



The Licensing Compliance Officer, H Gould, informed the Sub-Committee that an application had been made by Ulas Planning Ltd., on behalf of the applicant Kadir Kisa of River Off licence for a new premises licence at Rosemary, Dobbs Weir Road, Hoddesdon, EN11 OAZ, for a class A1 (shop) to be used as an off licence, to sell mostly food and groceries and with alcohol as a supplement.

The application was for the Sale of Alcohol for consumption off the premises from:

Monday to Saturday 06:00 hours to 20:00 hours and  
Sunday 08:00 hours to 18:00 hours

This was in line with the stores opening hours.

The application was received on the 8 October 2020, the Operating Schedule sets out conditions which would be attached to the licence if this application was granted

All Responsible Authorities had been notified and had been properly advertised at the premises and in a local newspaper and all residences and businesses within a 150 metre radius were consulted.

The authority had received two representations from local residents, the objections related to all four of the licensing objectives. Essex Police, Trading Standards, Public Health and Environmental Health had no objections to the application. Essex County Fire and Rescue Services had no objections and have written directly to the applicant to detail the regulatory reform order. The Planning Service had no objection subject to this remaining a class A1 shop.

#### **(b) Presentation of the Application**

Mr Turk outlined that the applicant wanted to open a grocery and off licence shop, with limited opening hours. He detailed that there would be no sales outside of the hours and there would be very little impact on the area. The applicant had already been granted Class A1 use by the Planning Authority and that the sale of alcohol would make the business viable.

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

Members of the Sub-Committee asked for details on the Designated Premises Supervisor (DPS) and were advised that Sayit Omak was the DPS and that he would be at the site all the time. The Licensing Officer confirmed that written consent had been received.

The Sub-Committee also wanted to know if the shop was separated from the café and if there were plans in place for litter. The applicant confirmed that it was a separate entity from the café and that appropriate waste arrangements would be put in place with Epping Forest District Council.

#### **(d) Questions for the Applicant from the Objectors**

No objectors were present

**(e) Closing Statement from the Applicant**

The applicant detailed that they would like to open the new business selling goods and alcohol with limited hours.

**(f) Consideration of the Application by the Sub-Committee**

The Chairman advised that the Sub-Committee would go into private deliberations to consider the application.

During their deliberations the Sub-Committee received no further advice from the Legal Officer present. The Sub-Committee considered what was appropriate to promote the four licensing objectives and the relevant parts of the Council's Licensing Policy and the Home Office's guidance.

**RESOLVED:**

That the application for a premises licence in respect of: 'Rosemary' Dobbs Weir Road, Hoddesdon, EN11 0AZ be **granted** subject to:

- a) the conditions as submitted by the applicant on 8 October 2020 and dated 2 October 2020
- b) the mandatory conditions contained in Sections 19 -21 of the Licensing Act 2003.

The Sub-Committee considered these were reasonable and proportionate and would not undermine the licensing objectives.

The applicant and objectors were reminded of their right of appeal to the Magistrates Court within 21 days of date of the written notification of this decision.

**74. LICENSING APPLICATION - ABBEY BAR & GRILL, 18 SUN STREET, WALTHAM ABBEY EN9 1EE**

The three Councillors that presided over this application were Councillors C P Pond (Chairman), I Hadley and J M Whitehouse.

The Chairman introduced the Members and Officers present and outlined the procedure that would be followed for the determination of the application. The applicant Mr Parlak, the applicant's agent Mr Sutherland, Mr Kovan and the County Licensing Officer, Essex Police, Mr McManus were in attendance.

The Chairman received confirmation that all parties had received relevant documentation in relation to the conditions.

**(a) Application before the Sub-Committee**

The Licensing Compliance Officer, H Gould informed the Sub-Committee that an application for a new Premises Licence had been received from Licenses-r-us Limited on behalf of the applicant Mr Parlak of Arin Restaurant Limited for a new premises licence at Abbey Bar and Grill, 18 Sun Street, Waltham Abbey, Essex, EN9 1EE.

