

## EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

<b>Committee:</b>	Licensing Sub-Committee	<b>Date:</b>	12 January 2016 23 February 2016
<b>Place:</b>	Council Chamber, Civic Offices, High Street, Epping	<b>Time:</b>	2.05pm - 3.15pm 2.35pm - 3.50pm
<b>Members Present:</b>	R Morgan (Chairman), P Keska, M Sartin and H Mann		
<b>Other Councillors:</b>	-		
<b>Apologies:</b>	-		
<b>Officers Present:</b>	A Mitchell (Assistant Director (Legal Services)), N Clark (Licensing Compliance Officer) and G J Woodhall (Senior Democratic Services Officer)		

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### **64. DECLARATIONS OF INTEREST**

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

### **65. PROCEDURE FOR THE CONDUCT OF BUSINESS**

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

### **66. VARIATION OF PREMISES LICENCE - IL BACIO, 19B FOREST DRIVE, THEYDON BOIS**

The three Councillors that presided over this item were Councillors R Morgan as Chairman, P Keska and M Sartin. The Chairman welcomed the participants and requested that they introduce themselves to the Sub-Committee. In attendance on behalf of the application were: Mr J Alonso, the Operations Manager for Il Bacio restaurants; and Mr L Funedda, the owner of Il Bacio restaurants. There were four Objectors in attendance: Mr D Jolly; Mrs J Hirst; Mr D Hirst; and Mr P Gooch, representing Theydon Bois Parish Council. Also in attendance were: Mr P Jones, Essex Police; Mr R Gardiner and Mr R Thompson, Environment and Neighbourhoods Officers with Epping Forest District Council; and Mr J Godden and Mr J Gordon, Planning Officers with Epping Forest District Council. The Chairman then introduced the Members and Officers present, and outlined the procedure that would be followed for the determination of the application.

#### (a) The Application before the Sub-Committee

The Licensing Officer informed the Sub-Committee that an application to vary a Premises Licence had been received in respect of Il Bacio Caves at 19B Forest Drive in Theydon Bois, along with representations from interested parties. The application had requested permission to include the front and side terrace of the restaurant within the area for licensable activity, and to update the existing Licensing Plan to reflect this. The Applicant had also offered six additional conditions to be attached to the Licence in relation to the Prevention of Public Nuisance as a result of the request to extend the licensable area.

The Licensing Officer highlighted that, as the application was for a variation of an existing Licence and not a new Licence, paragraph 11 of the report should read:

*“11. 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:*

- *to modify the conditions of the licence; or*
- *to reject the whole or part of the application.*

*For the purposes of the Licensing Act 2003 the conditions of the licence are modified if any of them are altered or omitted or a new condition added.”*

(b) Presentation of the Applicant's Case

Mr Alonso stated that Mr Funedda was very contrite over the previous breaches of the Licence which had occurred at the premises, and positive measures had been taken to ensure that all conditions on the Licence were complied with, particularly in relation to noise issues. A new Designated Premises Supervisor had been appointed and all of the staff had been fully trained. One member of staff would be stationed outside the premises on the front terrace from 9.30pm each evening when it was in use until all customers had left the premises.

In respect of the objection from the Parish Council, Mr Alonso contended that the document appended to the agenda was not an official copy from the Land Register, and therefore could contain errors; the Applicant affirmed their belief that the front terrace formed part of the property and belonged to them through their lease.

Mr Alonso argued that some of the issues raised by the Objectors related to traffic and parking, and therefore were not relevant Licensing issues. The premises were happy to discuss any potential concerns with residents at any time. Mr Alonso apologised for the past indiscretions that had occurred at the Premises, and these problems had been fully discussed with the Council's Environment & Neighbourhoods team. The Premises would continue to act responsibly and would take any measures necessary to remain within their Licence conditions.

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

In response to questions from the Sub-Committee, Mr Alonso stated that the area directly in front of the entrance was laid out with tables and chairs, and was being used for al fresco dining, with a smoking area there as well. The Premises did not currently have a Licence for this area, hence the application before the Sub-Committee. This area was demarcated from the pavement by planters and a small wooden fence. The proposed additional area was approximately 1 metre deep at the front and 1.5 metres deep to the side. It was intended to place four tables at the front of the Premises and three tables down each side.

The Licensing Compliance Officer informed the Sub-Committee that only those areas to the front of the premises and down the side in Buxton Road could be used, not the third side as shown on the map attached to the agenda. Mr Alonso confirmed that this was correct.

