

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Licensing Sub-Committee **Date:** 14 April 2016

Place: Council Chamber, Civic Offices, **Time:** 11.00 am - 1.00 pm
High Street, Epping

Members Present: P Keska (Chairman), B Rolfe and M Sartin

Other Councillors: -

Apologies: -

Officers Present: J Nolan (Assistant Director (Neighbourhood Services)), L Cole (Legal Services Officer), K Tuckey (Licensing Manager), L Turner (Licensing Compliance Officer), G J Woodhall (Senior Democratic Services Officer), S Kits (Social Media and Customer Services Officer) and A Rose (Marketing & Digital Content Officer)

88. DECLARATIONS OF INTEREST

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

89. PROCEDURE FOR THE CONDUCT OF BUSINESS

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

90. REVIEW OF LICENCE SUSPENSION - THE NU BAR, 153 HIGH ROAD, LOUGHTON, ESSEX IG10 4LF

The three Councillors that presided over this item were Cllrs P Keska as Chairman, B Rolfe and M Sartin. The Chairman welcomed the participants and requested that they introduce themselves to the Sub-Committee. In attendance on behalf of the Premises were: Mr M Cleary, owner of the Nu Bar and Designated Premises Supervisor; Mr P Warne, Solicitor for Greene King Retailing Limited; and Mr M O'Connor, from Greene King Retailing Limited. Also in attendance was Mr J Smith, a Licensee at another establishment nearby and a witness on the night of the incident who had been in the Premises at the time. In attendance on behalf of Essex Police were: Mr P Jones, Licensing Officer for Essex Police; Inspector T Mitchell; and Ms J Nash, County Licensing Officer for 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.

(a) The Review before the Sub-Committee

The Chairman reminded the Sub-Committee that the Licence for the Nu Bar in Loughton had been suspended by the Council at a meeting of the Licensing Sub-Committee on 12 April 2016, following a request by Essex Police for an expedited review after a serious incident at the Premises at approximately 2.10am on the morning of Sunday 10 April 2016. The Premises had exercised their right for a review of the suspension within 48 hours of the initial decision, which was the purpose of

this meeting. The Sub-Committee would determine whether the suspension should continue or be revoked until the full Premises Licence Review, scheduled for 3 May 2016.

(b) Submission by the Premises

Mr Warne stated that it was for Essex Police to prove that the Premises were sufficiently negligent to impose a restriction of livelihood under the Human Rights Act. Mr Warne expressed very serious concerns about the process. Essex Police should have presented the facts in a fair way at the first Review on Tuesday (12 April 2016), but Mr Warne felt that this was not unique as it had happened at other Councils.

Mr Warne felt that there were five fundamental errors in the evidence presented by Essex Police, which were critical to the determination of the Review.

Firstly, the documentation had stated that there had been 17 crimes recorded from in or in close proximity to the Premises, yet the summary list only listed 15 crimes. For the serious offences listed, there was no date and time listed for each incident. For some of the incidents listed, Mr Warne contended that:

- Attempted Murder – the assailants were never in the venue, they got out of a car outside the Premises and attacked the victim directly outside the Nu Bar; Essex Police never contacted Mr Cleary about the incident afterwards (42/101584/15).
- GBH – the drums were knocked over by customers, which resulted in a scuffle. The Door Staff put the Drummer out of the back of the Premises, and the Customers out of the front door. The Drummer was told that he was not welcome at the Premises any more, as he did not follow the proper procedures by calling the Door Staff to deal with the initial incident (42/69867/15).
- Grievous bodily harm – there was a small fight in the Premises but there were no injuries; the participants met up elsewhere after leaving the Premises where another fight broke out and the victim had his jaw broken (42/44820/15).
- GBH Assault – no evidence to link the incident to the Premises (42/44818/15).
- ATTEMPT GBH – the unknown suspect(s) had been refused entry to the venue, which the Premises contended was good management not a criminal incident; these incidents had been wrongly presented by Essex Police (42/36691/15 & 42/30596/15).

Mr Warne asserted that two of the incidents had happened some distance from the Premises.

Secondly, the incidents listed under Command & Control Information were in close proximity to the Premises, but they could equally have been committed by customers from The Luxe which was nearby. The Premises also had grave concerns about the information contained within the Police Intelligence Reports. Essex Police had never approached Mr Cleary regarding the allegations of a gang of drug dealers putting pressure on the management of the Nu Bar requesting assistance. Mr Cleary was a regular attendee at Loughton Pubwatch meetings; this was a serious allegation and the Premises had grave concerns that Essex Police had publicised these allegations.

Thirdly, there was the manner of the presentation of the case by Essex Police. The Premises was only open Thursday, Friday and Saturday nights, and Sunday afternoons during the Summer; this should have been disclosed by Essex Police at the first Review meeting.

Fourthly, in respect of the allegation concerning Section 1(a) and the Designated Premises Supervisor (DPS) not being present on the Premises when it was open, Mr Warne stated that the DPS did not have to be on site at all times. This was an error in law and a cynical attempt by Essex Police to close the Premises.