The application was for the sale of alcohol for consumption on and off the premises and for the provision of late night refreshment during the following hours:

Monday to Sunday 10:00 hours to 00:00 hours  
New Year's Eve 10:00 hours to New Year's Day 01:00 hours

Opening hours:  
Monday to Sunday 10:00 hours to 00:30 hours  
New Year's Eve 10:00 hours to New Year's Day 01:30 hours

The application was received on the 2 October 2020 and had been properly advertised at the premises and in a local newspaper, all residences and businesses within a 150 metre radius were consulted.

A response had been received from Environmental Health that highlighted recent complaints made by the public concerning COVID safety. Essex County Fire and Rescue Service had no objections but did visit the site and discussed the Regulatory Reform (Fire Safety) Order 2005 with the applicant.

The authority had received one objection from Essex Police which related to the prevention of crime and disorder and the public safety objectives. H Gould advised that a list of proposed conditions was included within the initial application, which was sent to all responsible authorities. The Chairman had confirmed at the start of the meeting that additional conditions agreed with Essex Police and a further proposed condition submitted to Essex Police on the previous night had been received by all parties.

#### **(b) Presentation of the Application**

The applicant's agent, Mr Sutherland, highlighted the one key difference between the applicant and Essex Police that focused on an individual (referred to as Relevant Person 1, "RP1"), he informed the Sub-Committee that "RP1" was not part of the application and suggested that the additional late condition addressed these concerns.

He outlined Mr Kovan was a licence holder in 2016 for 1 year 7 months and would assist the applicant with compliance and the operation of the premises. He suggested that the terms, times and activities as set out were not exceptional and advised the Sub-Committee that alcohol would be served at the bar and at tables and the offsales were for outdoor tables only.

Mr Sutherland addressed the comments raised by Environmental Health and the Fire Officer and noted that these were not objections. The Environmental Health Officers had found the premises to be, in the main, COVID compliant and this would be satisfied by the COVID risk assessment, the anonymous complaints in relation to noise could be disregarded as this was not substantiated and the comments of the Fire Officer would be resolved between the Fire Officer and the premises.

The business had no breaches in association with temporary events notices that had been granted and had worked within COVID restrictions without selling alcohol.

Mr Sutherland referred to the chronology provided by the police, and made specific reference to a meeting on 7 September 2020 at the premises between Essex police, Mr Kovan, Mr Parlak and Mr Sutherland, which detailed that "RP1" and Mr Parlak came from the same village and further suggested that culturally this gave rise to a responsibility of care. Mr Sutherland then detailed the bail condition that "RP1" resided at the premises had raised concerns with the police. He stated that he had

raised the specific question with the police who confirmed that if he moved from the premises this this would address their concern, “RP1” was advised of this and an application had been made to alter the bail condition. The police had then objected to the application as “RP1” was too close and had some involvement in the business.

Mr Sutherland advised the Sub-Committee that “RP1” was not involved in the business and any claims made by “RP1” were not true, and this had left the business trying to prove a negative, that “RP1” was not involved in the premises.

Mr Sutherland advised that a condition had been put forward, that was clear and enforceable, to address the concerns regarding “RP1” that stated ““RP1” shall not have any legal interest, whether proprietary or otherwise, in the business or property or be involved in the running of the business providing licensable activities and “RP1” shall not be permitted to enter or remain on the licensed premises whilst they are open for the purposes of providing licensable activities.” He advised that the conditions that related to CCTV would enable the police and other enforcement officers to ascertain if “RP1” had been on the premises, and he reiterated that “RP1” had nothing to do with the organisation and that he felt this explicit condition would address this. He concluded that with the experience of Mr Parlak, Mr Kovan and the inclusion of the proposed conditions the Sub-Committee could grant the licence.

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

The Sub-Committee asked for clarification on the position of Mr Palak and what had changed from the review in relation to the ownership and management of the premises. They were advised that the ownership and management of the company had changed, Mr Parlak was the director shareholder of the company and had taken over and run the premises with Mr Kovan, who has held a licence for over 3 years and would address any problems on the premises with the support of other staff.

