

Havering Council – Decisions taken by the Licensing Sub-Committee on Monday, 29 July 2013

Agenda Item No	Topic	Decision
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Note: this decision list is for guidance only. The text of the minutes, which may be different, is definitive.

Part A – Items considered in public

A1	Application to vary a premises licence for the Essex Grill, 177 St Mary's Lane, Upminster RM14 3BL	Licensing Act 2003 Notice of Decision									
		<p>PREMISES Essex Grill 177 St Mary's Lane Upminster RM14 3BL</p> <p>An application for a variation to a premises licence under section 34 of the Licensing Act 2003 ("the Act").</p> <p>APPLICANT Mr Mehmet Gilgil The Essex Grill 177 St Mary's Lane Upminster RM14 3BL</p> <p>1. Details of the application:</p> <p>The current premises licence hours are:</p> <table border="1"> <thead> <tr> <th align="center" colspan="3">Late night refreshment</th> </tr> <tr> <th align="center">Day</th> <th align="center">Start</th> <th align="center">Finish</th> </tr> </thead> <tbody> <tr> <td align="center">Monday to Sunday</td> <td align="center">23:00</td> <td align="center">01:00</td> </tr> </tbody> </table>			Late night refreshment			Day	Start	Finish	Monday to Sunday
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		<p>The applicant acted in accordance with regulations 25 and 26 of <i>The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005</i> relating to the advertising of the application. The required public notice was installed in the 21st June 2013 edition of the Yellow Advertiser.</p> <p>The premises licence is held by an individual whom appears to be a sole trader. As such sole trader’s home address is required to be provided on the licence in order that the Licensing Authority is able to monitor the holder’s solvency status in line with its obligation under s.27 of the Act. The holder of this licence has provided the address of the premises his address. As such the Licensing Authority is unable to determine whether the holder is solvent and hence whether the licence remains in force.</p> <p>4. Summary</p> <p>There were two representations made against this application from interested parties.</p> <p>There was one representation against this application by a responsible authority.</p> <p>5. Details of representations</p> <p>Valid representations may only address the following licensing objectives:</p> <ul style="list-style-type: none"> The prevention of crime and disorder The prevention of public nuisance The protection of children from harm Public safety

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		<p><u>Interested persons’ representations</u></p> <p>Cllr Linda Van den Hende’s representation against this application is based upon the prevention of public nuisance and the prevention of crime and disorder.</p> <p>The second interested person who made representation against this application is a resident of the borough whose house is approximately 720 metres as the crow flies from Essex Gr or 1 kilometre by road. This representation is based upon the prevention of public nuisance licensing objective.</p> <p><u>Responsible Authorities’ representations</u></p> <p>Licensing Specialist Paul Campbell made representation against this application on behalf of Havering’s Licensing Authority. The representation is based upon all four of the licensing objectives.</p> <p>There were no representations from any other responsible authority.</p> <p>6. Representations</p> <p>Licensing Authority</p> <p>The representation from the Licensing Authority addresses each of the licensing objectives.</p> <p>The Licensing Authority representative, Mr Paul Campbell, argued that:</p>

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		<ul style="list-style-type: none"> ○ On two occasions recently (28 April and 26 May 2013), Mr Gilgil was seen serving hot food past the premises closing times. He was spoken to on both occasions and agreed that he had contravened his licence. In the second instance he argued that he had not realised that there had been a festival being held at the nearby Damyns Hall Aerodrome and a large influx of people leaving the event had led to a large back-log of orders needing completion. ○ If the Essex Grill was allowed to stay open longer, it would become a clear destination venue for people in the area who were leaving pubs as they closed, as it would be the only premises in the vicinity open to these hours. There was a clear possibility that customers coming from different places, having consumed alcohol, would be likely to bring an increase of noise into an area in which there were a large number of residential properties. In these properties children would be trying to sleep and increased late-night traffic could impact on that happening. ○ As there would be no public transport, getting to and from the venue would be most likely by car, with the consequent sound of doors opening and closing. Patrons at these later applied for hours are likely to be those coming from bars and pubs, and therefore more likely to talk more loudly, and there was an appreciable risk of outbursts of violence which was likely to cause nuisance, and endanger public safety. ○ This potential situation would be exacerbated by the reduced Police presence in the area and consequently, if there was to be a disturbance which required police assistance, this would be delayed for some time as it would have to be summoned from elsewhere. <p>In conclusion, Mr Campbell informed the Sub-Committee that he had little confidence in the premises adhering to any new closure time (should any be granted) in the light of recent failures to observe the current closure times. Given the late hours applied for, the effect of any such breach would be exacerbated.</p>

