



Licensing Sub-Committee Monday, 19th September, 2016

You are invited to attend the next meeting of **Licensing Sub-Committee**, which will be held at:

**Council Chamber, Civic Offices, High Street, Epping
on Monday, 19th September, 2016
at 10.00 am .**

**Glen Chipp
Chief Executive**

**Democratic Services
Officer**

J Leither (Direct Line 01992 564756)
Email: democraticservices@eppingforestdc.gov.uk

Members:

Councillors R Morgan (Chairman), D Dorrell, J Jennings and M Sartin

PLEASE NOTE THE START TIME OF THE MEETING

- 1. APOLOGIES FOR ABSENCE**
- 2. DECLARATIONS OF INTEREST**

(Director of Governance) To declare interests in any item on this agenda.
- 3. PROCEDURE FOR THE CONDUCT OF BUSINESS (Pages 3 - 8)**
- 4. REVIEW OF PREMISES LICENCE - IL BACIO, 19B FOREST DRIVE, THEYDON BOIS, CM16 7EX (Pages 9 - 72)**

(Director of Neighbourhoods) To consider the attached report and appendix.

- 5. EXCLUSION OF PUBLIC AND PRESS**

Exclusion: To consider whether, under Section 100(A)(4) of the Local Government Act 1972, the public and press should be excluded from the meeting for the items of business set out below on grounds that they will involve the likely disclosure of exempt information as defined in the following paragraph(s) of Part 1 of Schedule 12A of the Act (as amended) or are confidential under Section 100(A)(2):

Agenda Item No	Subject	Exempt Information Paragraph Number
Nil	Nil	Nil

The Local Government (Access to Information) (Variation) Order 2006, which came into effect on 1 March 2006, requires the Council to consider whether maintaining the exemption listed above outweighs the potential public interest in disclosing the information. Any member who considers that this test should be applied to any currently exempted matter on this agenda should contact the proper officer at least 24 hours prior to the meeting.

Background Papers: Article 17 - Access to Information, Procedure Rules of the Constitution define background papers as being documents relating to the subject matter of the report which in the Proper Officer's opinion:

- (a) disclose any facts or matters on which the report or an important part of the report is based; and
- (b) have been relied on to a material extent in preparing the report and does not include published works or those which disclose exempt or confidential information and in respect of executive reports, the advice of any political advisor.

The Council will make available for public inspection for four years after the date of the meeting one copy of each of the documents on the list of background papers.

Licensing Committee - Terms of Reference

- (1) The full Committee shall comprise 15 Councillors appointed by the Council at its annual meeting, including a Chairman and Vice-Chairman.
- (2) For the functions set out in Appendix 1, and the legislation listed in Appendix 2, a Subcommittee consisting of no more than any three Councillors drawn from the members of the full Committee shall be formed. Any such Subcommittee shall include, by rota, one of the six Licensing Subcommittee Chairmen appointed at each Annual Council meeting.
- (3) The Quorum for the Committee is set out in the Rules set out in Part 4 of this Constitution save that no business shall be transacted unless either the Chairman or Vice-Chairman of the Committee is present.
- (4) The Committee and Subcommittees shall have full authority to hear and determine licensing applications.
- (5) The Committee and Subcommittees shall be further empowered to determine appeals made against the decisions of the Director of Neighbourhoods taken under delegated authority on licensing applications. (See Council delegation schedule for more details)
- (6) The Committee shall at all times carry out its duties solely within the policy from time to time determined by the Council and shall conduct its proceedings in accordance with the requirements set out in Appendix 3 (Conduct of Business by Licensing Committee and Subcommittees).
- (7) The Licensing Committee shall take no part in the production or revision of the statement of licensing policy made under Section 5 of the Licensing Act 2003, however, they may determine policy under the legislation listed in Appendix 2 to this Article.
- (8) To be responsible for the consideration and approval of Designation Orders under Section 13 of the Criminal Justice and Police Act 2001 (Exercise of Controls over the consumption of alcohol in Public Places).

LICENSING ACT 2003 – LIST OF FUNCTIONS AND DELEGATED AUTHORITY

Matter to be dealt with	Full Committee	Subcommittee	Officers
Application for personal licence		If a police objection	If no objection made
Application for personal licence with unspent convictions		All cases	
Application for premises licence/club premises certificate		If a relevant representation made	If no relevant representation made
Application for provisional statement		If a relevant representation made	If no relevant representation made
Application to vary premises licence/club premises certificate		If a relevant representation made	If no relevant representation made
Application to vary designated premises supervisor		If a police objection	All other cases
Request to be removed as designated premises supervisor			All cases
Application for transfer of premises licence		If a police objection	All other cases
Applications for interim Authorities		If a police objection	All other cases
Application to review premises licence/club premises certificate		All cases	
Decision on whether a complaint is irrelevant frivolous vexatious etc			All cases
Decision to object when local authority is a consultee and not the relevant authority considering the application		All cases	
Determination of a police objection to a temporary event notice		All cases	
All policy matters except the formulation of the statement of licensing policy	All cases		

LIST OF STATUTORY POWERS

Those functions pertaining to licensing and registration and permits and consents contained in the following legislation and any regulations, orders, byelaws or other subsidiary legislation made under the above Acts:

Animal Boarding Establishments Act 1963
Breeding & Sale of Dogs (Welfare) Act 1999
Breeding of Dogs Act 1973
Breeding of Dogs Act 1991
Caravan Sites & Control of Development Act 1960
Caravan Sites Act 1968
Dangerous Wild Animals Act 1976
Gambling Act 2005
Guard Dogs Act 1975
House to House Collections Act 1939
Licensing Act 2003
Local Government (Miscellaneous Provisions) Act 1976
Local Government (Miscellaneous Provisions) Act 1982
Pet Animals Act 1951
Pet Animals Act 1951 (Amendment) Act 1983
Riding Establishments Acts 1964 & 1970
Scrap Metal Dealers Act 1964
Scrap Metal Dealers Act 2013
The Game Act 1831
Town Police Clauses Act 1847
Town Police Clauses Act 1889
Zoo Licensing Act 1981

PART A – CONDUCT OF BUSINESS BY LICENSING COMMITTEE AND SUBCOMMITTEES

All references to committee in this annex shall be taken to infer a reference to the associated subcommittees.

1. General Conduct

- 1.1 All hearings of the Licensing Committee under the Licensing Act 2003, are to be held in accordance with the Personal Licences, Hearings, Premises Licences and Club Premises Certificates, and Licensing Register Regulations, made under the Licensing Act 2003.
- 1.2 The Council's Constitution shall regulate the conduct of and debate at meetings.
- 1.3 In the case of hearings under the Licensing Act 2003, the Committee shall only consider those matters relevant to the licensing objectives as set out in the Licensing Act 2003 and the statement of licensing policy adopted by the Council.

2. Declarations of Interest

- 2.1 Members of the Committee are subject to the Council's Code of Conduct.

3. Participation in the Hearing

- 3.1 Debate shall be restricted to members of the Licensing Committee. Where a local ward member, not being a member of the Committee, wishes to participate in the hearing, they may do so only with the permission of the Chairman and their participation shall be subject to the same rules as are applied to any other witnesses to the application.
- 3.2 In hearings other than those under the Licensing Act 2003, where a ward member is a member of the Committee, and wishes to object to the application, the member shall give 14 days' notice of their intention, and shall play no part in the decision-making process of the Committee. In hearings under the Licensing Act 2003, those named as responsible authorities and interested parties in the Act may only make representations within the time limits set out in the relevant statutory provisions.
- 3.3 All persons participating in the hearing shall be made aware of the limitations or scope of statements that will be acceptable and, in particular, that statements should be factual or a fair statement on a matter of public interest.
- 3.4 In the case of any hearing pursuant to the summary review procedure under the Violent Crime Reduction Act 2006, the membership of any Subcommittee adjudicating on such a review shall comprise any three members drawn from the Licensing Committee subject to the proviso that no member should serve more than one hearing.

4. Attendance of the Public

- 4.1 The Council's Constitution and relevant statutory provisions relating to the admission or exclusion of the public shall apply to all meetings of the Licensing Committee.

5. Natural Justice

- 5.1 There are two elements to natural justice:

(a) Fairness

- (i) All persons affected by the decision or in the case of matters associated with the Licensing Act 2003, those named as responsible authorities and interested parties in the Act, will be allowed a hearing before a decision is made.
- (ii) Only objectors who can show clearly that they are affected by a decision shall be afforded the right to be heard or, in the case of hearings under the Licensing Act 2003, only those named in the Act as responsible authorities or interested parties.
- (iii) All information shall be made available, where possible in advance, to the applicant and the Committee.
- (iv) All members of the Committee shall be present throughout the hearing of a particular application. Where a member arrives late or leaves during a hearing of a particular application, that member shall play no part in the decision-making process. Where an application is adjourned it shall be continued by the same members only, and no others.
- (v) The Committee shall have discretion in respect of 'late' objections. Such objections shall be clearly marked on the agenda as such and the Committee shall decide on their acceptability. The applicant shall be advised of any late objections. In the case of representations made in relation to the Licensing Act 2003 applications, these shall only be accepted in accordance with the relevant statutory provisions.