The Sub-Committee asked for comments on CCTV in relation to “RP1” and the need for this to be monitored and noted that “RP1” did not need to be on the premises to be involved. Mr Sutherland suggested that the proposed condition was clear in terms of interest in the premises and advised that the responsibility to ensure “RP1” was not on the premises rested with Mr Parlak and Mr Kovan, the CCTV would allow the police to investigate any reports or spot check for compliance.

#### **(d) Questions for the Applicant from the Objector**

There were no questions from the objector.

#### **(e) Presentation from the Objector**

Mr McManus, County Licensing Officer, Essex Police advised the Sub Committee that all the conditions proposed were acceptable with the exception of the proposed condition that related to “RP1”. The issues for this application were related to the potential involvement, ownership or control of the premises by “RP1”.

Mr McManus detailed that “RP1” was involved in criminality that resulted in the licence being reviewed and revoked. He referred specifically to a meeting on 7 September 2020 when assurance was given that “RP1” was not connected with the business in any way. He advised the Sub-Committee that a week earlier “RP1” asked the Local Authority Licensing Officer to leave the premises and claimed he was the owner. Mr McManus and Mr Sutherland negotiated that the business would

be managed through Temporary Event Notices, to test the management and how that would work.

Mr McManus detailed that on 6 October 2020, an investigation showed that “RP1” had been involved in serious crime and disorder in the Metropolitan Police District. At the point of arrest “RP1” gave his occupation as restaurateur and was given bail conditions, by the Crown Court, to live and sleep each night at the premises address. On 15 Oct 2020, Mr McManus had spoken with Mr Sutherland, to discuss where a relevant address for “RP1” could be, he was unable to provide an answer and did not recollect being asked about “RP1” moving next door. The bail condition of “RP1” was subsequently changed to move from 18 to 16 Sun Street. Mr McManus stated that he found this strange for someone who had no connection to the premises.

Mr McManus highlighted that on 26 November 2020 “RP1” contacted the police and stated that his restaurant and home address were under threat. Mr McManus felt that this indicated that “RP1” still had some control or business interest in the premises. He advised the Sub-Committee that at no stage was “RP1” the licence holder, DPS or on any documentation associated with the premises

Mr McManus added that he felt the additional condition proposed by Mr Sutherland was not manageable highlighted some of the issues with enforcement and advised that it would not be appropriate for any police officer that attended a call to sit through hours of CCTV to establish if an individual had been present, not every police officer was familiar with “RP1” and the police did not have the power to require someone to present identification.

**(f) Questions for the Objector from the Sub-Committee**

The Sub-Committee sought clarity around the new management arrangement as there seemed some contradiction in the papers and if there was any documented interest in the premises by “RP1”. Mr McManus clarified there was a new management style in place and new management process, however he felt that “RP1” was in control as a silent partner or owner and this was being managed on his behalf. He had not found any legal, formal or informal documentation that showed an interest, except for “RP1’s” own admission, and added that he felt that “RP1” had been kept away from documentation as he was not a suitable person to be connected to the premises.

The Sub-Committee challenged if “RP1” could have an interest without there being any impact on crime and disorder. Mr McManus agreed this was possible, but brought to the attention of the Sub-Committee events in the summer, when the premises above were allegedly used in criminality and noted that whilst Crown Prosecution Services did not take this forward due to the chances of winning the case, it did not mean that events did not occur.

**(g) Questions for the Objector from the Applicant**

Mr Sutherland asked Mr McManus if he recalled a conversation when he asked about where “RP1” could reside, as his recollection was that Mr McManus stated that he needed him out of the restaurant. Mr McManus did remember the conversation but suggested that he added, he couldn’t say how far was far enough, as he just needed to be sure that “RP1” did not have any controlling ownership or link with the premises.

Mr McManus confirmed, after questions from Mr Sutherland, that all allegations from the summer had not progressed and that there had not been any issues since September 2020 in relation to the operation of the premises, under Mr Kovan or Mr Parlak. He advised that the only reason that this was before the Sub-Committee was that no agreement could be found in relation to “RP1”.