Finally, in relation to the additional conditions suggested by Essex Police if a suspension was not agreed, Mr Warne stated that the Premises normally did not have any customers before 11.00pm and that conditions (a) and (g) would in effect close the premises. It was clear that Essex Police did not understand the nature of the business at The Nu Bar, and this was a cynical attempt by Essex Police to close the business.

Mr Warne emphasised the serious concerns felt by the Premises, and that no evidence had been presented to allow the Sub-Committee to suspend the Licence.

With respect to the incident at the Premises on 10 April 2016, there had been very little detail in the application supplied by Essex Police, who had had time to present proper evidence to the Sub-Committee before the Premises would open again on the following Thursday. Essex Police had contended that the incident was related to the Premises. Mr Warne stated that an unprovoked punch was thrown outside the Premises after closing time, which had then escalated into a melee outside. There had been no trouble inside the Premises during the night and no tension outside the Premises. There had been no allegations made that the door staff had aggravated the incident, and the Premises felt that it was customers from The Luxe who had inflamed the situation outside the Premises. There was no evidence that the incident had started within the Premises or that the Premises had ignored the Licensing Objectives. Therefore, the suspension was not appropriate and disproportionate.

Mr Warne highlighted that Mr Cleary had offered to financially contribute towards extra Police Officers in Loughton at Pubwatch meetings.

Mr Warne explained that The Premises would agree with the suggested conditions from Essex Police where they could, but the following proposed conditions for summary review was tabled by the Premises at the meeting:

1. A minimum of 8 door staff will be employed on Friday and Saturday night from opening until the last customer has left the Premises. A minimum of 3 door staff will be employed on the front door. There will be a minimum of 6 door staff employed from 7.00pm on Sunday night.
2. All customers will be subjected to searches prior to entry on Friday and Saturday, and from 7.00pm on Sunday.
3. All drinking vessels used in the premises shall be polycarbonate.
4. All beer bottles will be decanted into polycarbonate drinking containers prior to service on Friday and Saturday, and from 7.00pm on Sunday.
5. No customers carrying glassware shall be admitted to the premises at any time.
6. There shall be no admittance or re-admittance to the premises after 1.00am on the morning following Friday and Saturday nights, and midnight on Sunday nights.

Mr Warne clarified that the decanting of drinks would be confined to beer bottles, not all drinks, and the restriction on customers entering/re-entering the Premises would be 1 hour before closing time.

Mr Warne stated that, based on the papers before the meeting, the Sub-Committee should not suspend the Licence at the Premises and remove the livelihoods of all involved.

(c) Submission by Essex Police

Mr Jones from Essex Police apologised to the Committee for not providing some of the documentation, but this was due to not wanting to compromise ongoing investigations. However, a number of stills taken from the CCTV at the Premises of the incident on 10 April 2016 was circulated by Essex Police to the Sub-Committee. Mr Jones made the following points in relation to the photographs:

- Pictures 1 – 6 showed glasses leaving the Premises.
- Pictures 6 – 8 showed Door Staff leaving the Premises with bottles, but these could be bottles of water.
- Pictures 10 -11 showed the male perpetrator of the initial assault entering the Premises after 2.00am.
- Picture 14 showed the same male perpetrator leaving the Premises.
- Picture 18 showed the victim of the assault.
- Picture 19 – 20 showed the actual assault.
- Pictures 23 – 24 showed the male perpetrator himself being assaulted.
- Pictures 25 – 26 showed the resulting melee.
- Pictures 27 – 30 showed the Door Staff outside of the Premises.
- Picture 32 showed the male victim of the initial assault still lying on the floor.

Mr Jones added that CCTV footage from Epping Forest District Council also showed males with a broken bottle and a crutch outside of the Premises, and the events described above led to further incidents across the road of the Premises.

Inspector Mitchell also apologised to the Sub-Committee for his comments being limited in detail, but the Inspector did not want to compromise the ongoing investigations. It was explained that an early application for the suspension of the Licence had been made to negate the impact on the Premises before they were due to re-open on Thursday evening. The Command & Control incidents listed on the application form for the Summary Licence Review, had been reported by the public but had ended by the time that the Police had arrived on the scene. Essex Police considered all of the Premises in the local area, and the application had been made due to the seriousness of the incident, and the use of glass which had led to the condition for polycarbonate vessels to be used at the Premises. Essex Police accepted the comments made by the Nu Bar, and all of the evidence would be available for the full Review – currently scheduled for 3 May 2016.

(d) Questions from the Sub-Committee

In response to questions from the Sub-Committee, Mr Jones stated that the footage from the CCTV operated by Epping Forest District Council could not be released yet, but it did show a number of people in vicinity of the Premises and although it did not show any actual assaults, it did show males armed with broken glass and a crutch. Inspector Mitchell added that the release of evidence could compromise live investigations and any future trials. Mr Warne contended that this was not correct in law; Essex Police could show evidence in private. Mr Warne added that the majority

of bottles seen in the CCTV footage were plastic water bottles and the venue already had a stock of polycarbonate glasses which it used.