(b) Prevention of Bias

- (i) The rules on the declarations of interest shall be firmly applied.
- (ii) If the Committee moves into private session to consider its decision, it shall be accompanied only by its advising officers, none of whom shall have taken a substantive part in the hearing, and shall play no substantive part in the decision-making process.

6. General Procedures for Hearings

- 6.1 The following procedural requirements shall be followed at all times:

- (a) There shall be no recommendation from officers on the agenda;
- (b) The Committee shall be supplied with copies of all relevant documentation and the process and order of procedure shall be as follows:

- (i) The Chairman will open the meeting and introduce persons as appropriate asking applicants and representatives to identify themselves.
- (ii) The Chairman will outline the procedure to be followed.
- (iii) The Lead Officer will outline the matter in hand.
- (iv) The applicant or representative will present his/her case, with or without witnesses, and be questioned by members or any objectors/persons making representations present.
- (v) Any objectors/persons making representations may then present their objections/representation, with or without witnesses, and be questioned by members or the applicant/s or their representative.
- (vi) The objectors/persons making representations may make a final statement (without introducing new issues).
- (vii) Finally, the applicant has the right to make a final statement (without introducing new issues).
- (viii) All evidence/disclosures are to be made in the presence of all persons, unless someone voluntarily excuses themselves from the proceedings.
- (ix) Committee members shall restrict themselves to questions and not discussion or comment.
- (x) The applicant, objectors/persons making representations shall be allowed to ask officers questions of a technical/factual nature at any time during the proceedings.
- (xi) An adjournment should be granted where to do otherwise would deny a fair hearing.
- (xii) The Committee may resolve to decide upon the application in private session, however, if it becomes necessary to recall anyone for additional information, everyone shall be invited to return to the Hearing.
- (xiii) The decision shall be given in the presence of all parties that wish to be present and confirmed in writing as soon as possible thereafter. If legal advice is given to members this advice will be repeated in summary form.

Report to the Licensing Committee



Date of meeting: 19 September 2016

**Epping Forest
District Council**

**Subject: Summary Review of Premises Licence
Il Bacio, 19B Forest Drive, Theydon Bois, CM16 7EX**

Responsible Officer: Nuala Clark – Licensing Compliance Officer

Democratic Services Officer: Jackie Leither

Decision Required:

- 1. To determine an application for a Summary Review of the Premises Licence and to consider relevant representations as a result of the review application**

Report:

1. On 28th July 2016 an application for a Summary Review of a Premises Licence under Section 51 of the Licensing Act 2003 was received from Essex Police in respect of a Premises Licence issued to Mr Luigi Funedda.
2. A copy of the application for a summary review Section 51 was served on the holder of the Premises Licence and all responsible authorities.
3. The application was advertised in accordance with Section 51 of the Licensing Act 2003 and Regulation 38 of the Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005, thereby inviting representations to be made by responsible authorities and interested parties. Any representations had to be received by the Licensing Authority by 24th August 2016
4. A copy of the application for review is attached at Appendix A. Also attached at Appendix B is a location map showing the premises and surrounding area.
5. Appendix C relates to the letter of support received from Mr D Hirst in support of the police review. Appendix D relates to the letter dated from Mr Funeda's solicitors which gives his representation against the review.

Current Premises Licence

- 6 A copy of the current Premises Licence which includes conditions is attached at Appendix E.

Grounds for Review

- 7 The application for review relates to the following licensing objectives:

- The Prevention of crime and disorder.
- Public safety.

Relevant Representations

- 8 All responsible authorities have received a copy of the application for review and the Licensing Authority has not received any representations from any Responsible Authority.

- 9 The Licensing Authority has however received 1 representation in support of the review from interested parties relating to the following licensing objectives:

- The prevention of crime and disorder.
- Public Safety.
- The prevention of public nuisance.

- 10 In making its decision the Licensing Authority must take account of relevant representations from interested parties. Interested parties are defined as:

- a person living in the vicinity of the premises,
- a body representing persons who live in that vicinity
- a person involved in a business in that vicinity, and
- a body representing persons involved in such business.

- 11 The Licensing Authority should provide the applicant with copies of relevant representations that have been made. whether it wishes to consider these representations but must be satisfied that there are circumstances which justify the action and that the complaints are not vexatious or frivolous.
12. The Premises Licence Holder, the applicant for the review and all interested parties have been invited to attend this hearing and will be given the opportunity to address members

Legal Considerations

- 13 The decision must be taken following consideration of the representations received with a view to promoting the four licensing objectives which are:
 - Prevention of crime and disorder.
 - Public safety.
 - Prevention of public nuisance.
 - Protection of children from harm.

Options

- 14 In the case of a review of a Premises Licence the Licensing Sub-Committee has the following options:
 - To modify the Conditions of the Premises Licence.
 - To exclude from the Licence a licensable activity.
 - To remove the Designated Premises Supervisor.
 - To suspend the Licence for a period not exceeding 3 months.
 - To revoke the Licence.
 - To leave the Licence in its existing state.

Determination of the Application

15 Members are invited to determine this application following consideration of the evidence presented to them.

16 RIGHT OF APPEAL

If any party is aggrieved with the decision on the grounds set out in schedule 5 of the Licensing Act 2003 they can appeal to a Magistrates court. Such appeals are by way of a re-hearing. The appeal period is 21 days from the notification of the decision

Background Papers:

- Application for Review.
- Relevant Representations.
- Licensing Act 2003 (Summary Review of Premises Licences) Regulation 2007.
- Licensing Act 2003.
- Licensing Act 2003 (as amended by the Violent Crime Reduction Act 2006).
- Expedited/Summary Licence Reviews Guidance – October 2007.
- The Authority's Licensing Policy

Attached Documents:

Appendix A: Review application from Essex Police

Appendix B: Location map

Appendix C: Letter in support of the review from Mr Hirst

Appendix D: Letter from Mitchell Solicitors representatives of Mr Funeda confirming his representation against the review.

Appendix E: Current premises licence with conditions.



Licensing Department
Epping Forest District Council
Civic Offices
High St
Epping
Essex Police CM16 4BZ

County Licensing Hub
Witham Police Station
PO Box 12306
Newland St
Witham
Essex
CM84AS
25/07/2016

LICENSING REVIEW APPLICATION

IL BACIO 19B Forest Drive Theydon Bois CM16 7EX

Please find enclosed a review application for the above premise.

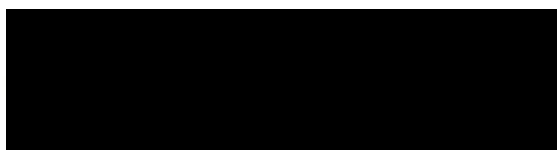
Essex Police are seeking REVOCATION of the premises licence based on the following licensing objectives:

- 1 The Prevention of Crime and Disorder
- 2 Public Safety

I would be grateful if you could serve this application on the Premises Licence Holder Luigi FUNEDDA and all other Responsible Authorities.

I await your advice as to the date, time and location of the review hearing

Yours faithfully



6895 Stephen Sparrow
Essex Police County Licensing Officer
Ext 406358

Application for the review of a premises licence or club premises certificate under the Licensing Act 2003

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form.
If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.
You may wish to keep a copy of the completed form for your records.

I STEPHEN SPARROW 42006895 County Licensing Officer Essex Police

(Insert name of applicant)

apply for the review of a premises licence under section 51 / apply for the review of a club premises certificate under section 87 of the Licensing Act 2003 for the premises described in Part 1 below (delete as applicable)

Part 1 – Premises or club premises details

IL BACIO 19B FOREST DRIVE	
Post town THEYDON BOIS	Post code CM16 7EX

Name of premises licence holder or club holding club premises certificate (if known) LUIGI FUNEDDA 

Number of premises licence or club premises certificate (if known) 
--

Part 2 - Applicant details

I am

Please tick ✓ yes

1) an individual, body or business which is not a responsible authority (please read guidance note 1, and complete (A) or (B) below)

2) a responsible authority (please complete (C) below)

3) a member of the club to which this application relates (please complete (A) below)

(A) DETAILS OF INDIVIDUAL APPLICANT (fill in as applicable)

Please tick ✓ yes

Mr

Mrs

Miss

Ms

Other title
(for example, Rev)

Surname

First names

I am 18 years old or over

Please tick ✓ yes

**Current postal
address if
different from
premises address**

Post town

Post Code

Daytime contact telephone number

E-mail address (optional)

(B) DETAILS OF OTHER APPLICANT

Name and address

Telephone number (if any)

E-mail address (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address ESSEX POLICE COUNTY LICENSING HUB WITHAM POLICE STATION NEWLAND STREET WITHAM ESSEX CM8 2AS
Telephone number (if any) 01245 452035 EXT 406358
E-mail address (optional) Licensing.applications@essex.pnn.police.uk

This application to review relates to the following licensing objective(s)

- | | |
|---|-------------------------------------|
| | Please tick one or more boxes ✓ |
| 1) the prevention of crime and disorder | <input checked="" type="checkbox"/> |
| 2) public safety | <input checked="" type="checkbox"/> |
| 3) the prevention of public nuisance | |
| 4) the protection of children from harm | |

Please state the ground(s) for review (please read guidance note 2)

This premise has been granted a premises licence by Epping Forest District authorising the sale of alcohol Monday – Sunday 11:00 - 2300 hours and the provision of late night refreshment and recorded music from 2300 - 0200 on New Year Eve.