#### **(h) Closing Statement from the Applicant**

Mr Sutherland returned to the serious allegations in the summer and highlighted that all the charges were dropped. He was concerned that the police stated that this didn't mean that this didn't happen and he felt it was fundamentally wrong to suggest that the events in the summer, above the premises, happened and noted that there was not sufficient evidence for this to go to Court.

He reminded the Sub-Committee that there were no issues with Mr Parlak and Mr Kovan and the way they operated the premises and categorically denied that “RP1” had anything to do with the premises.

Mr Fowles (Legal Counsel) reminded the Sub Committee that it might find facts on the balance of probability and Crown Courts might find facts on the standard of beyond all reasonable doubt, as such the Sub-Committee could find that certain events had occurred even if the Crown Court had not. He noted that it was for the Sub-Committee to determine what weight it put on different evidence and suggested that it might be beneficial to hear why the case collapsed in the summer and added that both Mr McManus and Mr Sutherland should be provided with the opportunity to further address the Sub-Committee.

Mr McManus outlined that the victim of events in the summer had given an account that they were taken by force to the premises, but the investigation revealed that the victim had gone to the premises in their own vehicle. The CPS determined this undermined the integrity of the victim and the case did not move forward.

Mr Fowles advised the Sub-Committee that this evidence was hearsay, it was entitled to consider hearsay evidence, but that it must determine what weight to place on that evidence.

Mr Sutherland noted that this hearsay evidence was many times removed from the source, it was accepted that the charges did not proceed, and the CPS did not have sufficient evidence. He suggested that the test applied by the CPS was a lesser test than the test that the Sub-Committee needed to apply. Mr Fowles detailed that the test for the CPS was whether there was a good chance of success and whether it was in the public interest to proceed. Essentially the Crown Prosecutor was looking for a better than 50 percent chance of success of proven beyond reasonable doubt. Mr Sutherland suggested this reinforced his point as it was on a better than 50 percent chance that the test that had been applied by the CPS, and this was identical if not less than the test the Sub-Committee needed to apply. He suggested that anything related to the allegations in the summer should be disregarded, and that the victim was not believed.

#### **(k) Consideration of the Application by the Sub-Committee**

The Chairman advised that the Sub-Committee would go into private deliberations to consider the application. The Sub-Committee considered what was appropriate to promote the four licensing objectives and the relevant parts of the Council's Licensing Policy and the Home Office's guidance.

**RESOLVED:**

That the application for a premises licence in respect of 18 Sun Street, Waltham Abbey, Essex, EN9 1EE be **refused**.

The Chairman outlined, in summary, the reasons which the Sub-Committee considered were reasonable and proportionate for refusal in relation to the licensing objectives.

- 1 The Sub-Committee concluded that, on the balance of probabilities, the individual known as "Relevant Person 1", ("RP1") remained involved with the premises and has a relationship with the business. The Sub-Committee concluded that, on the balance of probabilities, "RP1" had been involved in criminality including criminal acts which had taken place at or near the premises.

The Authority had a positive duty to advance the licensing objectives. The Sub-Committee concluded that "RP1"'s involvement in the premises increased the risk of criminal acts taking place in or around the premises and, therefore, this was inimical to the licensing objective of reducing crime and disorder. The Sub-Committee concluded that the conditions proposed by the Applicant would not be sufficient to mitigate this.

The Chairman advised that a full written statement of reasons would be published, this was attached to these minutes as Appendix A.

The applicants and the objectors were reminded of their right of appeal to the Magistrates Court within 21 days of date of the written notification of this decision.



## Appendix A

RE: APPLICATION FOR A PREMISES LICENCE UNDER THE LICENCING ACT 2003 AT ABBEY BAR AND GRILL, 18 SUN STREET, WALTHAM ABBEY, ESSEX, EN9 1EE.

