MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE
Council Chamber - Town Hall
18 June 2013 (10.30 - 11.45 am)

Present:

COUNCILLORS

Conservative Group	Peter Gardner (Chairman)
Residents' Group	Linda Van den Hende
Labour Group	Denis Breading

Present at the hearing for the applicant were his agent Mr G Hopkins and Ms L Potter. The applicant; Mr & Mrs Ozmen.

Representing the Police were Inspector M Blackledge and PC Jason Rose. Also present were Mr A Hunt and Ms S Taylor Senior Fair Trading Officer representing Licensing and Trading Standards respectively.

An interested party, Councillor F Thompson was also present.

Also present were Paul Campbell (Havering Licensing Officer), the Legal Advisor to the Sub-Committee and the clerk to the Licensing sub-committee.

The Chairman advised Members and the public of action to be taken in the event of emergency evacuation of the Town Hall becoming necessary.

No interest was declared at this meeting.

PREMISES
Essex Fish Bar & Best Kebabs
151 South Street
RM1 1PL

DETAILS OF APPLICATION

Application to vary a premises licence under section 34 of the Licensing Act 2003 ("the Act").

1. Details of the application

The application to vary the premises licence does not affect the hours of licensable activity. The application was:

Details of the application

Late Night Refreshment		
Day	**Start**	**Finish**
Sunday - Wednesday	23:00hrs	02:00hrs
Thursday - Saturday	23:00hrs	04:00hrs

Variation applied for:

Late Night Refreshment		
Day	**Start**	**Finish**
Sunday - Wednesday	23:00hrs	03:00hrs
Thursday - Saturday	23:00hrs	05:00hrs

2. To remove conditions and replace them with others these are listed on page 8 of the application.

2. Promotion of the Licensing Objectives

The applicant completed the operating schedule, which formed part of the application to promote the four licensing objectives.

The applicant acted in accordance with premises licence regulations 25 and 26 relating to the advertising of the application. The required newspaper advertisement was installed in the 1 May 2013 edition of the Yellow Advertiser.

3. Details of Representations

Valid representations may only address the four licensing objectives

- The prevention of crime and disorder
- The prevention of public nuisance
- The protection of children from harm
- Public Safety.

There was one valid representation against this application from interested parties.
This representation falls under the heading of the Prevention of Public Nuisance.

There were 2 representations against this application from responsible authorities.
Both Police and the Licensing Authority have made representations against the application which fall under the headings of the Prevention of Crime and

Disorder and Public Safety and wish the Sub-Committee to consider their comments on making a decision.

Responsible Authorities' representations

Metropolitan Police
The representation from the Police as per the report stated the concern that granting the premise licence variation would undermine the crime and disorder and public safety licensing objectives.

This premises is located within Havering boroughs Anti-Social Behaviour hotspot and opposite the main transport hub with a bus stop directly outside the premise which services night buses which naturally sees large numbers, under the influence of alcohol, congregating.

Inspector M Blackledge Havering Police Licensing Officer detailed various incident since the start of 2013 where a number of crimes had been recorded showing the premise as the venue.

As a result of police attendance on 2nd Feb 2013, the premise was found to be in breach of a condition of their license in respect of the presence of a SIA badge holder being on duty. This was highlighted to staff at the time of the incident.

On 28 April 2013 at 00:20hrs the premise was again visited as part of a MPS wide licensing initiative and again found no SIA badge holder on duty. An official warning letter was issued on 2 May 2013.

On 17 May 2013 during a licensing meeting at Mercury House, Mr Ozmen admitted breaching the condition in respect of SIA badge holder being on duty on any Sunday evening due to cost.
The Havering Police Licensing Officer stated that they could not support an application for an extension of licensing hours to 0500hrs. The Police believe the majority of their customer base within these hours would be those who have maximised their drinking time within Romford Town Centre and would be under the influence of alcohol and therefore increase the risk of crime and disorder. In addition the Police would not support a reduction in the number of days a SIA badge holder should be present as this premise as this would increase the risk to public safety and increase the burden on staff in enforcing their current licensing condition in respect of capacity.

Licensing Authority

Mr A Hunt Havering Licensing Officer reiterated his representation to the application as per his submitted report based upon its concerns in relation to the prevention of public nuisance and the prevention of crime and disorder licensing objectives. He stated that the premise has been the subject of crime and disorder matters, including reports of disorder and assaults at the premises. He also detailed the failure to comply with conditions on the Premises Licence. He informed the sub-committee that if the premise was

permitted to open for longer hours, that they would have to deal with intoxicated customers for a longer period, thus the possibility of further crime and disorder was increased. With reference to Public Safety the premise has operated without Door Supervisors as required by its premises licence. On at least one occasion this may have contributed to an incident where someone was hit by a bus outside the premises.

A consequence of the applied for change to conditions would be the reduction in coverage by door supervisors. Currently, the premise requires door supervision during all hours of licensable activity. The request was to reduce it to Thursday to Saturday (and following day), Sunday's prior to Bank Holidays, Christmas Eve and New Year's Eve.