The premises operate as a restaurant.

The Premise Licence Holder of the venue is Luigi Funedda

.....

Following information and intelligence held by the Home Office Immigration Service, a Magistrates Court Warrant was obtained and the premises were visited on Thursday 30/06/2016 at 16:50 hrs. by Immigration Officers Gear, Denham, Clouting, Newell, Clarke and Chief Immigration Officer Davis.

On this occasion, one Columbian male was identified in the kitchen of the premises. This male confirmed to Immigration Officer Gear that his name was [REDACTED] born 21/01/1981. On being questioned by Immigration Officer Gear [REDACTED] admitted to working in the premise for "A couple of months" and was paid wages depending on the amount of hours worked.

The premise at this time was open for business.

Subsequent checks identified this male were working illegally.

It has been stated by Immigration Officer Gear in his witness statement in Appendix B that there were a number of warning markers allegedly linked to the subject that indicate that [REDACTED] was a heavy drug user and seller and had been known to threaten people with knives. Immigration Officer Gear then decided to handcuff [REDACTED]

After searching the premise a Columbian I.D card was found and seized by CIO Jack Davis.

It should be noted that [REDACTED] stated to IO Gear that he arrived in the UK in 2008 or 2009 after he was previously removed from the UK on a previous occasion.

In Appendix C IO Denham statement are details of an occurrence with the manager [REDACTED] and it is of concern to Essex Police that upon the arrival of [REDACTED] at the premise he spoke with IO Denham in an excitable state and claimed to have known [REDACTED] for "20 years, he works for me, he is not illegal"

ESSEX POLICE FORCE OBJECTIVES

Currently Essex Police Force Objectives include:- Human Trafficking and Modern Day Slavery. It is felt that the employment of illegal workers in the UK infringes both of these Force objectives by encouraging unscrupulous persons to bring illegal workers, who have no employment rights and are often paid below minimum wage rates, into the UK for profit.

CASE CITATION

I wish to cite the case East Lindsey District Council v Abu Hanif (See Appendix D) where a High Court Judge, Mr Justice Jay, certified this case for citation. In this case the judge determined that it is not necessary for a prosecution to be brought in order for the crime prevention objective to be engaged. Therefore the judge upheld East Lindsey District Council appeal and the premises licence was revoked

This review application is submitted as relevant to 2 of the Licensing objectives, namely the prevention of crime and disorder and promotion of public safety.

The Licensing Act 2003 is clearly intended to prevent crime and disorder from occurring in relation to licensed premises but also to deter and prevent criminals from operating a premise under the auspices of a Premises Licence granted by the local authority.

Section 11.24 of the Guidance to the Licensing Act states that reviews do not have to be directly linked or connected with the licensable activities at any premise, although in this case the offences are directly linked to the operation of the premises as a restaurant selling alcohol and providing late night refreshment and the staff were actively involved in these activities.

Section 11.26 states that it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives.

Section 11.27 states that there is certain criminal activity which should be treated particularly seriously, one of these being knowingly employing a person who is unlawfully in the UK or who cannot lawfully be employed as a result of a condition on that persons leave to enter.

(It is pertinent to note that the previous guidance issued under s.182 in October 2011 did not include this offence in paragraph 11.29. This indicates the offence has now become a particular concern.)

Section 11.28 states that *'where 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.'*

Home Office Immigration is concerned with the apprehension, detention and management of persons illegally or unlawfully in the UK and as such their procedures and protocols are not directed towards supporting or promoting the Licensing Act and the licensing objectives, nor are they considered a responsible authority for the purposes of the legislation at this time.

The Immigration, Asylum and Nationality Act 2006 amends immigration, asylum and nationality acts in relation to appeals; entry; deportation and removal of persons.

It also introduces legislation on employment of adults subject of immigration control; issue of employment penalty notices; associated employment offences; providing passenger, crew and freight information; a duty to share information; provide disclosure to other agencies and additional powers for searching, fingerprinting, examining and seizure of documents together with connected offences.

However, this particular legislation is ineffective in dealing with the specific issue of this review application and the consideration of this matter at a licensing hearing is therefore wholly appropriate.

Where an employer pays wages to illegal workers off record with no tax or national insurance deductions which are then deliberately omitted from an employers End of Tax Year P35 returns to HMRC, the employer may be dealt with by means of the Fraud Act 2006.

Similarly, the HMRC may take action as a civil proceedings case and raise a tax debt against the business.

Such an Employer may also potentially breach further regulations in Appendix A attached.

Unfortunately any litigation or civil proceedings in relation to these offences is strictly confidential and the HMRC will not disclose any details in this respect to a public body, hence the specifics of this incident cannot be disclosed.

This is a delicate and sensitive area and HMRC would be unable to disclose details about its investigations if those details were to be revealed in a public forum like a Hearing as this would break the HMRC/Taxpayer confidentiality guidelines.

HMRC *does* publish details of serious tax defaulters on their website for the world to see, but the cases have to satisfy strict criteria. It is possible that some of the cases may find their way on to the Serious Defaulters Published list but the timing will rarely suit the timescale of Licensing Hearings. For example – HMRC, & Lincolnshire Police visited a premises in Horncastle with Home Office Immigration in September 2012 and the tax issues arising from that case are only just being brought to a conclusion and being submitted to the HMRC Serious Defaulters team for consideration.

Licence Holders also have a responsibility to ensure the safety of those using their premises (Guidance to Licensing Act 2003 section 2.8).

There are obvious concerns in relation to public safety as to the competency and training of these staff with respect to matters of food preparation and levels of personal hygiene, even though this may be covered by other legislation.

It should be quite apparent that there are potentially numerous criminal offences which may apply to the employment of illegal workers at this particular premise.

Disproportionate weight should not be placed upon whether there is sufficient evidence to determine whether the Licence Holder knowingly employed illegal workers as being the only relevant crime to this review.

The individuals working illegally are committing criminal acts in their own right, irrespective of whether the employer is aware or not.

Illegal working has harmful social and economic effects on the UK; It undercuts British businesses and their workers that stay within the Law and exploits migrant workers. As long as there are opportunities for illegal working the UK will be an attractive place for illegal migrants. This why it is imperative to put a stop to employers breaking the law by taking tough and robust action against those who do so.

There is evidence that some workers employed illegally are paid less than the minimum wage, do not pay tax and may be doing dangerous work that breaks health and safety regulations. Employers who use illegal workers may do so because they want to avoid providing minimum standards, such as the National Minimum Wage and paid holidays. This is harmful to the workers involved and enables dishonest employers to gain an unfair advantage over competitors who operate within the law.

There can be no doubt that the premises licence granted by the authority, offers the provision of licensable activities to be conducted at this venue and that employing illegal workers to facilitate this activity is to the employers financial benefit and to the detriment of law abiding competitors.

It is also obvious that illegal workers are prone to exploitation by their employers in that;

Illegal workers are unable to declare themselves to the authorities to claim any sort of financial support or benefits as this would render them liable to detention, and consequently they are more than likely poorly paid for the hours they are required to work and are not subject to the benefit of a minimum wage or restricted hours as prescribed in law.

They are not provided in most cases with anything other than the most basic of living accommodation nor are they afforded the benefit of the protections offered by UK employment legislation.

Illegal Working in the United Kingdom and Essex is not merely a result of chance happening and should be considered in its true context.

Illegal workers are by nature transient and do not tend to remain in any location for any length of time in order to reduce their chances of detection.

They do not put their name to any official documents and do not rent, lease or purchase property.

They have no recourse to public funds and live beneath the radar to avoid detection by the Agencies.

In order to do this, there has to be a support network in place or they would all be encountered living in the streets and detected in that manner. The support network is provided in the main but not exclusively by, Organised Crime Groups.

Essex Police have identified that illegal workers tend to be harboured and sheltered either in rudimentary accommodation on site or in property nearby, owned or operated by the Licence Holder or their associates.

These workers are predominantly paid below the minimum wage, if at all, as the employers know the worker cannot complain to any Authority.

To this end, they are open to exploitation to the financial benefit of the employer.

Essex Police accept that there are some occasions where false/fake documents are created for some workers to fool/deceive employers or authorities but in our experience this is an exception to the norm. In some cases, the employers are complicit in this whilst others may be considered victims of this fraud. But recovering false documentation is rare in these circumstances.

Employment at licensed premises can represent the terminal point of organised human trafficking in some instances and in the exploitation of these workers. In other cases, it is the means of resort for persons whose legitimate right to remain in the UK has expired.

Responsible and caring employers do not employ illegal workers and take measures to ensure this. Large and well known branded restaurants' and takeaway operators (McDonalds and KFC for example) are not renowned for being identified as employing illegal workers for this very reason.

It is not credible that employers do not know or suspect that the persons they are employing are not entitled to work. These are not merely cases of mistakes or lack of knowledge but deliberate ignorance or actual knowledge of the fact.