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		<p>Councillor Linda Van den Hende then addressed the Sub-Committee in her capacity as a Ward Member.</p> <p>Her argument was broadly similar to that of the Licensing Officer in-so-far as the issues concerning public nuisance and the prevention of crime and disorder were concerned. She argued that no matter how well the premises was managed, an increase in traffic would create a nuisance. In addition, because this would be the only premises open within Upminster, it would be a magnet for late night revellers who wanted something to eat after an evening’s drinking. The potential for the to be trouble would escalate enormously as people came together in the early hours of the morning. Any small incident could become a dangerous situation. Whilst acknowledging that the Essex Grill might indeed be a pleasant environment (which it appeared to her, to be), she urged the Sub-Committee not to grant the licence extension for the sake of the local residents’ peace and safety.</p> <p>In response, the Applicant’s representative, Mr Hopkins, said that whilst his client accepted he had acted wrongly by exceeding his opening times, he had not done so consciously but had misunderstood the difference between the terms “sale of” and “provision of”. He had, in addition, apologised unreservedly for that and had changed his operating procedures to ensure that these failures could not reoccur. As far as the remaining arguments advance by the Licensing Authority and the other objector were concerned, they were solely based on conjecture.</p> <ul style="list-style-type: none"> • In respect of the question of his client’s solvency, he had evidence to show that he was (and would make this available to the Licensing Authority). He added that his client was a partner in two premises (the other being a pizza parlour in Romford) and had not understood that he needed to use his place of residence when making the application. This would be rectified as there had been no intention to mislead.

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		<ul style="list-style-type: none"> • Concerning the matter of the two recent after hours infringements of the licence, he asked Mr Campbell if he had asked to inspect the till receipts or if he had witnessed payment changing hands? Mr Campbell replied in the negative to both questions. Mr Hopkins then informed the Sub-Committee that Mr Gilgil’s records would show that cash for the food ordered had been taken before time the premises should close. His client had, unfortunately, not appreciated that the food ordered needed to be provided by the time of closure and that the premises needed to be closed on time. In order to ensure that this did not happen again, he had changed the last orders (either by personal appearance or by telephone) to fifteen minutes before the premises closed. Mr Hopkins added that a good deal of his trade was conducted through the delivery of telephone orders and that he employed two drivers specifically for that purpose. • Specifically looking at the more recent of the two incidents, the issue had arisen because of a festival held near-by and a late influx of customers leaving the venue and wanting food on their way home. He confirmed that the orders had been received before the premises should have closed, but because of the number of customers, it had taken some time to fulfil the orders and that is what Mr Campbell had witnessed. • He accepted that the premises could well become a destination venue if allowed to open later, but argued that this was not, in itself, a bad thing. He did not accept that people from Romford or Harold Hill would drive to Upminster for a late take-away (Romford and Hornchurch had numerous establishments open later than the time his client was requesting), but it would provide a genuine service. His client could show that there was a market available and was only looking for an honest business opportunity to ensure that customers were not sent elsewhere. • He drew the Sub-Committee’s attention to the absence of any objections from local residents to the request. Not only was there an absence of representations from those who were likely to be most affected, but none of the responsible authorities

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		<p>(with the exception of Licensing) had seen the necessity to lodge an objection and surely, if there was a likelihood of disorder or public nuisance, the police would have registered an objection? He claimed to have an e-mail from the Council's noise specialist in Environmental Health which confirmed there had been no incidents of noise nuisance relating to the premises.</p> <ul style="list-style-type: none"> • He added that his client had eight years of experience in this business, not only managing, but owning hot food outlets and during all that time he had had no trouble at any of his premises. His establishments were properly staffed in order to ensure that the time from receipt of order to its fulfilment was kept as short as possible. Staff would also greet customers as they entered and see them off the premises as it grew late. Most of his custom came from older residents and much of the Essex Grill's work was in response to telephone orders which were delivered. His two drivers were instructed to be mindful of where they were late at night and certainly not to keep their cars' engines running or slam doors. • With regard to the matter of door supervisors, this was not necessary. Staff were doing nothing different to what staff would do (as a matter of courtesy) in a restaurant: they would simply be seeing them off the premises and reminding them to be considerate when leaving. His client saw no reason to employ SIA registered door supervisors. This was not a place which sold alcohol and neither was it surrounded by establishments where trouble could be expected. The premises was covered by CCTV and that ought to be sufficient. <p>7. Determination of Application</p> <p>Decision:</p> <p>Consequent upon the hearing held on 29 July 2013, the Sub-Committee's decision regarding the application for a variation to a Premises Licence for</p>
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		<p>Essex Grill is as set out below, for the reasons shown:</p> <p>The Sub-Committee was obliged to determine this application with a view to promoting the licensing objectives, which are:</p> <ul style="list-style-type: none"> • The prevention of crime and disorder • Public safety • The prevention of public nuisance • The protection of children from harm <p>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.</p> <p>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.</p> <p>Agreed Facts <u>Facts/Issues</u></p> <p>The prevention of public nuisance, The prevention of crime & disorder, Public safety,</p> <p>Whether the granting of a variation to the premises licence would undermine the licensing objectives.</p> <p>Mr Campbell asserted that the evidence before the Sub-Committee demonstrated that the Applicant had – relatively recently – broken the conditions of his licence on two occasions by selling hot food after his premises should have closed and was therefore not a reliable person to have his application accepted. He further argued that the Council’s Licensing Policy (012 – hours) would be compromised if the request were to be allowed – more so because the premises already stayed open half an hour beyond the recommended closing time in a mixed use environment and there were</p>

