

EPHING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Licensing Sub-Committee **Date:** 30 May 2017

Place: Council Chamber, Civic Offices, High Street, Epping **Time:** 10.06 am - 3.17 pm

Members Present: M Sartin (Chairman), J Jennings and R Morgan

Other Councillors:

Apologies:

Officers Present: J Nolan (Assistant Director (Neighbourhood Services)), R Ferriera (Assistant Solicitor), K Tuckey (Licensing Manager), N Clark (Licensing Compliance Officer), S Hart (Planning Enforcement Officer) and A Hendry (Senior Democratic Services Officer)

1. DECLARATIONS OF INTEREST

1. Councillor J Jennings declared a personal, non-pecuniary interest in agenda item 4 Summary review of Premises Licence – Luxe Essex, Loughton by virtue of knowing two of the speakers. The Councillor had determined that her interest was non-pecuniary and that she would remain in the meeting for the consideration of the application and voting thereon.
2. Councillor R Morgan declared a personal, non-pecuniary interest in agenda item 4 Summary review of Premises Licence – Luxe Essex, Loughton by virtue of knowing one of the speakers. The Councillor had determined that his interest was non-pecuniary and that he would remain in the meeting for the consideration of the application and voting thereon.

2. PROCEDURE FOR THE CONDUCT OF BUSINESS

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

3. FULL SUMMARY REVIEW OF PREMISES LICENCE - LUXE ESSEX, 126 HIGH ROAD, LOUGHTON IG10 4BE

The three Councillors that presided over this application were Councillors M Sartin (Chairman), J Jennings and R Morgan. The Chairman welcomed the participants and requested that they introduce themselves to the Sub-Committee. In attendance on behalf of the premises were: Ms S Le-Fevre, solicitor for the premises licence holders, Mr K Iyapah and Mr N Iyapah the designated premises supervisor and directors of the company.

In attendance on behalf of Essex Police were Mr A Ranatunga, Barrister for Essex Police, J Nash, G Ashford and S Sparrow.

On behalf of EFDC Planning Enforcement was S Hart and on behalf of the Licensing Authority were J Nolan, K Tuckey and N Clark.

Objectors to the premises attending were Cllr J Angold-Stephens (Town Council representative), D Linnell on behalf the LRA, I Moody (resident), P Kelly (resident), R Jones (resident) and S Moody (Resident).

Also in attendance were M Fincham and R Baker representing the landlord of the premises and F Irving of the Epping Guardian.

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 Application before the Sub-Committee

The Assistant Director for Neighbourhood Services, Mr Nolan, noted a couple of typo errors in the report and then introduced the basis of the review brought against Luxe Essex, 126 High Road, Loughton IG10 4BE, by Essex Police under Section 53B of the Licensing Act 2003. Within 48 hours of receiving the application from Essex Police at the beginning of May 2017, the Council as the Licensing Authority suspended the Premises Licence until a Review hearing could be scheduled as there was a danger of serious crime and serious disorder. This meeting represented the full review hearing and the Sub-Committee was tasked with determining the future of the Premises Licence.

A late written representation from Councillor Baldwin, who had made an initial objection but could not attend the meeting, had been received and Mr Nolan asked the Police and Luxe Essex representatives if they would allow it to be considered. They agreed, after reading the submission that his written submission could be taken into account.

It was also noted that the Police would like to produce a last minute witness. Mr Ranatunga noted that this was a witness for the Freeholder on behalf of the Police. The Council's legal representative said that they could only be considered if they were to assist on the four licensing objectives and could not comment on the freehold contract and only with the agreement of the Luxe representatives. On consideration it was agreed that the witnesses could not be taken into consideration.

It was also noted that a supplementary agenda had been issued containing plans to turn the Luxe Essex premises into a Gastro Pub and also amended conditions and opening hours.

(b) Presentation of the Applicants case

Mr Ranatunga noted that this was the final day of the initial suspension pending the result of today's hearing. The basis of which it was necessary to suspend the licence was detailed in the report in the agenda, laying out why it was necessary to suspend the Licence on the basis of the prevention of Crime and Disorder, the prevention of Public Nuisance and for Public Safety.

Today was about what it was appropriate the future. The incident was about a stabbing in the front of the premises after a large fight and this raised concerns about the state of the people leaving the premises and the about the level of control from the premises.

Essex Police believed that the siting of the late night establishment in a densely residential area such as the High Road was always likely to undermine the licensing

objectives of preventing a public nuisance unless sufficient and adequate dispersal measures were in place. This was demonstrated by the premises having attracted the concern of local residents for many years regarding general noise and anti-social behaviour.