At the very least, the employers should demonstrate responsibility and due diligence in determining that persons they employ are entitled to work under the auspices of a licence granted by the Licensing Authority.

Allowing this premise to continue to operate with the benefits of a premises licence will merely serve to perpetuate the criminal activity and human exploitation already apparent from the findings of this Immigration, HMRC and Police visit, thereby undermining the licensing objectives for the prevention of crime and disorder and public safety.

It is the respectful submission as the representative of of the Chief Constable that it is an **appropriate** step to revoke the premises licence in order to promote the licensing objectives.

Please provide as much information as possible to support the application (please read guidance note 3)

Please see statements of witness and documentation from Home Office Immigration officers.

Please tick ✓ yes

Have you made an application for review relating to the premises before

If yes please state the date of that application

Day	Month	Year
┆	┆	┆
┆	┆	┆
┆	┆	┆
┆	┆	┆
┆	┆	┆
┆	┆	┆
┆	┆	┆

If you have made representations before relating to the premises please state what they were and when you made them

Please tick ✓ yes

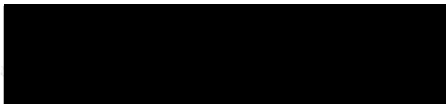
- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate
- I understand that if I do not comply with the above requirements my application will be rejected

IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION

Part 3 – Signatures (please read guidance note 4)

Signature of applicant or applicant’s solicitor or other duly authorised agent (please read guidance note 5). **If signing on behalf of the applicant please state in what capacity.**

Signature



Date

25/07/2016

Capacity **for and on behalf of Chief Constable of Essex Police**

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 6)

STEPHEN SPARROW
COUNTY LICENSING OFFICER
WITHAM POLICE STATION
NEWLAND STREET

Post town
WITHAM

Post Code
CM8 2AS

Telephone number (if any)

If you would prefer us to correspond with you using an e-mail address your e-mail address (optional) Licensing.applications@essex.pnn.police.uk

Notes for Guidance

1. A responsible authority includes the local police, fire and rescue authority and other statutory bodies which exercise specific functions in the local area.
2. The ground(s) for review must be based on one of the licensing objectives.
3. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
4. The application form must be signed.
5. An applicant’s agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
6. This is the address which we shall use to correspond with you about this application.

Appendix A

The Income Tax (Pay As You Earn) Regulations 2003, (SI 2003 No. 2682)

Regulations 8, 21 - deduction and repayment of tax under the appropriate code.

- Regulations 22, 23, 28, 29, 31 - calculation and making of deduction or repayment.
- Regulations 9, 46, 47, 48, 49, 58 - employee for whom code not known.
- Regulation 66 - deductions working sheet (DWS).
- Regulations 68, 69 - payment of tax monthly by employer.
- Regulations 70 - payment of tax quarterly by employer.
- Regulation 97 - retention of employer's records.

Social Security Contributions and Benefits Act 1992

- Section 3 and paragraph 2 of Schedule 1 - earnings and earnings periods.
- Section 6 - liability to pay Class 1 NICs.
- Sections 8 & 9 - calculation of primary and secondary Class 1 NICs.
- Paragraph 3 of Schedule 1 - method of paying Class 1 NICs.
- Paragraph 3B of Schedule 1 - transferring secondary NIC liability to an employee.
- Paragraph 6 of Schedule 1 - power to combine collection of NICs with income tax.
- Paragraph 7 & 7A of Schedule 1 - penalties in the case of returns.
- Paragraph 7B & 7BZA of Schedule 1 - collection of NICs otherwise than through the PAYE system.

Social Security (Contributions) Regulations 2001, (SI 2001 No 1004)

- Regulations 2 -31 - assessment of Class 1 NICs.
- Regulation 67 and Schedule 4 - makes provision for Class 1 NICs to be paid, accounted for and recovered in a like manner as PAYE.
- Paragraphs 6 & 7(13) of Schedule 4 - prepare and maintain a DWS.
- Paragraph 7 of Schedule 4 - calculation of Class 1 NICs deductions.
- Paragraph 10 of Schedule 4 - payment of NICs monthly by employer.
- Paragraph 11 of Schedule 4 - payment of NICs quarterly by employer.
- Paragraph 11A of Schedule 4 - payment of NICs in respect of retrospective earnings.
- Paragraph 22 of Schedule 4 - end of year returns.
- Regulation 26 of Schedule 4 - retention of employer's records.

RESTRICTED (when complete)

WITNESS STATEMENT

(CJ Act 1967, s.9 MC Act 1980, ss.5A(3) (a) and 5B; MC Rules 1981, r.70)

URN

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Statement of: **JUSTIN DAVIS**.....

Age if under 18: **OVER 18**. (If over 18 insert "over 18") Occupation: **CHIEF IMMIGRATION OFFICER**

This statement (consisting of 2 pages signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated anything which I know to be false or do not believe to be true.

Signature Date: 27th July 2016

Tick if witness evidence is visually recorded (supply witness details on rear)

I am a Chief Immigration Officer of the Home Office Immigration Enforcement Immigration Compliance & Engagement Team East of England, based at Custom House, Viewpoint Road, Felixstowe, Suffolk IP11 3RF. I have been an Immigration Officer since April 1991 and have worked at a number of ports of entry to the UK, although my main work has been in the areas of enforcement and crime investigation. My current role is as the senior officer of the Immigration Enforcement arrest team, operating in the counties of Suffolk and Essex, responding to intelligence relating to alleged immigration offences in this area, liaising with local police and other law enforcement agencies and supporting other government departments, local authorities and relevant other organisations in enquiries or investigations relating to non British nationals. As part of my duties I have responsibility for the compilation and custody of Home Office records in both written and electronic form. These records are compiled by officers and members of staff during the course of their duties, from information which they have particular and specific knowledge of at the time of compiling, in light of the volume of records compiled and the length of time that has elapsed, they cannot reasonably be expected to have any recollection of the matters dealt with in relation to a specific record.

At the request of Essex Police County Licensing Officer Stephen SPARROW, I have examined Home Office records relating to an enforcement visit conducted to the premises of "IL BACIO" located at 19b Forest Drive, Theydon Bois, Essex CM16 7EX and the records relating to a Colombian male who was arrested at that premises.

Home Office records show that on 30 June 2016 Immigration Officers from this team executed a

Signature Signature Witnessed by:

Page 27

RESTRICTED (when complete)

Continuation of Statement of: **JUSTIN DAVIS**

Page 2

search warrant at the premises of "IL BACIO" as previously detailed. The warrant was issued to locate and arrest a Colombian male named [REDACTED] born [REDACTED]. Home Office records show that a man of that name and identity had previously arrived in the United Kingdom on 24 July 1999 and had sought leave to enter outside of the immigration rules. Following consideration of his application and a lengthy appeal process, [REDACTED] had been removed from the United Kingdom to Colombia on 09 May 2007 and since that date had not been issued a visa to return to the United Kingdom or ever been granted any further leave to enter or admitted in any other capacity.

During the execution of the search warrant on 30 June 2016, a male who gave his identity as [REDACTED] was encountered as one of the kitchen staff and was detained under the Immigration Act 1971 (as amended). He admitted to the arresting officer that he had entered the United Kingdom in a friend's car and did not have a visa for the United Kingdom; accordingly he had entered the United Kingdom without the leave of an Immigration Officer and was determined to be an illegal entrant to the United Kingdom. I authorised that he be given notice of this and of his liability to removal and that he be detained in order to enforce that. A subsequent search of [REDACTED] bedroom above the premises recovered his Colombian national identity card.

Home Office records show that [REDACTED] admitted to the arresting officer that he had been working at the premises for "a couple of months" and that he was paid "£300/£400" depending on his hours per week. They further show that a man who gave his name as [REDACTED] attended the premises and identified himself as the manager of "IL BACIO" and in dealings with officers stated "That man is not illegal, I have known him for 20 years, he works for me, he is not illegal". [REDACTED] was served with a notice of potential liability for a civil penalty for employing a person who does not have permission to work in the United Kingdom, contrary to section 15 Immigration, Asylum & Nationality Act 2006.

[REDACTED] remains detained under the Immigration Act, pending the issue of an emergency travel document by the Colombian embassy. The Civil Penalty notice has been submitted to the Civil Penalty Compliance Team for processing and representations by the business owner.

I make this statement of my own free will from records that I have seen and accessed today, 27 July 2016. I am willing to attend court if necessary.

Signature
2004/05(1)

[REDACTED SIGNATURE]

Signature Witnessed by:

RESTRICTED (when complete)

WITNESS STATEMENT

(CJ Act 1967, s 9 MC Act 1980, ss 5A (3) (a) and 5B; MC Rules 1981, r.70)


URN

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Statement of: MARK GEAR.....

Age if under 18 **Over 18** (If over 18 insert "over 18") Occupation: Immigration Officer



This statement (consisting of 3 page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated anything which I know to be false or do not believe to be true.

Signature  Date: Friday 01st July 2016

Tick if witness evidence is visually recorded (supply witness details on rear)

I am an Immigration Officer currently based at EAST OF ENGLAND ICE, CUSTOM HOUSE, VIEWPOINT ROAD, FELIXSTOWE, SUFFOLK, IP11 3RF. I am an Arrest trained Immigration Officer. On THURSDAY 30th JUNE 2016 I was tasked to visit IL-BACIO, 19B FOREST DRIVE, THEYDON BOIS, EPPING, CM16 7EX..