On the 17 May 2013 the Licensing Authority and Police met with Mr and Mrs Ozmen together with their agent, Mr Hopkins, at his request. It was clear that the provision of Door Supervisors was a financial strain on their business. The premise failed to comply with this condition under their current licence following transfer of the licence to Mr Ozmen in March 2013. It was admitted by Mr and Mrs Ozmen that they had only made provision for Door Supervisors from Thursday to Saturday. Mr Ozmen further stated that he had arranged another security company to provide coverage for the rest of the week. This had been as a result of receiving a warning letter from the police about the lack of door supervisors on the 28 April 2013. It became evident that in fact Mr Ozmen had only arranged Door Supervisors for Monday to Wednesday not Sunday, but would undertake to do so following the meeting. It was explained to Mr and Mrs Ozmen that as this was a condition of his licence, if they did not have door staff they should close.

If the current financial climate continued, then it could be envisaged that this would continue to be a strain on the business and an easy saving can be made by non-compliance.
The Licensing Officer referred to Havering's licensing policy 012 relating to the hours during which it was felt appropriate to provide licensable activity in given areas of the borough, being 00:30 in mixed use areas, with applications outside those hours to be considered on their merits.

The Licensing Authority contended that the application as submitted should not be considered an exception to the guidelines of licensing policy 012. Essex Fish Bar premises licence was already currently in excess of the hours dictated by licensing policy 012 as it allows late night refreshment until 02:00 Sunday to Wednesday and 04:00 hours Thursday to Saturday. Given the clientele of these premises at these hours would be late night, 'post-club' customers, The Licensing Authority was concerned that extending the premises' operation further into the early hours of the morning had an implication which reaches beyond the boundary of the premises. Further, given the competition for late night customers might appear to operate on a 'supply and demand' principle, the longer a premise remains open to the public, the more members of the public would want to avail themselves of the services offered within. The result of such a situation was

that competing businesses may feel compelled by this principle to extend their hours also. The outcome of such a scenario is 'hours-creep'.

The area in which this premises is located was subject to a cumulative impact policy.
This special policy area had been highlighted as one which requires greater attention than other areas of the borough in relation to licensed premises and the problems attendant to alcohol consumption. The Licensing Authority's concern was the potential for this vicinity to incrementally increase its average terminal hour. A potential result of this hours-creep would be the influx of greater numbers of individuals to the area seeking a late-night refreshments after an evening out.

This application stated that "a written dispersal policy would be put in place." However, the no mention was made of the busy bus stop which was outside the premises and would surely impinge on any dispersal plan. It may be that the applicant had failed to identify any risk posed by the application. Equally, it may be that the applicant feels the application poses no risk to the local area. Both of these possibilities cause the Licensing Authority concern.

As mentioned previously the Romford Town Centre was a special policy area addressed by Havering's licensing policy 018. The property was located in this special policy area and late night refreshment premises were required to promote the licensing objectives. The Licensing Authority reasonably expected that the applicant acknowledges his role in relation to preventing public nuisance in this special area; however, there was no mention of "why they consider the application should be an exception to the policy."

Based upon Havering's licensing policy 015 an application such as this should also be considered in the light of the applicant's compliance history in relation to the provisions of the current licence.

On the 28 April 2013, the Police visited the premises at 00:20 and found that there was no door supervisor on duty. A warning letter was issued by the Police and delivered by hand on the 2 May 2013. The staff member on duty stated that the door staff had been held up on his way to work, this was re-iterated by Mr & Mrs Ozmen at the meeting on the 17 May 2013.

The Licensing Officer informed the sub-committee that based upon these concerns the Licensing Authority was not in a position to be able to support an application to extend licensable activity at the premises.

Other Responsible Authorities

Public Health: None

The London Fire and Emergency Planning Authority: None

The Health & Safety Enforcing Authority: None

The Trading Standards Service: None

Planning Control & Enforcement: None

Children & Families Service: None

Practice Improvement Lead: None

Interested parties' representations

This representation was based upon the prevention of Public Nuisance objective.

Councillor Thompson stated that he was endorsing the representation of the Licensing Authority and Havering Police against this premise. In his written submission Councillor Thompson stated that he was objecting on the basis that such excessive late opening to the early hours of the morning impacts heavily on public nuisance as it will delay dispersal from the town centre of those who have left clubs and are likely to be heavily intoxicated. The trail of litter caused by takeaways frequently shows up on the street quite often carelessly thrown in householders front gardens and into shop fronts of shops and premises that have normal trading hours.

The sub-committee was informed that in addition to late dispersal, numbers can easily impact in the lessening of the protection of children from harm as the added anti-social behaviour such as noisy dispersal impacts on the many households close to the town centre who despite living in flats or small houses frequently have children whose schooling will suffer from disturbed sleep.