(d) Questions for the Applicant from the Objectors

Mr Alonso reiterated that it was proposed to place three tables to the side of the

Premises adjoining Buxton Road, and the staff stationed outside would assist in reducing the noise levels from customers at the outside tables. This approach had been successful with the rear garden at the Il Bacio premises in Buckhurst Hill.

Mr Alonso fully understood the concerns of residents and was very conscious of the past failures by the Premises to adhere to their Licence conditions, but the Premises did take its responsibilities seriously and had taken strong measures to prevent further problems occurring. It was unlikely that the tables outside would be in use throughout the year; it was expected that they would be in use predominantly during the summer months with this area reserved for smoking during the winter. Any tables and chairs positioned outside would be taken back inside each evening as per the agreed planning condition for the Premises.

Mr Alonso acknowledged that there was a music event planned to take place at the premises later in January, and this was being consulted upon at the current time. It had not yet been decided whether the event would definitely take place, but if it did then all possible measures would be taken to prevent any disturbance to neighbours.

(e) Questions for the Applicant from the Officers

In response to questions from the Officers present, Mr Alonso asserted there would be a member of staff outside at all times to control the customers at the tables; this would include possible drunken behaviour and noise issues. The Premises reserved the right to refuse to serve further alcohol to customers if they were being particularly rowdy. There were no other smoking areas for the customers other than outside the front of the Premises.

(f) Presentation of the Objectors' Cases

Mr Jolly drew the attention of the Sub-Committee to his written representation on page 56 of the agenda. It was Mr Jolley's belief that approval of this application would increase noise levels and traffic disruption to an unacceptable level for residents living in Forest Drive and Buxton Road. The restaurant was already having a significant impact on residents in Buxton Road, and there would be more incidents of public nuisance by allowing people to drink outside the restaurant in a residential area. It would prove more difficult to control the noise generated by the outside tables as customers drank more alcohol. Mr Jolly stated that he was not in favour of people being permitted to drink alcohol outside.

Mr Hirst drew the attention of the Sub-Committee to his written representation on page 58 of the agenda. Mr Hirst added that there would be an increase in public nuisance if the application was granted, and the Policing would be reactive after any incidents had occurred. The Sub-Committee was urged to refuse the application with the offered conditions as the existing conditions on the Licence were regularly being disregarded. Mrs Hirst added that the levels of traffic in the area would increase in the evenings if this application was granted.

Mr Gooch emphasised the strong objections expressed by Theydon Bois Parish Council, as outlined on pages 46 to 51 of the agenda. It was reiterated that the front terrace was not part of the applicant's lease as the freeholder did not own this land. The Parish Council was in the process of ascertaining from the County Council that this area was actually part of the pavement. It was highlighted that there had been a number of noise disturbances since the premises opened in October 2013, and a Noise Abatement Order was currently in place. The original planning application for the Premises had made no mention of outside dining, and the planning conditions imposed to prevent public nuisance had been ignored. These conditions had

included that the bi-fold doors at the front should not be left open after 9.00pm, and that no amplified music should be played at the Premises when these doors were open. The District Council was in the process of prosecuting the Applicant for breaching the conditions laid down when planning permission was granted. The Premises was situated in a very quiet area of Theydon Bois, and eating and drinking should not be permitted outside the bi-fold doors. The Parish Council therefore requested that this application be refused.

The Assistant Director of Governance (Legal Services) advised the Sub-Committee that ownership of the pavement could not be considered as this was dealt with by other legislation. Mr Gooch, representing the Parish Council, requested an adjournment of the meeting to seek further advice.

(g) Presentation of the Officers' Cases

Mr Gardiner, of the District Council's Environment & Neighbourhoods Team, highlighted the points outlined in his representation on pages 39 & 40 of the agenda. It was reiterated that the use of the outside areas would be likely to cause significant disturbance to nearby residents during the evening, and that it was not reasonable to impose an abnormal level of control on customers socialising at the Premises. Therefore, it had been suggested that a condition should be imposed on the Licence to close the outside areas at 9.00pm each evening to customers for the consumption of food and drink.

Mr Jones, representing Essex Police, had expressed similar concerns in his representation on page 41 of the agenda, and had suggested the following three conditions should be imposed on the Licence if the variation was granted: the external areas of the Premises to be closed to customers for eating and drinking at 8.00pm each day, with the exception of persons using the smoking area; a maximum of five persons to use the smoking area at any one time after 8.00pm each evening; and no drinks or glasses to be permitted outside the Premises after 8.00pm each evening.