My role on the visit was Arrest Officer being covered by IO CLOUTING and to enter the premises through the front door.

The information provided to me at the briefing prior to the Operation was that a male by the name of  born  a Columbian National was working illegally at the address using a false ITA identity document.

At approx 16:50hrs I entered the premises through the front door, I went straight to the kitchen area which was at the back of the premises. At this point IO CLARKE had arrived at the back of the premises. All persons in the kitchen were asked to come through to the front of the restaurant so that they could be checked.

When the kitchen staff were sitting down I asked generally are you all European nationals as one of the male indicated this, one of the male said no I am from Columbia.

Signature: ...  ... Signature Witnessed by:

RESTRICTED (when complete)

Continuation of Statement of: Mark GEAR

Page 2

I then spoke to the Columbian male. He asked me if I could have a quiet chat with him on the other side of the room, I then showed him my notebook and pointed to the name [REDACTED] [REDACTED] born [REDACTED] and asked him is this you, he confirmed,

I then arrested [REDACTED] as a person liable for removal from the United Kingdom under Paragraph 17(1) Schedule 2 of the Immigration Act AA. [REDACTED] stated that he understood and that he is aware that he has no permission to remain in the United Kingdom.

[REDACTED] stated that he arrived in the United Kingdom by car after his removal date back in 2008 or 2009. He claims that he showed the Immigration Officer his PPT and he was allowed to enter, although he cannot remember where he entered. He claims that he lives with friends and not willing to advised us of his address.

I used the RAPID mobile fingerprint check machine, this returned a no match result. Paragraph 18.

I then asked him a couple of questions relating to his employment.

Q, WHAT ARE YOU DOING HERE?

A, WORKING

Q, HOW LONG HAVE YOU WORKED HERE?

A, COUPLE OF MONTHS

Q, WAGES?

A, DEPENDS ON HOURS WORKED

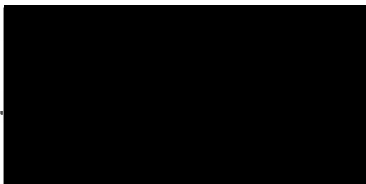
Q, WORK FOR A WEEK

A, £300/400 BUT DEEPENDS.

I had been previously advised of a number of warning markers that where allegedly linked to the subject, it was alleged that he was a heavy drug user and seller and that he has been known to

Signature: [REDACTED]
2004/05(1)

..... Signature Witnessed by:



RESTRICTED (when complete)

Continuation of Statement of: Mark GEAR

Page 3

threaten people with knives, for this reason I placed him in handcuffs in the front stack position checking for tightness, I then searched the subject as he had come directly from the kitchen where a number of sharp implements are used. This was done under Section 25B of Schedule 2 of the Immigration Act AA.

I was then advised that the manager of the premises who was speaking to IO DENHAM had stated that [REDACTED] lived upstairs in the employees accommodation flats.

[REDACTED] confirmed this.

CIO JACK DAVIS authorised a search to be conducted under Section 25A Schedule 2 of the 1971 Immigration Act AA.

A search was completed, a Columbian ID card was found and seized by CIO JACK DAVIS,

[REDACTED] was allowed to change out of his work clothes and I removed the handcuffs, they were not re-applied when I led him to the vehicle as he had been totally compliant all the way through and not displayed any kind of warning signs to me.

[REDACTED] was then taken to custody by IO CLARKE, IO NEWELL AND IO DENHAM.

I make this statement with my recollection of events and my original notes made at scene.

Signature: ...
2004/05(1)



Signature Witnessed by:

RESTRICTED (when complete)

WITNESS STATEMENT

(CJ Act 1967, s.9 MC Act 1980 ss.5A (3) (a) and 5B, MC Rules 1981, r 70)

URN

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Statement of:James DENHAM 15115.....

Age if under 18 **Over 18** (If over 18 insert "over 18") Occupation: Immigration Officer

This statement (consisting of 2 page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated anything which I know to be false or do not believe to be true.

Signature [redacted] Date: 05/07/016

Tick if witness evidence is visually recorded (supply witness details on rear)

On Thursday 30th July 2016 I was on duty as an arrest trained Immigration Officer. I gave other officers on the visit a pre visit brief as I was tasked to be the Officer in charge (OIC) of the visit. Attending the briefing were Immigration Officer's CLOUTING, NEWELL, CLARKE, GEAR and Chief Immigration Officer DAVIS. The target premise for the visit was IL BACIO, 19b Forest Drive, Theydon Bois, Epping, Essex, CM16 7EX. We were to enter the premises on a 17(2) schedule 2 search warrant. This warrant was to search one named immigration offender, [redacted] born [redacted] a national of Columbia. It was suspected that [redacted] was working at the restaurant after an allegation had been received at the Home Office.

During the pre visit brief that I conducted, I informed officers of their role's and [redacted] immigration status. I informed the officers that I was the officer in charge and that I would execute the search warrant on entry and speak with the person in charge of the restaurant whilst officers conducted status checks whilst attempting to encounter the target of the visit.

Signature: [redacted]

Signature Witnessed by:

RESTRICTED (when complete)

Continuation of Statement of: James DENHAM

Page 2

At approximately 1650hrs I entered through the front door of the restaurant and walked towards the bar area. I spoke with a female behind the bar and stated that I was an immigration officer and that we had a search warrant to search the premises for a suspected offender. At this time the female who spoke broken English said that she was not in charge and that she did not know where the manager was. During this time, my colleagues had encountered all members of staff and sat them down in the restaurant area. IO GEAR located and spoke with a male who confirmed he was the target of the warrant. IO GEAR arrested the target and proceeded to speak with him. Approximately 5 minutes later a white van pulled up at the rear door which I could see through the open door way by the bar. A male walked towards me and at this time I asked him if he was the manager, the male ignored me, walked past and towards the other immigration officers speaking to the staff. I asked the male once again if he was in charge or the manager to which he stated he was. I explained to him that a search warrant had been issued from the magistrate's court in order to search the restaurant for a suspected immigration offender. The manager I now know to be [REDACTED] looked at the warrant and stated words along the lines of 'THAT MAN IS NOT ILLEGAL, I HAVE KNOWN HIM FOR 20 YEARS, HE WORKS FOR ME, HE IS NOT ILLEGAL.' I stated to [REDACTED] that the target of the warrant was an immigration offender and that he had been arrested and would be taken to the local police station. I asked [REDACTED] for his details for the purpose of the Notice of Person Liable, at this time he threw his driving license on the bar counter and took his jacket off in a very aggressive manor and threw this on the floor. I asked [REDACTED] to calm down and explained that he was liable to a fine and that he had employed [REDACTED] when he had no permission to be in the United Kingdom. [REDACTED] reiterated that he had known [REDACTED] for 20 years and that he was allowed to work. I

Signature: [REDACTED]
 2004/05(1)
 [REDACTED]

Signature Witnessed by:

RESTRICTED (when complete)

Continuation of Statement of: James DENHAM

Page 3

handed [REDACTED] he NOPL and explained that the team who investigate illegal working would be in touch and he would need to provide evidence that he conducted the correct right to work checks on [REDACTED] This was the end of my conversation with [REDACTED] and I left the premises along with other officers. [REDACTED]

Signature: [REDACTED]
2004/05(1)

Signature Witnessed by:

From: Gordon Ashford 42076878
To: Stephen Sparrow 42006895
Subject: case
Date: 23 May 2016 08:49:47

Philip Kolvin QC reports on an important High Court ruling after a restaurant owner appealed the revocation of his premises licence over the employment of an illegal worker.

In *East Lindsey District Council v Abu Hanif (trading as Zara's restaurant and takeaway)* a High Court Judge has restored a licensing authority's decision to revoke a premises licence for employment of an illegal worker.

Zara's restaurant traded in East Lindsey. The owner and licensee was Mr Hanif. After a raid by the immigration authorities it was discovered that Mr Hanif was employing an illegal worker.

The Police brought review proceedings and the licensing authority revoked the premises licence. Mr Hanif appealed. At the appeal, which was heard by District Judge Veits, his counsel argued before the District Judge that, since Mr Hanif had not been prosecuted for employing an illegal worker under section 21 Immigration, Asylum and Nationality Act 2006, but had merely been given a civil penalty under section 15 of that legislation, the crime prevention objective was not engaged.

At the hearing of the magistrates' appeal, it was established that Mr Hanif had employed the illegal worker without paperwork showing a right to work in the UK, he had paid him cash in hand, he paid him less than the minimum wage, he did not keep or maintain PAYE records and that, while he had deducted tax from the worker's salary, he failed to account to the HMRC for the tax deducted.

The District Judge held that because prosecution proceedings had not been brought, and no crime had been reported, the crime prevention objective was not engaged; and that in any event the failure to pay the minimum wage had not been the main basis of the licensing authority's decision.

The council appealed by way of case stated. It argued that it is not necessary for a crime to have been reported, prosecuted or established in a court of law in order for the crime prevention objective to be engaged. The licensing objectives are prospective, and are concerned with the avoidance of harm in the future.