4. Applicant's response.

Reply for the Premises Licensee
Mr G Hopkins, Agent for applicant addressed the Sub Committee. He stated that:

- Mr & Mrs Ozmen had experience in running similar business in Upminster and previously in Lewisham.
- Mr & Mrs Ozmen took over the management of the premise on 1 March 2013 and is requesting the sub-committee to disregard any incident that was prior to this date even it was accepted that this

client worked in the premises at the time. The applicant could not be held responsible for matters that occurred prior to 1 March 2013.

- The assertion that the breach of the condition in respect of SIA badge holder being on duty an Sunday evening was due to cost was incorrect. The applicant had a business plan whereby they would only have door staff Thursday to Saturday, as it was seen as unnecessary on other evenings (due to low trade) and paying door staff is admittedly a drain on their resources. They can afford to do so however.
- His client was fully aware and would like to apologise for the breach of conditions which was as a result of shortage of SIA badge-holding door supervisors.
- The premise now kept a register of SIA badge-holder door supervisor attendance.
- That English was a second language to Mr Ozmen.
- Informed the committee of a Magistrates Court ruling concerning Leeds City Council where an application had been refused on a policy basis. The court overturned it as too rigid an application of policy. Policy should be utilised as appropriate, and not strictly enforced in all cases.
- His client would like to extend his hours to match with his competitors such as McDonalds and Wacky Bagel who were operating until 05:00 hours. It was stated that Wacky Bagel operated without SIA Badge supervisor and McDonald operating schedule required it to have supervisor on Thursday to Saturday.
- The premise had installed new CCTV system to enhance the security of the venue and would be prepared to relocate any of its cameras to support the surveillance operation of the council and be linked to the council's radio system to support the security of the area.
- The application was to bring his client in line with other competitor. The premise was seeking an additional hour on its current licence.
- The premise was also seeking the removal of the current conditions contained in Annex 2.
- The sub-committee was informed that the premises had five staff on duty on Friday to Saturday late shift and were all fully trained and records kept.
- The venue operated as a seating restaurant during the day time and moved all furniture away for the night trade. That an incident book was maintained on the premise.
- There was signage to inform customers that alcohol was not allowed on the premise.
- There was also a signage to have client leave the area quietly.
- His client wants to be responsible operators and since takeover have made positive improvement to the premise.

5. Determination of Application

Decision

Following the hearing held on 18 June 2013, the Sub-Committee's decision regarding the application to vary a Premises Licence for Essex Fish Bar & Best Kebabs, 151 South Street, Romford, RM1 1PL was as set out below, for the reasons shown:

The Sub-Committee was obliged to determine this application with a view to promoting the licensing objectives, which are:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

In making its decision, the Sub-Committee also had regard to the Guidance issued under Section 182 of the Licensing Act 2003 and Havering's Licensing Policy.

In addition, the Sub-Committee took account of its obligations under s17 of the Crime and Disorder Act 1998, and Articles 1 and 8 of the First Protocol of the Human Rights Act 1998.

Facts/Issues

Whether the granting of the premises licence would undermine the four licensing objectives.

The prevention of crime and disorder

Mr Hopkins took exception to the fact that an incident that preceded his client's management had been raised, and that it should have no bearing on their running of the premises. It was accepted that the applicant was not at that time the licence-holder, but the incident itself was indicative of alcohol-related problems in the vicinity.

The sub-committee noted that the representations from the responsible authorities stated incidents at the premise that led to Police attendance, the premise was found to be in breach of a condition of their license in respect of the presence of a SIA badge holder being on duty.

Mr Hopkins stated that the applicant had installed new CCTV system and was offering to locate a camera at the front of the premise to assist in preventing crime and disorder. That he was also offering to be linked to the Town Centre safety radio system.

Mr Hopkins had made comparisons with Wacky Bagels and McDonalds. Inspector Blackledge advised that Wacky Bagels operated from a window and that there was no entry by patrons into the premises, and McDonalds on Friday and Saturday nights have in excess of 4 SIA badge holders.

It was accepted that the area was subject to a cumulative impact policy, and that licence-holders and applicants are expected to be aware of the policy, and the alcohol-related issues affecting the area, and to consider and address those issues in any application made. While the policy is not to be rigidly enforced, it was incumbent upon applicants to demonstrate that their applications would not have any negative impact upon the licensing objectives in the area.

The Sub-Committee decided **not to grant** the application to vary the premise licence.

The sub-committee stated that having listened to all the representation, they were not prepared to grant the application with the exception for the change of name.

The Sub-Committee are well aware that the area was covered by a cumulative impact due to long standing alcohol related concerns. That much of this was due to large gatherings of people at the closing time of bars and clubs in the immediate locality of the applicant's premises. The Sub-Committee stated that it was clear that from strenuous objections by the Police and Licensing Authority that serious concern are held in relation

to this premises itself as well as the immediate vicinity. Numerous incidents have been recorded which lead the sub-committee to the conclusion that SIA door supervisors remain necessary during late night refreshment hours and that those hours should not be increased.

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Chairman