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### DECISION

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#### INTRODUCTION

1. The application was made by Licences-r-us Ltd on behalf of the applicant Mr Hasan Parlak (“the Applicant”) of Arin Restaurant Ltd for a new premises licence at Abbey Bar and Grill, 18 Sun Street, Waltham Abbey, Essex, EN9 1EE (“the Premises”). The application was for a new Premises Licence at said restaurant and bar serving Turkish cuisine for the sale of alcohol for consumption on and off the premises and for providing late night refreshment during the hours Monday to Sunday 10:00- 00:00 and New Year’s Eve 10:00 – New Year’s Day 01:00 (“the Application”). The full details of the application are set out in the attached application form.
2. The Committee took into account the report prepared by the Epping Forest District Council’s (“the Council”) Licensing Compliance Officer, Hannah Gould. That report sets out:
  - (a) The nature of the Application.
  - (b) The Council’s duties pursuant to the Licensing Act 2003 (“the 2003 Act”),
  - (c) The extent and nature of the consultation carried out for the Application.
  - (d) The relevant provisions of the Secretary of State’s guidance issued under section 182 of the 2003 Act.
3. The Committee also took into account:
  - (a) The application form (including the operating schedule) submitted by the Applicant.
  - (b) The plans submitted by the Applicant.
  - (c) The evidence of compliance with the notification requirements submitted by the Applicant.
  - (d) A schedule of agreed conditions submitted separately from the application form and a further single condition submitted in the body of an email dated 30 November 2020.
  - (e) Representations received from:
    - (1) Essex Police
    - (2) Epping Forest Environmental Health.
    - (3) Essex County Fire and Rescue
4. The Committee agreed that the Applicant had satisfied all of the relevant procedural requirements and the Committee was able to consider the Application.

**SUBMISSIONS**

5. The Committee took into account all of the oral and written submission made in respect of the Application. It noted, however, that the principal issue arising from the Application was the involvement of an individual known as “Relevant Person 1” (“RP1”) with the Premises. It therefore focused its consideration on this issue.
  
6. The Committee heard oral submissions from Mr Sutherland of Licenses-r-us on behalf of the Applicant. Mr Sutherland’s submissions can be grouped into two categories: those relating to the Application in general and those relating particularly to the involvement of RP1. Mr Sutherland made the following submissions relating to the Application in general:
  - (a) There was general agreement between the Applicant and the relevant authorities about the Application. The relevant authorities either raised no objection or were satisfied with the Applicant’s response. The only outstanding objection to the Application was that made by Essex Police relating to the involvement of RP1.
  - (b) The Premises is owned and operated by the Applicant. The DPS will be Mr Parlak, an experienced DPS who was, himself, the licence holder for the Premises for a number of years previously. Mr Parlak gave evidence himself that he consented to be DPS and that a number of other individuals who worked at the Premises also held personal licences. The Applicant and Mr Parlak had run the Premises successfully since the summer (albeit without serving alcohol).
  - (c) The Applicant and Mr Kovan had demonstrated their suitability to manage a licenced premises through successful conduct of a number of Temporary Event Notices.
  - (d) Alcohol would be served only by table service and to customers sitting at the bar. Although the Application was for both “onsales” and “offsales”, the latter was only necessary so that table service of alcohol could be provided at a number of outdoor tables.
  - (e) The Premises was Covid secure.
  
7. Mr Parlak gave evidence in support of the Application, telling the Committee that:
  - (a) He ran restaurant for three years without a problem
  - (b) He will be in charge of selling alcohol. He would be assisted by three other people who also have personal licences.
  - (c) Service of alcohol was integral to the business model of the Premises and business had been hurt by the absence of a premises licence.
  - (d) The past problems are nothing to do with him. He is taking over now and looking to the future.
  - (e) He will try his best to avoid having any problems on the premises

8. Essex police objected to the Application on the basis that it would not be in accordance with the First Licensing Objective (the prevention of crime and disorder) [Licensing Act 2003, s. 4(2)]. Essex Police provided substantial written representations. These included a chronology of alleged criminality associated with the Premises. In particular:

“23rd May 2020

VICTIM 1 was in Waltham Cross, Hertfordshire, when a car approached him and the occupants asked him to get in the car, he recognised these males. They drove around for some time before arriving at Abbey Grill. VICTIM 1 entered the restaurant where he was met by OFFENDER 1.