The matter came before Mr Justice Jay. He accepted all of the council's arguments. In his view, there was clear evidence of the commission of criminal offences, both in relation to the non-payment of the minimum wage and also tax evasion. As for the offence of knowingly employing an illegal worker, he considered that, based on the fact that the employee could not provide the requisite paperwork, a national insurance number or a tax code, the clear inference was that Mr Hanif well knew that he was employing an illegal worker. A deterrent approach was justified on the facts.

Mr Justice Jay decided that remission of the case to the Magistrates' Court was not appropriate, since he considered that the council's decision to revoke was clearly correct. In reaching that decision, the Learned Judge pointed out that employing an illegal worker involves not only defrauding the Revenue, but also the exploitation of vulnerable individuals including, here, by not paying them the minimum wage.

The Learned Judge ordered Mr Hanif to pay costs in the High Court in the sum of £15,000 and ordered costs of the Magistrates' proceedings in the sum of £4,000.

Reflecting the importance of the principle that it is not necessary for a prosecution to be brought in order for the crime prevention objective to be engaged, Mr Justice Jay certified the case as appropriate for citation in future cases under the relevant Practice Direction.

This means that the judgment can be cited in future cases.

Philip Kolvin QC is head of chambers at Cornerstone Barristers. Together with David Dadds, he appeared for East Lindsey District Council, instructed by Dadds LLP. Philip can be contacted on 020 7242 4986 or by email.

Gordon Ashford
AMBII, AMIoL
Substance Misuse & Licensing Coordinator
Licensing Hub
Police Station
Newland Street
Witham
Essex
CM8 2AS
Direct Dial: 01245 452036
Internal: Ext: 406361
Please visit our website at: www.essex.police.uk/licensing

APPENDIX B.



19 B Forest Drive Theydon Bois

Date: 17/12/2015

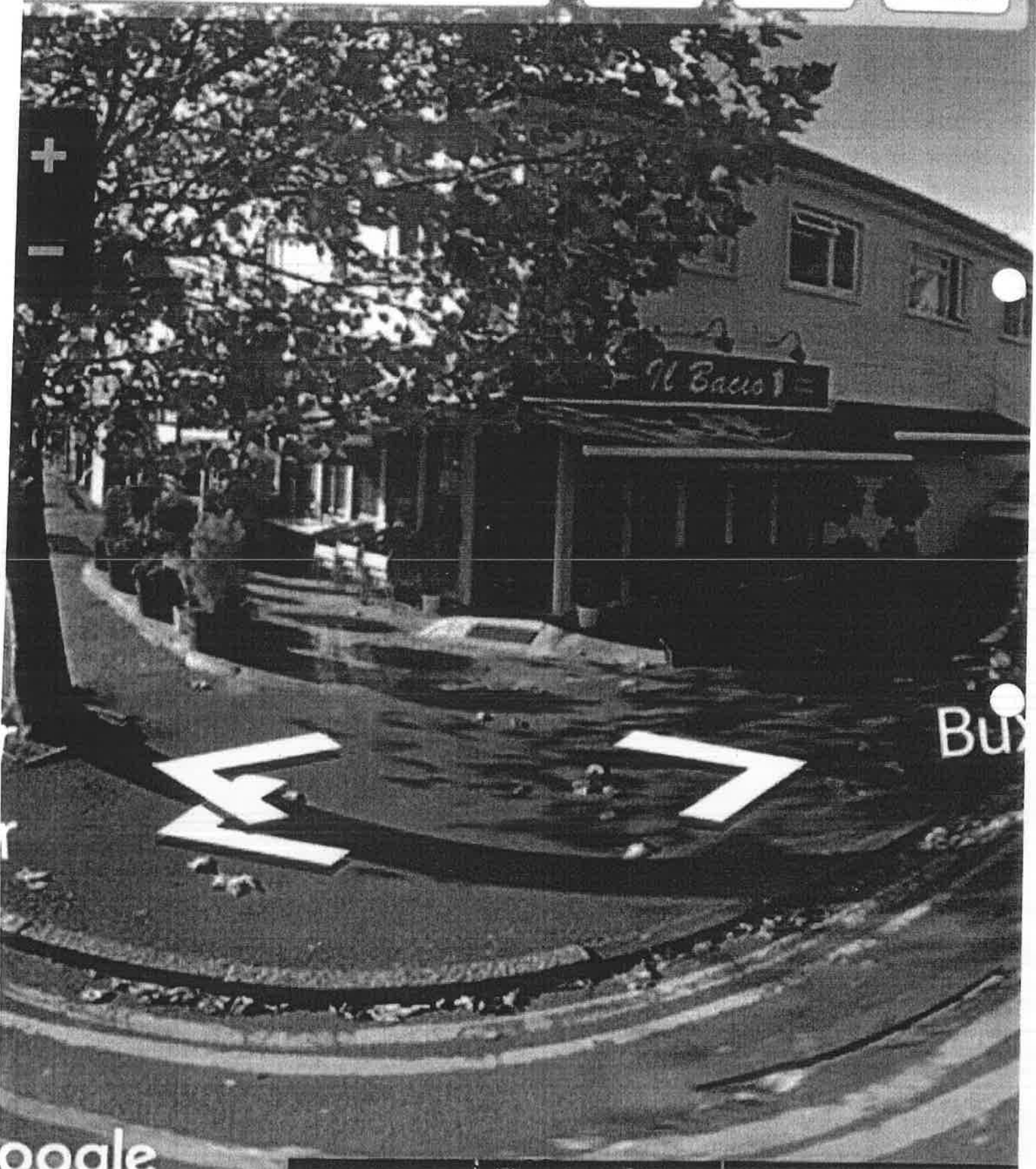
Scale: 1:1,000

Name: argis



Buxton Rd, Theydon Bois, Epping, ...

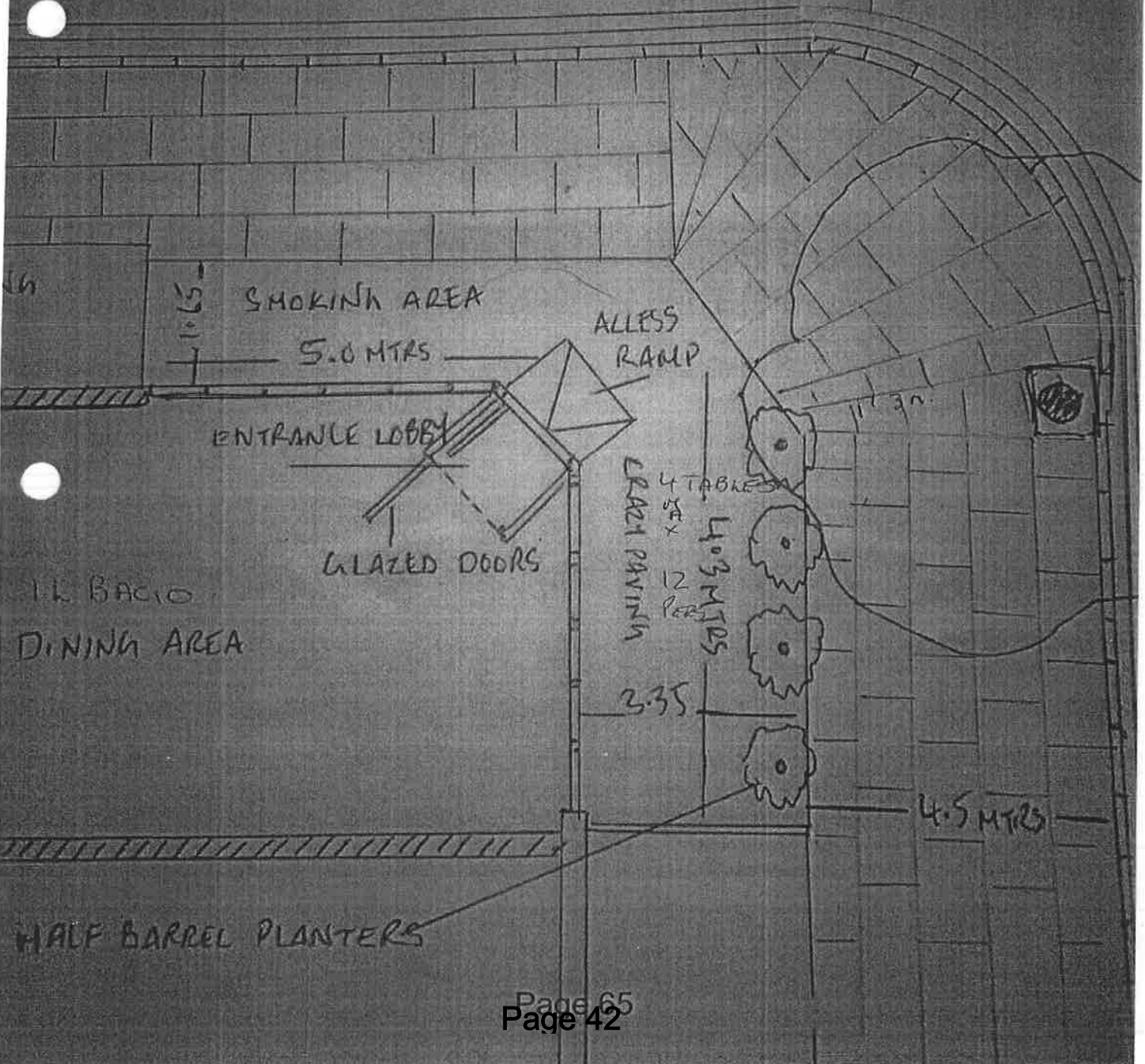
Buxton road they



oogle

BUXTON ROAD

BARCEL DRIVE



SMOKING AREA
5.0 MTRS

ACCESS RAMP

ENTRANCE LOBBY

GLAZED DOORS

IL BACIO
DINING AREA

4 TABLES
5X4
4.3 MTRS
12 SEAT

3.35

4.5 MTRS

HALF BARREL PLANTERS

[REDACTED] Forest Drive
Theydon Bois
Essex
[REDACTED]

Epping Forest District Council
Licensing Unit Civic Offices
High Street
Epping
Essex CM16 4BZ

23rd August, 2016

Dear Sir or Madam,

Re: Licence Review for Il Bacio, 19B Forest Drive, CM16 7EX

We were very pleased to receive a letter from you stating that a review of the above licence is being sought by Essex Police, as there is a long history of disturbance and public nuisance emanating from these premises and we feel that a review of the licence is long overdue.