Mr Ranatunga asked that the Luxe Essex representatives be allowed to view the CCTV footage, which they claimed not to have received. The Chairman agreed to this noting that as part of an on going investigation, that this should be viewed in private. Accordingly the chamber was cleared of the public and press and the relevant footage of the incident that took place on the 30th April 2017 was shown.

After this the meeting reverted back to a public meeting and members of the press and public were invited back. Mr Ranatunga noted that this was the end point of similar incidents that were detailed in the police report contained in the agenda going back some time. He noted that the Nu Bar licence had recently been suspended and the Hollybush closed at 1am. So these late night/early morning incidents related to the Luxe establishment.

Going forward, the Police have recently met with the management of the Luxe and as a result the Police had seen proposals put forward by the premises to change to a food led operation. The police have had concerns over a long period and they thought these new conditions could be kept and contribute to the reduction in crime and disorder problems.

The amended terms and conditions had been circulated to the meeting on a supplementary agenda with the relevant amendments highlighted, including the proposed change in their opening and licensed hours, the addition of having licensed door supervisors on Fridays and Saturdays, relevant training for their staff, and operating a 'Challenge 25' policy. It was understood that the management of the premises would like to alter their licensable times to 10.00 to 00.00 hours Sundays to Saturdays.

The position of the Police was that the premises had to change due to the seriousness of the incidents and the loss of control of the management and a suspension of their licence would allow for the training of the staff and the alteration of the premises. The Police sought a 3 month suspension to enable the establishment to have a complete break with the past. They were aware that this it attracted groups from North East London, especially for fights. The Police also had concerns about the management and noted that the premises needed a three month break.

They noted that it was proposed that there would be a refit of the Kitchen and other internal works to be carried out for the change of use of the premises. The management would remain in place for this.

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

Councillor Sartin noted that on page 5 of the supplementary agenda the Police said that they "would *reluctantly* ask the Committee to consider the... (proposed actions)". Why did they use the word *reluctant*? She was told that they reluctantly proposed the change of the conditions but they would prefer the revocation of the licence.

(d) Questions for the Applicant from the Premises

There were no questions for Essex Police from the premises representatives.

(e) Questions for the Applicant from the Objectors

There were no questions for Essex Police from the objectors.

(f) Statements from the Objectors

(a) Town Councillor J Angold-Stephens stated that Loughton Town Council had objected to the reinstatement of the Luxe licence due to their concerns on public safety and public nuisance for their residents. The late night premises was unacceptable as it was situated so close to residential properties. As a Town Council they were keen to support local businesses but not for this problematic one. They would ask that the licence be suspended for 3 months.

They were also in support of the Gastro Pub but would like a closing time of 12.00.

(b) The representative of the Loughton Residents Association, D Linnell, was also concerned about public safety and public nuisance. The residents had to deal with ongoing incidents throughout the year. Residents were concerned about having a late night establishment in a densely residential area was always likely to undermine the licensing objectives.

They were being presented with a Gastro Pub but it will turn into a late night bar as the food would stop being served at 10pm and it would be the same as it is now. There will also be door supervisors and the provision of plastic glasses, this did not sound like a Gastro Pub. There was also mention of the terrace area which was not available due to planning conditions but would be part of the Licensing Area, he asked the committee to clear this up. He also thought that closing time should be midnight as it was a residential area. Early closing was the only way to ensure the problems did not reoccur. He would like alcohol sales to be limited to an 11.30 finish with a close at 12.00 midnight.

(c) Mr Moody a local resident, commented that he agreed with Mr Linnell comments, this had been going on for too long; and he did not think that this Gastro Pub would be much better. Why did they need to serve breakfast at 8am on a Sunday? Café Rouge opened at 9am.

He noted that the agenda was full of complaints. He was sorry for the Police having to police this area. But as residents we need a level of protection. There were people coming from outside the area to go to Luxe, perhaps their business should be put where these people come from.

(d) Ms Kelly (resident) agreed with the previous speakers and added that they had been ignored for too long and was now distrustful that anything would change. The establishment was notorious for miles around. She was very angry for being ignored and would like to see it finally closed. It was also affecting the livelihood of the local residents by the lack of sleep and worry it caused.

(e) Ms Moody (resident) said that Mr Linnell had put it well; this has been going on for too long. She asked if the new establishment would be given a probationary period when it opened. Mr Ranatunga replied that once these steps have been implemented the Luxe would not be allowed to reopen and the new establishment would be subject to the usual environmental checks on noise and hygiene etc.