Mr Warne confirmed to the Sub-Committee that the Premises kept an Incident Book, as this was considered good practice. The Premises were currently trying to track some of the incidents cited by Essex Police using the Incident Book. The Door Staff were properly badged although it was acknowledged that this could be difficult to see in the still photographs provided by Essex Police. There was nothing in law to enforce the wearing of armbands, identification for Door Staff just had to be clearly displayed, but the Premises was happy to discuss this matter further with Essex Police. It was accepted that the Door Staff had been dispersed due to the need to deal with the incident outside the Premises; it was acknowledged that there was a need to review the policies at the Premises to ensure that one member of the Door Staff remained on the door at all times during incidents.

Mr Warne informed the Sub-Committee that The Luxe nearby could open until 3.00am, and that some of the incidents which had occurred in the vicinity of the Premises were equally close to The Luxe. The Licensing Compliance Officer confirmed that The Luxe opened on Thursday, Friday, Saturday and Sunday, and their Licence permitted them to remain open until 3.00am on Friday and Saturday.

Mr Warne declared that staff were aware of the need to not serve alcohol to customers who were drunk, and the Premises had a robust policy for the serving of alcoholic drinks. No evidence had been produced to show that the incidences of drunkenness in Loughton High Road had any connection with the Premises. It was the preference of customers to drink beer from bottles; the Premises were willing to decant bottles of beer to polycarbonate glasses; and beer on draught was also available in polycarbonate glasses to customers.

Mr Cleary opined that there were not enough Police Officers on duty in Loughton to deal with any incidents, even a Police Car parked in Loughton High Road would assist in preventing incidents from occurring or escalating. On the night in question, when a Police Car arrived on the scene, the incident quickly halted and people dispersed. This was a frequent topic of conversation at the local Pub Watch meetings, and Mr Cleary was willing to assist in the funding of extra Police Officers for Loughton High Road.

Mr Smith added that the local Licensees liaised with each other to make Loughton a better place. All of the establishments in the Loughton High Road needed the Police but there were never enough Officers on duty; even one extra Police car in situ would assist with dealing with the problems in the area. Mr Smith confirmed that there were people in tracksuits outside the Premises, approximately 45 minutes before the Premises closed, on the night in question.

Mr Cleary confirmed that the Premises operated a smart dress code, i.e. people were not allowed to enter the Premises wearing training shoes, tracksuits or hooded jackets. The Door Staff at the Premises would turn away approximately 30 people on an average night, for a variety of reasons, and the people in the tracksuits mentioned by Mr Smith were refused entry to the Premises.

Mr Warne clarified that the Door Staff had taken some of the participants through the Premises and had put them out through the back door to get them away from the melee, which was confirmed by the pictures from the CCTV. This was a tactic commonly used by the Door Staff, and in a previous incident the Police had accepted that the participants were put out of different doors before meeting up again later at a different location.

Mr Warne stated that there were usually six door staff on duty on Friday and Saturday nights, with 8 door staff used on special nights. The Premises, which had a capacity of 150, liked to have a strong security presence to deal with any incidents that occurred. The Door Staff had been changed as part of the previous Action Plan, and the Premises certainly did not look to abdicate its responsibility by throwing people out of the Premises on to the street at the first sign of trouble. The policy was to identify the aggressors and remove them from the incident through the back of the Premises.

The Assistant Director of Neighbourhoods (Neighbourhood Services) confirmed that the CCTV equipment used by the Council to cover Loughton High Road would be of sufficient quality to identify individuals. However, one of the cameras rotated so might not be able to pick up all incidents in the vicinity.

Mr Warne confirmed that Greene King were the Landlords, Mr Cleary owned the business and leased the buildings.

Inspector Mitchell stated that all of the incidents had occurred after midnight on the nights in question, and the suspension was relevant and proportionate to maintain public safety.

(e) Closing Statement by the Premises

Mr Warne contended that the suspension of the Premises Licence had been a disproportionate response, as the Premises could potentially be shut for months until the end of the appeal process. Had the Premises undermined the Licensing Objectives set out on the Licensing Act 2003 sufficiently to suspend the Licence, as Essex Police had not produced sufficient evidence, in private, to demonstrate this. The Sub-Committee was also reminded that the right to a livelihood was a basic human right, which would be denied to Mr Cleary if the suspension was continued.

Mr Warne maintained that not enough evidence had been produced to continue to suspend the Premises Licence; the six conditions proposed earlier in the meeting by the Premises could be imposed as interim steps pending the full review in 3 weeks on 3 May 2016.

(f) Consideration of the Review by the Sub-Committee

The Sub-Committee retired to consider the review.

The Sub-Committee noted the catalogue of incidents in the vicinity of the Premises, as outlined by Essex Police.

The Sub-Committee noted that any continuation of the suspension would be to prevent Crime and Disorder, which would outweigh the Premises' right to a livelihood under the Human Rights Act.

The Sub-Committee was concerned about the paucity of the evidence produced by Essex Police.

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

Resolved:

(1) That the suspension of Premises Licence at the Nu Bar, 153 High Road in Loughton be continued as the original decision by the Council to suspend the Licence was considered reasonable and proportionate under the circumstances.

91. EXCLUSION OF PUBLIC AND PRESS

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

CHAIRMAN