OFFENDER 1 told VICTIM 1 he needed to go upstairs, which he did. Once there, OFFENDER 2 was waiting for him. OFFENDER 2 was sat at a table with a sawn-off shot gun on it.

VICTIM 1 could see a single bed in the room, and thought he was dead, and his life was over. There were other males in the room who are unidentified. VICTIM 1 was then hit on the head with a small bat and he fell on the bed. OFFENDER 1 began to slap and punch the male. This was recorded on a mobile phone.

A knife was then held to the throat of VICTIM 1 and threats made to his and his family’s lives unless £70000 was paid.

The assaults continued for approximately one hour, and the gun was pointed at him the whole time by OFFENDER 2.

25th May 2020

Two people were detained by staff at Abbey Grill. Metropolitan Police were contacted by a relative of the victim asking for money. It is alleged the persons were stealing cooking oil from the premises when they were taken into the premises and held against their will. Money was demanded in reparation and their identity documents taken.

6th June 2020

A firearms warrant was executed at Abbey Grill and other associated premises. Suspects in relation to the incident on 23rd May 2020 were arrested and drugs were seized.

OFFENDER 1 and OFFENDER 2 were among those arrested. Others arrested include those who transported VICTIM 1 to Abbey Grill, and those present at the premises on 23rd May 2020 (OFFENDER 3 and OFFENDER 4). OFFENDER 1 has been charged with assault occasioning actual bodily harm, and false imprisonment. OFFENDER 2 has been charged with possession of a firearm with intent to cause fear or violence, assault occasioning actual bodily harm, false imprisonment and possession of class A drugs. OFFENDER 3 was charged with conspire to blackmail, assault occasioning actual bodily harm, and false imprisonment.

OFFENDER 4 was charged with conspire to blackmail, assault occasioning actual bodily harm, false imprisonment, and possession of a taser.

8th June 2020

PERSON 2 reported an attempted burglary at Abbey Grill, three people trying to gain entry to the premises

9th June 2020

Several males attended Abbey Grill. They entered the premises with banners saying, 'under new management'. They told PERSON 3 they had spoken to the owner who told them to take back control.

10th June 2020

PERSON 3 attended the police station stating the males from 9th June had made threats to kill her. Since PERSON 3 came to the attention of police it has come to light that they are 15 years old and have been working at Abbey Grill since February 2020. She was asked about her involvement with OFFENDER 1 as she refers to him as "UNCLE". She stated he was a family friend and "UNCLE" is just a term she refers to him as. She was asked if there was anything more to the relationship and she stated no.

PERSON 3 attended Abbey Grill with police on 10th June 2020 where she cashed the till up and removed all the takings, she also has access to all of the restaurants CCTV on her mobile phone, clearly indicating her role there is simply more than just turning up for part time work. She also arranged for OFFENDER 1's dog to be taken to her grandmothers address so she could look after it while he is on remand. It is unclear as to what exploitation she is involved but she is clearly involved in the business on a level more than part-time work and though only 15 years of age was expected to serve alcohol.

7th September 2020

Essex Police and Epping Forest licensing officers attended the premises and met:

Mr Hasan PARLAK the new director of Aaron restaurant Ltd

Mr Yavuz COBAN proposed new DPS with previous knowledge and experience at the premises.

Mr Kenan KALAYCI – Currently seeking lease hold for the premises.

Concerns were raised about an individual [RP1] who had been involved in the management of the premises during the incidents detailed above. All parties at this meeting gave assurances that [RP1] had no connection with the premises. It was described that [RP1] had originated from the same village as Mr PARLAK in Turkey and he was in no other way connected to the premises.

6th October 2020

Essex Police information reported that [RP1] has been charged with a serious offence within the Metropolitan Police district and if found

guilty could face 10 years imprisonment. [RP1] has Court bail conditions to live and sleep each night at 18 Sun Street, Waltham Abbey dated 19<sup>th</sup> September 2020. This report also shows [RP1] declared his occupation as a restaurateur. [RP1] has a clear connection with the premises seeking to obtain a premises licence and that his presence on the premises clearly undermines the licensing objective of preventing Crime & Disorder.