(f) Ms Hart from EFDC Planning Enforcement noted that an objection had been submitted by the Planning Department of the Council and they supported revocation of the licence. The premises had constantly given rise to public nuisance to the local residents. The Council's legal officer reminded Ms Hart that the Sub-Committee could not take planning objections into consideration.

(g) Questions for the Objectors

There were no questions for the objectors.

(h) Presentation of the Premises Case

Ms S Le-Fevre, solicitor for the premises licence holders, started by saying that it was unsurprising that the license was suspended due to the recent problems. The premises has now been closed for three and a half weeks and they have used this time to analyse what went wrong and what should be done for the future. This had resulted in their plan to transform the premises into a Gastro pub. This has also transformed the position of the police who were now asking for suspension and not a revocation of the license. The problems may have been accentuated by the closure or change of the other premises in the area, such as the Nu Bar and the Hollybush.

They were looking at radical changes and the rebranding of the premises and having a break from the past. None of this came cheap, it would need an investment of about £300k, most of which had been secured.

New conditions have been offered up and are printed on the supplementary agenda papers. The Chairman had picked the Police up on their use of the word "reluctantly"; this was a historic use of the word as it was in the original draft.

The new conditions were acceptable to the Police, with the change of hours as indicated and there had never been any failure to comply with conditions and their closing hours. She drew the attention of the sub-committee to conditions 15, 16 and 16a – that there would be no playing of recorded music (except for incidental background) and no live music after 10pm and no use to be made of the terraced area after 23.00 and 10.00 the next day.

Conditions 24a & b says that there would be at least 40 covers for table meals available and 24a should be slightly amended to add "*until at least*" to read: "Substantial food and non-intoxication beverages would be available in all part of the premises where alcohol is sold or supplied for consumption on the premise up *until at least* 22.00"

They were content for a minimum numbers of covers to be set for the first floor area and they welcomed their license to be conditioned to restrict them to operate on a permanent basis as the sub-committee saw fit.

They were also looking to put the building back as it was formally. It was a lovely building and most suitable for a gastro pub. The Chef has already been recruited, a former Essex Chef of the year and Essex Restaurant of the Year in 2013. He was coming as a head Chef to take on this challenge.

As for objector's comments, we are in contact with the environmental officers of this council; asking for them to tell us of any complaints received and how we could put things right and make things better. So far we have not identified any. As part of the

conditions, we can add a telephone number to be made available to residents, or have regular meetings with them. We will of course have regular meetings with the Police.

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

Councillor Jennings noting that they had said that they had not failed to comply with their conditions, asked what about the premises being run as a nightclub?

The council's Legal officer interjected that planning issues were not relevant. Councillor Jennings replied that this was more about their attitude to the law. Ms Le-Fevre said that this was for licensing conditions, planning fell outside this sub-committee's remit.

Councillor Sartin noted that they had pre-empted any decision that the Sub-Committee may make by hiring a Chef. Ms Le-Fevre said that they liked to show that they had made proper proposals.

Councillor Sartin then asked if there were no plans for the terrace then what area was covered by this licence. Ms Le-Fevre said that they might have to make a variation so that the terrace area would not be in their licensing area.

Councillor Sartin wanted to clarify if food was to be served up to 10pm then would orders be taken up to 10pm? Ms Tuckey, the Licensing Manager, said that they could take orders up to 10pm. Councillor Sartin added that the current licence includes late night refreshments. Ms Le-Fevre said that they would like to serve hot drinks/meals up to closing time.

Councillor Sartin asked if the licensing conditions for dancing and live entertainment were to be removed. She was told that it was.

Councillor Sartin asked if they would be content if their licensing hours were reduced slightly, depending on the day of the week, maybe change hours early on in the week. There were no issues or objections raised.

Councillor Sartin noted their opening hours of an 8am start, while other premises opened at 9am. Was there a strong reason to open at 8am? There were no objections if it aligned with other businesses.

The Council's legal officer asked if the 40 covers mentioned referred only to the ground floor. She was told that it was 40 on the ground floor and 40 on the first floor. Councillor Sartin asked if they could fit in 40 covers on the ground floor and was told they could comfortably do so.

Councillor Sartin asked officers if there was any restrictions on the numbers they could have and was told that that was covered by other legislation.

(j) Questions for the Premises from the Objectors

A resident asked if it was specifically to be conditioned that there be no music and dancing. It was agreed that there would be no music or dancing except for incidental, background music.