In our opinion, it is highly questionable whether there should be a licence for these premises at all, and we were extremely disappointed that an extension was granted in March, albeit with conditions (which, incidentally, have been heartily ignored).

Our objections to the licence have not changed since the application for that extension and we have largely reiterated them here, together with further concerns that have evolved since the licence was extended.

Public Nuisance

There is a well-documented history of noise issues emanating from this establishment. The proprietor has already been in receipt of one noise abatement order, and it seems only a matter of time before another is on its way to him. As well as live music events (which continue to happen, despite promises to the council that they would not occur in the future), there is a lot of general noise, especially in the summer months. Diners have always sat outside and alcohol has been served outdoors ever since the restaurant opened in October 2013 (witnessed on at least one occasion by Jim Gordon of EFDC), despite the lack of a license for this area until only recently. When the extension to the licence was granted in March, it stated that the license holder could only serve in the outdoor area *if certain conditions were met*. For example, outside diners must be supervised by a member of staff, tables and chairs must be cleared by a certain time, taxis must not beep to call customers out, etc. These

conditions have been widely ignored. We have timed photographic evidence of many occasions where the conditions have been broken.

Even when there are only diners indoors, the restaurant refuses to make any effort to keep the noise down by simply closing the front door. We have on several occasions had to resort to going over and closing it ourselves. In addition at the end of the evening, we hear the sounds of people shouting their goodbyes as they get into cars to leave, beeping to say goodnight to each other, deliberately revving car engines, laughing and yelling, regularly swearing – often well after midnight. On one occasion a neighbour caught someone who had just left the restaurant, clearly inebriated, urinating on the wall of the block of flats next door to us.

Public safety and the protection of children from harm

The diners and indeed, the proprietor of this restaurant have always and continue to park very dangerously on the double yellow lines on Buxton Road and Forest Drive. This illegal parking greatly reduces visibility of approaching vehicles and pedestrians, blocking driveways and access to Buxton Road, and sometime blocking the dropped kerbs for residents with reduced mobility, those with mobility aids and , for example, parents with young children in buggies and prams. The problem is worsened as a result of this junction being used as an unofficial “turning circle”. We have countless photographs showing this illegal parking (often including the owner’s vehicles, one of which helpfully has a personalised number plate showing his name) that happens on virtually a daily basis. We know, therefore, that this is a direct result of this restaurant coming to the area, as for the ten years we lived here before the restaurant opened, this was only a very occasional problem. We have, now, a three year old son so you can understand our concern at any dangerous driving on our door step which could occur as a result of someone parking on these double yellow lines.

It has been claimed before that parking is a separate issue to licencing. However, the fact remains, if these premises had no licence these people would not be parking there and the associated dangers would be correspondingly reduced.

In addition, we are aware of a problem whereby diners allow their children (sometimes very young children) to play in the street, kicking footballs and fooling about on bicycles, while the parents are eating and socialising in the restaurant. The problem is that these unsupervised children often play in the road itself, which is extremely dangerous for all the reasons previously mentioned. Being children they are more focussed on the game and each other than on the traffic and other possible dangers. We heard anecdotally that one such child did actually get hit by a car earlier this year after running out from between parked cars. The road is hardly a suitable playground and it is only a matter of time before there is a serious accident. Given the history of this site and the many warnings which have been sent to the council by us and other concerned neighbours, it

astounds me that this preventable situation is allowed to continue. If there is a really serious incident, especially involving a child, this neighbourhood and, doubtless, the council too are going to be devastated.

Your letter states that other considerations, such as Planning Regulations cannot be taken into account in this review. However, it would not be a full picture of the situation if we did not at least mention that they have also flouted their planning conditions many times and indeed, been successfully prosecuted by EFDC for doing so.

Finally, we read in the local press that a Colombian worker at the premises was found to be in the country illegally. The fact that such a person has come to be working at this restaurant is hardly the sign of a diligent and responsible employer, and certainly calls into question his suitability as a license holder.

We are far from the only local residents who feel negatively towards this establishment. Earlier this year when the licence extension was sought, we spoke to people living in Forest Drive and Buxton Road and asked them to sign a petition, objecting to the licence extension for the reasons above. 30 people out of 32 signed it, and the remaining 2 had sympathy but felt it did not affect them strongly enough to sign. We ran out of time to ask anyone else, but this gives a strong indication of how the nearest neighbours feel.

[REDACTED]

We trust the council will make suitable sanctions against this restaurant and restore peace and safety to our neighbourhood.

Yours sincerely,

[REDACTED]

Dr. and Mrs. D.J. Hirst

Formatted

Mitchell Solicitors

Maxet House
Liverpool Road
Luton
Bedfordshire LU1 1RS

Tel: 01582 414 002
Fax: 01582 400 166
Emergency 24hr: 07711 342 570
Email: mitchellsolicitors@fsmail.net

Mrs N Clark
Licensing Compliance Officer
Epping Forest District Council
Civic Offices
High Street
Epping
Essex
CM16 4BZ

Your Ref: WK/201625978
Our Ref: GH

16th August 2016

Dear Sirs,

**Re: Licensing Act 2003 - Premises License Review Application in respect of Il Baccio 19B
Forest Drive Theydon Bois Epping Essex CM16 7EX**

We write to inform you that we act for Mr L Funeda in the above matter.

We understand that Mr Funeda has informed you that he is unable to attend the Review Application due to commitments that day which were in place prior to receiving notification of the Review date. On that basis Mr Funeda has instructed us to attend the Review Application on his behalf and we make it clear that he has no objection to the review going ahead on 19th September.

Mr Funeda objects to Essex Police's proposal to revoke the premises licence and representations to this effect will be made on his behalf at the hearing. In order to comply with s.51(3) and 52(8) of the Licensing Act 2003, however, we would make the following representations at this stage, which will be expanded upon orally.

Mr Funeda accepts that Mr [REDACTED] was working at the restaurant and that he did not have a legal right to work. However, this fact only became known to Mr Funeda after the warrant was executed by the Immigration Service at the restaurant on 30th June 2016.

The restaurant had a vacancy for a chef and after talking to employment agencies and other restaurants Mr [REDACTED] came forward and applied for the job. The employment history that he reported, which was confirmed informally, led Mr Funeda to believe that there was no question of Mr [REDACTED] having the right to work in this country. Mr [REDACTED] was asked to

Solicitors: Vincent Mitchell, Gavin Harris, Simon Hancock
Nesta Gresham

This firm is regulated by the Solicitors Regulation
Authority Reg no 426935 (SRA)

provide the required documentation for the appropriate confirmatory checks to be carried out, however, he stated that his identification documents were with his brother who looked after them and that he would provide the documents in due course. Mr [REDACTED] never produced any documents to Mr Funeda before the warrant was executed and therefore it is accepted that the proper checks were not carried out in this one instance. Mr Funeda makes clear that this was the first and only time that such a position has occurred and that the proper checks and procedures were followed when hiring every other employee. The hiring of an illegal worker was not intentional, the omission came about in part due to the stress of running the restaurant and accepting Mr [REDACTED] explanation. Mr [REDACTED] was given free lodgings above the restaurant and was paid expenses. Once he provided the required documentation to Mr Funeda he would be paid the difference in his wages and the appropriate steps would have been taken with regard to tax and NI

Mr [REDACTED] the restaurant manager, is alleged to have said to the Immigration Officers 'That man is not illegal, I have known him for 20 years, he works for me, he is not illegal.' Mr [REDACTED] cannot remember exactly what he said at the time and accepts that he was distressed and emotional at the scene he returned to. What he intended to convey was that he knew that Mr [REDACTED] had worked at other restaurants which were known to Mr [REDACTED] for nearly 20 years and on that basis Mr [REDACTED] believed he must be a legal worker. Neither Mr [REDACTED] nor Mr Funeda had ever met Mr [REDACTED] before he applied for the job as chef.