15<sup>th</sup> October 2020

In line with guidance point 8.48 working in partnership with the applicant. I spoke with the applicants representative Mr Sutherland and expressed my concerns about [RP1] presences at the premises.

20<sup>th</sup> October 2020

[RP1] contacted Police and confirmed that he is at the premises and raised an issue in relation to his bail conditions.

23<sup>rd</sup> October 2020

At the time of submission of this document the applicants have not responded to Police concerns about [RP1] connection to the premises.”

9. Essex Police concluded that “The same management regime is still in control of the restaurant that gave rise to the revocation of the alcohol licence and in effect, nothing has changed.” Mr McManus made oral representations on behalf of Essex Police. His representations were, in summary:
- (a) RP1 had been arrested and charged in connection with several of the events of criminality detailed in Essex Police’s written submissions. In particular, with the alleged assault and imprisonment on 23 May 2020. In relation to that incident. The Crown Prosecution Service decided not to proceed to trial and the charge was dropped. This decision was made because the alleged victim’s account changed. He initially asserted that he had been taken to the Premises by car. It subsequently emerged that he had attended the premises voluntarily. Mr McManus was, nevertheless, of the opinion that the other alleged events on 23 May probably occurred as per the victim’s account.
  - (b) Essex Police had no direct objection to the Applicant or Mr Kovan but believed RP1 to still be heavily involved with the Premises. This belief was based on the following:
    - (1) When a Licensing Officer attended the premises RP1 was present, claimed to be the owner of the Premises, and demanded the officer leave.
    - (2) When RP1 was arrested by the Metropolitan Police he gave his profession as “restaurateur” and his home address as the Premises.
    - (3) On 26 November 2020 RP1 contacted Essex Police. He claimed to be the owner of the Premises and that the Premises was his home address and stated that they were under threat.

- (4) Despite all parties agreeing that RP1 had been the owner (or, at least, the controller) of the Premises in the past, there has never been a paper record of his involvement.
  - (5) During the course of preparing the Application, the Applicant had discussed with Essex Police the best way to demonstrate that RP1 did not control the Premises. RP1 was, at that time, on bail with the Premises as his bail address. Essex Police advised that RP1 should be removed from the premises. RP1 subsequently sought a variation of his bail conditions to allow him to move from the Premises yet only moved to the house next door. In Mr McManus' view this indicated that RP1 intended to maintain his involvement with the Premises.
10. The second part of Mr Sutherland's submissions related specifically to RP1. These were given partly in his initial submissions and partly in response to Mr McManus. Mr Sutherland's submissions were, in summary:
  - (a) It had never been proved that RP1 was involved in criminal acts. The CPS dropped the case against him in relation to the incident on 23 May and he has not been prosecuted for any other crime. The Committee should apply the principle of "innocent until proven guilty" and treat RP1 as if he was innocent. Mr McManus' assertion that he believed RP1 to have been involved in criminal acts was problematic in the light of this. The CPS burden of proof was lower than that applied by the Committee and, given the CPS decided that the facts of the alleged offence could not be proved, the Committee should do the same.
  - (b) All of the evidence that the Committee had heard in relation to RP1 was "hearsay or double or triple hearsay".
  - (c) In any case RP1 was no longer involved in the Premises. As Mr Kovan had said, RP1 had no involvement.
  - (d) Essex Police had, in fact, agreed to RP1 moving from the premises to the property next door (Mr McManus disputed this assertion).
11. Mr Sutherland, in his email dated 30 November, and in his oral submissions, offered a condition excluding RP1 from physical attendance at or involvement with the Premises. He suggested that this could be enforced using the CCTV cameras which (as part of the agreed conditions) would be installed at the Premises.
12. Mr McManus submitted that the condition would not be effective because it could not be policed. The Application contained no plan for monitoring of the CCTV. It was unrealistic to expect police officers to attend the Premises and run through hours of CCTV to check for whether RP1 attended.