Asked if there would be food available after 10pm they were told that they would take orders up to 10pm and the wording on condition 24a would be slightly altered to reflect this.

Councillor Angold-Stephens said that this seemed contradictory to her to end food at 10pm but to close at 12 midnight. It was explained that they would take late orders for food up to 10pm but can serve up until midnight.

Mr Linnell had four questions:

- (1) that on the main agenda it stated that all incidents took place after 1pm although there were some that had happened before then;
- (2) How loud would the background music be?
- (3) Was the terraced area to be exempted from the licenced area? And
- (4) Will you be asking for extensions to your times in the future?

Ms Le-Fevre took question 4 first and said that temporary events licences would be asked for as appropriate, noting that they could be objected to. They could not promise that that they would not seek these in time and even if permission were given it might not be taken up. As for the third question, the use of the terrace; we will submit variations to our plans to take out the terrace for licensable activities. For your question two we will have music until closing time but at a level at which normal conversation could be had without raising the voice. We do not want any recorded music that required a licence. As for question one about incidents before 1am, apologies if I misled you, I was alluding to the most serious incidents happening in the early hours.

Councillor Sartin noted that part of the proposed conditions on page 5 of the supplementary agenda (3(b) (iv)) and queried the part that mentioned opening hours and the vernal/spring equinox. A Police representative said that this referred to when the clocks move forward or backwards, but applied for when they wanted a 1am closure time which did not now apply as they wanted a 12 midnight closure.

The officer from Planning Enforcement asked the premises representatives to confirm that there were no terrace facilities there now. They confirmed this.

(k) Closing Statement from Essex Police

Mr A Ranatunga summed up by saying that the steps proposed by the Police, if implemented properly, would be an appropriate response. Taken into account the seriousness of the incidents, we seek a three month suspension.

(l) Closing Statement for the Premises

Ms S Le-Fevre summed up by saying that it would take them at least two months to have the new premises up and running; so they did not resist the imposition of a suspension of up to two months. They have been closed for nearly a full month so far, with two more months it would have been closed for a quarter of a year. This three month closure was sufficient to break any patterns of behaviour of its former clientele. We invite you to impose a proportionate 2 month closure.

(m) Closing Statement from the Objectors

Mr Moody said that there was a lot of talk about moving forward. They had a Facebook post apologising to their clients for the closure, but not to the residents.

They could have done something to show that they were sorry. He hoped the maximum penalty was imposed on them.

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

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

The Sub-Committee reconvened the meeting to clarify some points on the proposed conditions and opening hour changes with the premises holders and then retired again to further consider the review.

In its deliberations, the Sub-Committee received the following advice on Section 53d of the Licensing Act, on interim steps following a full review, from the legal officer present.

The Sub-Committee found that there had been a history of incidents leading to serious violence and serious disorder at or outside the premises. They considered the steps that they could have taken including the revocation of the licence. They noted that the Police had agreed a way forward with the licensee and took into account the representations made at the hearing as well as the written representations. They felt that the proposed conditions agreed between Essex police and the License holders were necessary, but modified the hours and amended and added to some of the other conditions. In addition, they agreed that the interim steps imposed on the Premises Licence should continue and the Licence should be suspended for a further three months.

RESOLVED:

- (1) That the interim steps imposed on the Luxe Essex should continue and that the Licence should be suspended for a further three months.
- (2) That the following revised hours of operation and licensable activities be agreed to replace the proposed hours of operation and licensable activities:
 - (a) Opening Hours, Sunday to Thursday 09.00 to 23.30
Opening Hours Friday & Saturday 09.00 to 00.30
 - (b) Licensable Hours, Sunday to Thursday 10.00 to 23.00
Licensable Hours, Friday & Saturday 10.00 to 00.00
- (3) The following non-standard hours are established:
New Year's Eve (31 December – 1st January) annually only to extend licensable activity to 01.00 hours.
- (4) To remove the following licensable activities:
 - Exhibition of Films;
 - Performance of Dance;
 - Provision of Entertainment facilities for making music and dancing.
- (5) That no use shall be made of the terraced area other than for access.
- (6) After 23.00 hours no persons shall be admitted or readmitted to the premises save for persons who have temporally left the premises (e.g. to smoke).

- (7) The licensee to provide a contact number for the manager of the premises for residents and to establish regular community liaison meetings.
- (8) Substantial food and non-intoxicating beverages shall be available in all parts of the premises where alcohol is sold or supplied for consumption on the premises up until at least 22.00 hours.

CHAIRMAN