Mr Gordon, of the District Council's Planning Department, fully supported the comments made by the residents objecting to the application, and highlighted that their representation had proposed the serving of alcohol to the outside areas should cease at 9.00pm each evening.

(h) Questions for the Officers from the Sub-Committee

Mr Gardiner confirmed that there was a history of complaints regarding the Premises, mostly related to noise from music events. The Noise Abatement Notice had been issued as there had been two breaches witnessed by Officers, and the Applicant had accepted a caution.

(i) Applicant's Closing Statement

Mr Alonso accepted the comments made during the meeting and acknowledged that there had been problems with the Premises in the past. In Mr Alonso's experience, customers became noisy when they were left alone; the staff at Il Bacio spent time to get acquainted with their customers and supervised the outside areas to prevent problems. The management was always available to discuss any issues arising with neighbouring residents.

The Assistant Director of Governance (Legal Services) clarified that the application could only be considered based on the Licensing Act 2003 and the four Licensing

Objectives therein. The applicant did not need to own the land to make an application, and Essex County Council could take action if the proposed outside areas actually formed part of the highway. Mr Gooch added that Essex County Council were searching for the title deeds of the premises.

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

The Sub-Committee left the Council Chamber to consider the application.

The Sub-Committee noted that it probably would have been helpful if a more detailed plan showing the dimensions of the requested outside area had been provided, and that a site visit to the premises could be beneficial prior to making a decision. The Chairman suggested that the meeting be adjourned, pending the production of a more accurate map, and that a site visit should be arranged for the morning of the reconvened meeting. This was agreed by the other members of the Sub-Committee.

The Sub-Committee returned to the Council Chamber and informed the participants of their decision.

Meeting adjourned at 3.15pm on 12 January 2016.

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Meeting reconvened at 2.35pm on 23 February 2016.

The Chairman welcomed the participants to the reconvened meeting, following the production of a more accurate map by the Applicant.

(k) Further Questions for the Applicant from the Sub-Committee

Mr Alonso confirmed that the side area in Buxton Road would remain as a smoking area, while the area to the front of the premises in Forest Drive would contain a maximum of three tables, seating twelve people in total.

(l) Further Questions for the Applicant from the Objectors

Mr Alonso acknowledged that 'Policing' the outside areas would be reactive rather than proactive, but in his experience the presence of staff in the outside areas made nuisance less likely to occur as customers could be engaged with from the start of their evening. The staff stationed outside would not continually go inside the premises to process orders.

Mr Alonso did not believe that there was a great noise disturbance from opening and closing the front doors; however, it was accepted that there needed to be a plan in place to control the noise from the whole premises. The premises already had a system in place whereby a Taxi company had to call back the Premises when a taxi had arrived outside, rather than toot its horn. Taxi firms who did not follow these procedures would not be used for future bookings.

Mr Alonso was not aware of anyone being involved in a road traffic accident outside the premises either during or after their visit. Parents who visited the premises were expected to take responsibility for the behaviour of their children, whether those children were inside or outside the premises; the premises only had a responsibility to customers when they were in the premises. The Assistant Director of Governance (Legal Services) reminded the Sub-Committee that the hearing was constrained by the Licensing Act 2003, and could not take account of parents - when visiting the premises - allowing their children to play in the streets outside the premises.

Mr Alonso stated that alcohol would not be served to customers who were drunk, and that the Designated Premises Supervisor was Mr Funedda's wife. A very experienced Manager had also recently been appointed for the premises, who would be at the premises on a daily basis. The Assistant Director of Governance reminded the Sub-Committee that the Designated Premises Supervisor was responsible for the premises regardless of whether they were actually present.

Mr D Hirst produced a photograph of the premises, purporting to have been taken on the afternoon of Saturday 20 February 2016, which showed people drinking alcohol at the premises at a time when the premises was not licensed to serve alcohol. Mr Funedda responded that no proof had been offered to support the time and date that the photograph was allegedly taken. He stressed that there were no tables and chairs shown outside the front of the premises, and this could mean that the premises was not open and that the visitors were either friends or family. Mr Funedda stated that he could not respond definitively to the allegation until he had spoken with the staff at the premises that evening.

Mr Alonso confirmed that he had been a professional Licence holder for 30 years, during which time he had passed numerous examinations and demonstrated his knowledge. Mr Alonso highlighted that the Council had procedures in place to revoke his licence if it was felt to be necessary.