Mr Funeda would invite the Committee to recognise that this is the first occasion upon which any issue like this has ever arisen in respect of restaurants with which he is involved, despite having long term interests in several establishments. He is deeply apologetic for his unintentional error and has already taken steps to ensure that no similar situation could ever be allowed to develop in the future.

Please contact us if we can be of any assistance.

Yours faithfully,

Mitchell Solicitors

Solicitors: Vincent Mitchell, Jeanette Mitchell,
Gavin Harris, Simon Hancock,
Dominique Mitchell O'Neil, NESTA GRESHAM

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Authority (SRA) no 426935 (SRA)

PREMISES LICENCE

Part A



Premises licence number:

LN/000000352

Part 1 – Premises details:

Postal address of premises, or if none, ordnance survey map reference or description:

Il Bacio
19B Forest Drive, Theydon Bois, Epping, Essex, CM16 7EX

Post Town: Post code: CM16 7EX

Telephone number:

Where the licence is time limited the dates: N/A

Licensable activities authorised by the licence:

Sale of Alcohol

The times the licence authorises the carrying out of licensable activities:

Monday to Sunday 11.00 to 23.00

The opening hours of the premises:

Monday to Sunday 11.00 to 23.00

Where the licence authorises supplies of alcohol whether these are on and / or off supplies:
On only

Name, (registered) address, telephone number and e-mail (where relevant) of holder of premises licence:
Mr Luigi Funedda
19B Forest Drive, Theydon Bois, Epping, Essex CM16 7EX

Registered number of holder, for example company number, charity number (where applicable):

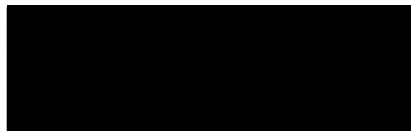
N/A

Name, address and telephone number of designated premises supervisor where the premises licence authorises the supply of alcohol:

Mrs Andreea Michela Mosteanu



Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises for the supply of alcohol:



Mandatory Conditions

All Premises Licence authorising supply of alcohol

The licence is granted subject to the Mandatory conditions for sale of alcohol as set out in the Licensing Act 2003 as amended by the Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010 and Order 2014.

1. No supply of alcohol may be made under the Premises Licence –
 - (a) At a time when there is no Designated Premises Supervisor in respect of the Premises Licence; or
 - (b) At a time when the Designated Premises Supervisor does not hold a Personal Licence or his Personal Licence is suspended.

2. Every supply of alcohol under the Premises Licence must be made, or authorised by a person who holds a Personal Licence.

3. (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.

(2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises.
 - a) games or other activities which require or encourage, or are designed to require or encourage, individuals to –
 - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
 - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
 - b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
 - c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;

- d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner.
 - e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).
4. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.
5. (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.
- (2) The designated premises supervisor in relation to the premises licences must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
- (3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either:-
- (a) a holographic mark or
 - (b) an ultraviolet feature.
6. The responsible person shall ensure that –
- (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures –
 - (i) beer or cider: ½ pint;
 - (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
 - (iii) still wine in a glass: 125 ml; and
 - (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and

- (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.

Minimum Drinks Pricing

1. A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.

2. For the purposes of the condition set out in paragraph 1 –

- (a) “duty” is to be construed in accordance with the Alcoholic Liquor Duties Act 1979

- (b) “permitted price” is the price found by applying the formula –

$$P = D + (D \times V)$$

Where –

- (i) P is the permitted price

- (ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and

- (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;

- (c) “relevant person” means, in relation to premises in respect of which there is in force a premises licence –

- (i) The holder of the premises licence

- (ii) The designated premises supervisor (if any) in respect of such a licence, or

- (iii) The personal licence holder who makes or authorises a supply of alcohol under such a licence;

- (d) “relevant person” means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and

- (e) “value added tax” means value added tax charged in accordance with the Value Added Tax Act 1994.

3. Where the permitted price given by Paragraph (b) of paragraph 2 would (apart from the paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.

4. (1) Sub-paragraph (2) applies where the permitted price given by Paragraph (b) of paragraph 2 on a day (“the first day”) would be different from the permitted price on the next day (“the second day”) as a result of a change to the rate of duty or value added tax.
- (2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

If the Premises Licence allows Exhibition of Films

1. Where a premises licence authorises the exhibition of films, the licence must include a condition requiring the admission of children to the exhibition of any film to be restricted in accordance with this section.

2. Where the film classification body is specified in the licence, unless subsection (3)(b) applies, admission of children must be restricted in accordance with any recommendation by that body.

3. Where

- (a) The film classification body is not specified in the licence, or
- (b) The relevant licensing authority has notified the holder of the licence that this subsection applies to the film in question,

admission of children must be restricted in accordance with any recommendation made by that licensing authority.

4. In this section “children” means any person aged under 18; and

“film classification body” means the person or persons designated as the authority under Section 4 of the Video Recordings Act 1984(c39) (authority to determine suitability of video works for classification).

**If the Premises Licence has conditions in respect of Door Supervision
except theatres, cinemas, bingo halls and casinos**

1. Where a premises licence includes a condition that at specified times one or more individuals must be at the premises to carry out a security activity, each such individual must:

- (a) be authorised to carry out that activity by a licence granted under the Private Security Industry Act 2001; or
- (b) be entitled to carry out that activity by virtue of section 4 of the Act.

2. But nothing in subsection (1) requires such a condition to be imposed:

- (a) in respect of premises within paragraph 8(3)(a) of Schedule 2 to the Private Security Industry Act 2001 (c12) (premises with premises licences authorising plays or films); or
- (b) in respect of premises in relation to:
 - (i) any occasion mentioned in paragraph 8(3)(b) or (c) of that Schedule (premises being used exclusively by club with club premises certificate, under a temporary event notice authorising plays or films or under a gaming licence), or
 - (ii) any occasion within paragraph 8(3)(d) of that Schedule (occasions prescribed by regulations under that Act).

3. For the purposes of this section:

- (a) "security activity" means an activity to which paragraph 2(1)(a) of that Schedule applies, and, which is licensable conduct for the purposes of that Act, (see Section 3(2) of that Act) and
- (b) paragraph 8(5) of that Schedule (interpretation of references to an occasion) applies as it applies in relation to

Annex 2 – Conditions consistent with the Operating Schedule:

The Prevention of Crime and Disorder.

- The Premises Licence Holder will install CCTV which follows DCMS guidelines; the cameras will cover all licensed areas of the premises.
- The system will record for 31 days at a time and all recording will be made available to the police upon request, the system will be monitored by a trained member of staff.
- Signage will be in place to inform the public that CCTV is in operation.
- There will be a Personal Licence holder on the premises throughout the time that licensable activity is taking place to authorise any sales of alcohol.
- All alcohol sales will be ancillary to a full table meal.

Public Safety

- All public areas will be monitored by CCTV to ensure there are no risks to health and safety.
- The DPS will be responsible for health and safety risk assessment checks and will ensure that suitable public notices are on display.
- The Premises Licence Holder and DPS will ensure that the premise operates and adheres to the existing health and safety legislation.

Prevention of Public nuisance

- The Premises Licence holder and DPS will be responsible for ensuring that the premises do not cause any nuisance to the local residents, other business operators or the general public.
- They will monitor the external areas of the premises in relation to public nuisance or antisocial behaviour.
- Deliveries and rubbish collections will only take place during normal business hours and are at the rear of the premises.
- The DPS and Premises Licence holder will make available to the police any antisocial behaviour CCTV recordings.
- All alcohol sales will be ancillary to a full table meal.

The Protection of children from harm

- The Premises Licence holder and DPS will ensure that all staff are fully trained in relation to Challenge 25 and the licensing objectives.
- The Premises Licence holder and DPS will ensure that a refusal book will be kept on the premises for inspection by the authorities all necessary signage will be displayed with regard to Challenge 25 and the fact that No ID No Sale policy is in place.

Annexe 3 – Conditions attached after a hearing by the licensing authority:

Hearing 23.2.2016

For the prevention of public nuisance

1. The premises licence holder shall ensure that any patrons eating, drinking, and/or smoking outside the premises do so in an orderly manner and are supervised by staff so as to ensure that there is no public nuisance or obstruction of the public highway. A member of staff shall be stationed outside to supervise the front and side terrace when in use until 20.30pm. 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.
2. The use of the terrace will be restricted to a maximum of 12 seated diners.
3. The number of smokers outside will be limited to 5 at any one time.
4. The outside area must be cleared of customers by 20.00 daily save for smokers using the bonafide smoking area and tables and chairs removed from the outside by 20.30.
5. No food or drink to be consumed on the patio area after 20.00.
6. The Bi-fold doors are to be kept closed after 20.00
7. Signs will be displayed at all times reminding customers to respect our neighbours when leaving or using the outside area.
8. No drinks or glassware will be permitted in any outside area after 20.00.
9. The Premises Licence holder will have in place an agreement with a local taxi company with an agreed pick-up and set down policy. This will include a requirement that the drivers will not double park or use their horns and that the drivers will call the restaurant when 5 minutes from pick up to reduce waiting times.

Annexe 4 – Plans:

Plans held at Epping Forest District Council