## DISCUSSION

13. The Committee took all of the oral submissions and written representations into account.
14. At the Committee's request, the Legal Advisor gave the following advice:
  - (a) The Council has a positive legal duty to promote the Licensing objectives, including the prevention of crime and disorder. [Licensing Act, s. 4(1) and (2)(a)]
  - (b) Mr Sutherland's treatment of the burden of proof was incorrect. The Committee was entitled to find its own facts, determine what weight

should be given to the evidence before it, and to reach its own conclusions. The Committee, when finding facts, must apply the “civil test” of “the balance of probabilities”. While the Committee was not, itself, a court. It had to apply the same test for evidence as a civil court. In the event of an appeal, the Magistrates’ Court was entitled to find facts for itself and would apply the “balance of probabilities” test.

- (c) Mr Sutherland was wrong to say that the CPS test was lower than that applied by the Committee. A criminal court applies a higher evidential test than a civil court. In a criminal court facts must be found “beyond all reasonable doubt”. When considering whether to prosecute an alleged offender the CPS applies a two-stage test. It, first, determines whether there is a “reasonable prospect of conviction”. This means that there is a “reasonable prospect” of proving the relevant facts beyond all reasonable doubt. It then decides whether the prosecution is in the public interest.
  - (d) The Legal Advisor recommended that the Committee take the following approach to the issue of RP1:
    - (1) Ask itself whether, on the balance of probabilities, RP1 remained involved with the Premises. If it answered the question in the negative, then the issue presented no barrier to granting the licence.
    - (2) If the Committee answered the first question in the affirmative, then it must ask itself whether RP1’s involvement was compatible the First Licensing Principle (e.g., did it increase the risk of crime and disorder associated with the Premises). This would involve finding whether, on the balance of probabilities, RP1 had been or was involved in criminality.
15. Adopting the approach recommended by the Legal Advisor. It noted that Essex police and Mr McManus had substantial expertise and experience in identifying and predicting criminality and, further, had no interest in the Application save that required by their statutory duty. It therefore decided to accord substantial weight to the representations of Essex Police and Mr McManus’ oral submissions. By contrast, Mr Sutherland and Mr Kovan’s contentions that RP1 was no longer involved in the Premises were contradicted by RP1’s own assertions. Mr Sutherland and Mr Kovan’s submissions on this point were, therefore, given less weight.
16. The Committee noted that all of the evidence relating to RP1, save Mr Kovan’s oral evidence, was, to some extent, hearsay. Given, however, that (a) there was a substantial degree of hearsay evidence on both sides, and (b) Essex Police have highly developed and formalised systems for recording events and evidence, the fact that much of Essex Police and Mr McManus’ submissions contained hearsay evidence did not substantially reduce the weight accorded to them.
17. The Committee noted RP1’s decision to move only to the house next door was not hearsay and was a fact undisputed by any party. This fact, when taken in the context of the submissions and evidence discussed hereto, pointed to RP1 maintaining an association with or involvement in the Premises.
18. The Committee concluded that, taken all together, the evidence and submissions presented indicated that, on the balance of probabilities, RP1 remained involved with the Premises.

19. Having reached this conclusion, the Committee turned to the Legal Advisor's second question: whether RP1's involvement compromised the First Licensing Principle. The Committee noted that there were a substantial number of allegations of criminality associated with the Premises while it was under RP1's control. In addition, RP1 had been accused of a number of criminal offences. Some of these charges were subsequently dropped while others were, at the time of the hearing, awaiting further action. The Committee noted that the Mr Sutherland, on behalf of the Applicant, had not presented any evidence to dispute the allegations of criminality. He had merely stated that they had not been proved in criminal court and invited the Committee to discount them on that basis. This ignored that, first, some of the allegations against RP1 have not yet been tried (and therefore may well be proved in future), and second, the Committee applies a lower standard of proof than the criminal courts.
20. The Committee, again, gave substantial weight to the submissions from Essex Police and Mr McManus (notwithstanding that they contained hearsay evidence), for the same reasons set out above.
21. On that basis the Committee concluded that, on the balance of probability, RP1 had been involved or associated with criminal activity. On this basis, granting the Application would not be in accordance with the Council's duty to advance the First Licensing Objective.
22. The Committee therefore resolved to refuse the Application.

**CHAIRMAN**