(m) Further Questions for the Applicant from the Officers

In response to questions from Mr Jones, representing Essex Police, Mr Alonso stated that the planters currently in place on the side of the premises in Buxton Road would remain in place to separate the smoking area from the pavement, and that the premises would prefer the outside areas to be open until 9.00pm each evening rather than 8.00pm. The Assistant Director of Governance reminded the Sub-Committee that the premises should be closed to customers at 11.00pm, although this did not necessarily apply to members of staff and family. The Sub-Committee noted that the premises had a planning condition whereby the bi-fold front doors had to be kept closed after 9.00pm, with the tables and chairs to be taken in by 11.00pm each evening.

(n) Closing Statement by the Objectors

Mr Hirst was of the opinion that the Applicant would not do as they said they would and that the application should be refused. Mr Jolly reminded the Sub-Committee that residents in Theydon Bois were very concerned about the levels of noise emanating from the premises, and that the Sub-Committee should bear this in mind when coming to a decision.

The Sub-Committee left the Council Chamber to consider the application.

(o) Further Consideration of the Application by the Sub-Committee

The Assistant Director of Governance formally advised the Sub-Committee that instances of unlawful parking, children playing in the street and highway obstruction at the premises were not relevant to the consideration of the application under the Licensing Act 2003.

The Sub-Committee felt that there were no reasons to refuse the application per se, and agreed that the application to include the Front and Side Terraces within the licensable area of the premises should be agreed. However, it was noted that the

Environment & Neighbourhoods Manager had suggested a condition to prohibit the consumption of food and drink on the outside Terraces after 9.00pm, and that Essex Police had suggested the outside areas should be closed to customers at 8.00pm each day. Given the representations made by residents concerning noise nuisance at the Premises, the Sub-Committee decided that the outside Terrace should be closed to customers at 8.00pm each day for the consumption of food and drink, and that the tables and chairs should be packed away by 8.30pm each day. There should be a maximum of twelve seated diners using the Front Terrace and a maximum of five customers only should be permitted in the smoking area at any one time.

The Sub-Committee noted that the Applicant had stated a member of staff would be stationed outside on the Terrace at all times when it was open, and agreed to add a condition to the licence to this effect. The Sub-Committee also agreed a further condition concerning the policy for the delivery and collection of customers from the premises by taxis. To further reduce the noise nuisance to neighbours, the Sub-Committee felt that the Bi-fold doors at the front of the Premises should be kept closed after 8.00pm each day, and no food, drinks or glasses should be permitted on the Terraces after this time as well.

The Sub-Committee returned to the Council Chamber and informed the participants of its decision.

Meeting ended at 3.50pm on 23 February 2016.

**Resolved:**

(1) That the application to vary a Premises Licence at Il Bacio, 19B Forest Drive in Theydon Bois be granted in accordance with the following conditions, which the Sub-Committee considered were appropriate and necessary for the promotion of the four Licensing Objectives contained within the Licensing Act 2003:

(a) the licensable area to include the following areas of the Terrace, as shown on the revised plan provided by the Applicant:

(i) Front Terrace, 3.35m wide by 4.3m long; and

(ii) Side Terrace, 1.65m wide by 5m long;

(b) the Designated Premises Supervisor, or representative, to be stationed outside to supervise the Front and Side Terraces when in use until 8.30pm each day;

(c) the Designated Premises Supervisor, or representative, stationed outside shall ensure that any patrons eating, drinking or smoking outside the premises do so in an orderly manner and do not cause a public nuisance;

(d) the use of the Front Terrace to be restricted to a maximum of twelve seated diners;

(e) a maximum of five customers to be permitted to use the designated smoking area at any one time;

(f) the Front Terrace to be closed to customers at 8.00pm each day and the tables and chairs to be removed from the Front Terrace by 8.30pm each day;

- (g) no food or drink to be consumed, and no drinks or glassware to be permitted, on the Front and Side Terraces after 8.00pm;
- (h) the Bi-Fold doors at the front of the Premises to be kept closed after 8.00pm each day;
- (i) signs to be displayed at the Premises at all times reminding customers to be respectful of neighbours when using the outside Terraces or leaving the Premises;
- (j) a 'pick-up and set-down' policy to be agreed with a local Taxi company to include a requirement for Drivers to:
  - (i) not double park in the vicinity of the Premises;
  - (ii) not sound their car horn upon arrival; and
  - (iii) call the Premises when five minutes from pick-up to reduce waiting times; and
- (k) any changes to the 'pick-up and set-down' policy to be agreed beforehand with the Licensing Authority.

**67. EXCLUSION OF PUBLIC AND PRESS**

The Sub-Committee noted that there was no business for consideration that necessitated the exclusion of the public and press.

**CHAIRMAN**