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		<p>The protection of children from harm no other establishments in the vicinity which were open as long.</p> <p>In addition he stated that there was a clear indication that the proprietor intended his premises to become a destination venue and if that were allowed to happen, it would almost certainly have a detrimental effect on the locality, not to mention the probability of other establishments seeking to extend their hours of business.</p> <p>He argued that children in nearby properties could be harmed by the coming and going of an increased amount of vehicular traffic with its attendant door-slamming and immoderate voices of those using the establishment. He added that by bringing together disparate late night drinkers to a small establishment, the risk of a break-down in behaviour amounting to at least disorder and a rise in threat to public safety was a real possibility – especially as the proprietor had no intention of installing SIA approved door staff.</p> <p>He contended that to grant a licence would also be to disregard the Council's Licensing Policy (012) which had been designed to mitigate potential problem areas and to do so would send conflicting messages to the local community.</p> <p>Councillor Van den Hende spoke on the same theme, arguing that at the very least the peace and quiet of local residents would be compromised and there was precedent to show that once additional hours had been granted, the potential for trouble would increase irrespective of what was claimed to the contrary.</p> <p>In response Mr Hopkins argued that there was no evidence of any nuisance which could be attributed to his client's premises. He argued that his client was a conscientious person who strove to ensure that he provided good food</p>

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		<p>in a congenial environment. He had adequately staffed the premises and his only failure was to appreciate that his premises needed to be closed by the time on the licence – not that it should not simply be selling any more food. His client had apologised for that and had taken steps to ensure it did not happen again. Mr Hopkins argued that there was a market for the Essex Grill to remain open longer and that there had been an absence of objections from residents living close to the premises and from the responsible authorities.</p> <p>Mr Hopkins concluded by saying that despite the objections advanced by the Licensing Service, his client had operated a number of temporary events without problems and which clearly demonstrated that his business was more likely to be properly conducted than otherwise.</p> <p>The Sub-Committee stated that in arriving at this decision, it took into account the licensing objectives as contained in the Licensing Act 2003, the Licensing Guidelines as well as Havering Council’s Licensing Policy.</p> <p>After careful consideration of all issues the Sub-Committee announced that it was not prepared to grant a variation to the premises licence:</p> <p>The Sub-Committee had listened to all of the representations and noted the objections on the grounds of public nuisance due to the fact that the venue would become a late night destination – which currently did not exist in this vicinity - and although this was a mixed use area, there were many residential properties in close proximity, and the Sub-Committee was not satisfied sufficiently to endorse the request to extend the trading hours to those applied for.</p> <p>Furthermore, the London Borough of Havering’s Licensing Policy applicable in this area</p>

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		<p>permitted regulated trading until 00.30 hours – and the establishment already held a licence permitting it to trade half an hour beyond that terminal time. This policy decision had been made to ensure that local residents were protected from noise and disturbance.</p> <p>Although the Sub-Committee acknowledged – and appreciated - the apologies tendered for the two recent infringements of the closing time, it remained concerned by those breaches, and the exacerbated effect of breaches in terms of public nuisance should a later terminal hour be approved, and it could not support an application for the hours applied for.</p> <p>8. Right of Appeal</p> <p>Any party to the decision or anyone who has made a relevant representation [including a responsible authority or interested party] in relation to the application may appeal to the Magistrates’ Court <u>within 21 days of notification of the decision</u>. On appeal, the Magistrates’ Court may:</p> <ol style="list-style-type: none"> 1. Dismiss the appeal; or 2. Substitute the decision for another decision which could have been made by the Sub Committee; or 3. Remit the case to the Sub Committee to dispose of it in accordance with the direction of the Court; and 4. Make an order for costs as it sees fit. <p>Grant Söderberg</p> <p>Clerk to the Licensing Sub-Committee the Essex Grill</p>

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