Police would draw the Sub-Committee's attention to the change in wording of this paragraph following the April 2017 revision of the guidance, where the previous reference to 'knowingly employing' was removed.

Paragraph 11.28 of the Guidance states:

'It is envisaged that licensing authorities, the Police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance, should be seriously considered'.

Essex Police considered this paragraph self-explanatory; where an enterprise employs illegal workers, it was the duty of Essex Police to work with Immigration Enforcement to bring forward reviews and for the authority to consider revocation in the first instance.

(c) Questions for the Applicant from the Sub-Committee

There were no questions for the Applicant.

(d) Questions for the Applicant from the Premises

There were no questions for the Premises.

(e) Presentation of the Premises Case

Ms N Beck, solicitor advised the Committee that the police evidence was not disputed and her client accepted the seriousness of the offence. She asked the Sub-Committee to take on board that her client had put measures in place since the visit from the Immigration Compliance and Enforcement Officers in December 2018 and confirmed that all workers were now legal with the correct paperwork and the restaurant was compliant. The licensing objectives were now not being undermined and she asked the Sub-Committee to consider all of the options.

Ms N Beck advised that her client had received a substantial financial penalty to which they have accepted and revocation of the licence would mean the likelihood of the business having to close and a number of legitimate staff being unemployed.

(f) Questions for the Premises from the Sub-Committee

The Sub-Committee had no questions to ask.

(g) Questions for the Premises from the Applicant

Mr G Ashford stated that in 2013 seven illegal workers were found on the premises and asked why were another seven illegal workers found at the premises in 2018.

Mr Chi Kwong Wu stated that he recognised the wrong doing but every worker had now been checked and they were all legal with the correct paperwork. In 2013 he advised that he was only staff and did not become the manager until 1 April 2018.

(h) Closing Statement from Essex Police, the Applicant

Mr D Colwell summed up by saying that this was the second occasion in 5 years that illegal workers had been found at the premises.

It was unfair on other businesses in the area and the loss of their licence would not close the restaurant people could still come in to eat and bring their own drink with them.

In seeking revocation, Essex Police had considered and rejected conditions as an alternative, in part because this was specifically addressed in paragraph 1.16 of the Guidance.

'Licence conditions should not duplicate other statutory requirements or other duties of responsibilities placed on the employer (my emphasis) by other legislation'.

Therefore we urge the Sub-Committee to consider revoking the license.

(i) Closing Statement from the Premises

Ms N Beck summed up by saying that they were aware and accepted the seriousness of this review but assured the Sub-Committee that there would be no further incidents of this nature in the future.

(j) Consideration of the Application by the Sub-Committee

The Sub-Committee left the chamber to consider the review of the premises licence requested by Essex Police in private.

During their deliberations, the Sub Committee received the following advice from the legal officer present:

- (i) Article 1 of the First Protocol of the Human Rights Act 1988 that every person was entitled to the peaceful enjoyment of his possessions (in this case the Licence). No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
- (ii) That any decision made in respect of the premises licence for Wo Fat Restaurant, 270-272 High Road, Loughton, Essex IG10 1RB must be necessary and proportionate.
- (iii) Details of our powers under Section 52 (4) of the Licensing Act 2003.
- (iv) Powers of a Licensing Authority on the determination of a review paragraphs 11.16 to 11.28 Guidance under Section 182 of the Licensing Act 2003 (April 2018 edition).

RESOLVED:

That the decision of this Sub-Committee after considering the representations taken by the Licensing Authority was to revoke the licence.

Having received and read all of the paperwork before us at this hearing and listened to the representations from Essex Police and the Solicitor on behalf of Wo Fat, we do not believe that there was any other option open to us.

This was the second occasion when illegal workers have been found at the premises (in 2013 and 2018) which we believe would have continued had the visits from Immigration Officers not taken place. This was not just a case of confusion over paperwork, it was an exploitation of vulnerable people. The two brothers Chi Chu Wu and Chi Kwong Wu were and are involved in the management of the restaurant known as Wo Fat, on both occasions.

The guidance indicated that our decision should be a deterrent to other potential perpetrators and no other decision would fulfil this objective. We considered the options to remove the designated premises supervisor of the Licence or the suspension of the Licence but as previously indicated we did not feel that this would be sufficient.

CHAIRMAN