

**Havering Council – Decisions taken by the Licensing Sub-Committee on Wednesday, 2 October 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**

<p><b>A1</b></p>	<p>APPLICATION TO VARY A PREMISES LICENCE FOR ESSEX GRILL 177 ST MARY'S LANE UPMINSTER RM14 3BL</p>	<p align="center"><b>Licensing Act 2003 Notice of Decision</b></p> <p><b>PREMISES</b> 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><b>APPLICANT</b> Mr Mehmet Gilgil The Essex Grill 177 St Mary's Lane Upminster RM14 3BL</p> <p><b>1. Details of the application:</b></p> <p>The current premises licence hours were:</p>
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		<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>Monday to Sunday</td> <td align="center">23:00</td> <td align="center">01:00</td> </tr> </tbody> </table> <table border="1"> <thead> <tr> <th align="center" colspan="3">Opening hours of the premises</th> </tr> <tr> <th align="center">Day</th> <th align="center">Start</th> <th align="center">Finish</th> </tr> </thead> <tbody> <tr> <td>Monday to Sunday</td> <td align="center">14:00</td> <td align="center">01:00</td> </tr> </tbody> </table> <p>Variation applied for:</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>Sunday to Thursday</td> <td align="center">23:00</td> <td align="center">01:00</td> </tr> <tr> <td>Friday &amp; Saturday</td> <td align="center">23:00</td> <td align="center">02:00</td> </tr> </tbody> </table> <table border="1"> <thead> <tr> <th align="center" colspan="3">Opening hours of the premises</th> </tr> <tr> <th align="center">Day</th> <th align="center">Start</th> <th align="center">Finish</th> </tr> </thead> <tbody> <tr> <td>Sunday to Thursday</td> <td align="center">15:00</td> <td align="center">01:00</td> </tr> <tr> <td>Friday &amp; Saturday</td> <td align="center">15:00</td> <td align="center">02:00</td> </tr> </tbody> </table> <p><b>2. Seasonal variations &amp; Non-standard timings</b></p> <p>A non-standard timing request sought to permit the premises to remain open to the public and provide late night refreshment until 02:00 on a Sunday before a bank holiday. The written application did not make explicit whether “a bank holiday” referred only to bank holiday Mondays or bank holidays which may appear on other days of the week, e.g. Christmas Day etc.</p>	Late night refreshment			Day	Start	Finish	Monday to Sunday	23:00	01:00	Opening hours of the premises			Day	Start	Finish	Monday to Sunday	14:00	01:00	Late night refreshment			Day	Start	Finish	Sunday to Thursday	23:00	01:00	Friday & Saturday	23:00	02:00	Opening hours of the premises			Day	Start	Finish	Sunday to Thursday	15:00	01:00	Friday & Saturday	15:00	02:00
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		<p><b>3. Comments and observations on the application</b></p> <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 30 August 2013 edition of the Yellow Advertiser.</p> <p>The premises licence was held by an individual whom appeared to be a sole trader. As a sole trader's home address was required to be provided on the licence in order that the Licensing Authority was able to monitor the holder's solvency status in line with its obligations under s.27 of the Act. The holder of this licence had provided the address of the premises and his address. The Licensing Officer confirmed that the applicant had confirmed his home address and the solvency status had also been confirmed.</p> <p><b>4. Summary</b></p> <p>There were three representations made against this application from interested parties one of whom was a ward Councillor.</p> <p>There was one representation against this application by a responsible authority.</p> <p><b>5. Details of representations</b></p> <p>Valid representations may only address the following licensing objectives:</p> <p>The prevention of crime and disorder</p>

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		<p>The prevention of public nuisance                      The protection of children from harm                      Public safety</p> <p><b><u>Interested persons' representations</u></b></p> <p>Cllr Linda Van den Hende's representation against this application was based upon the prevention of public nuisance and the prevention of crime and disorder.</p> <p>The two other persons who made representation against this application were residents of the borough whose houses were in close proximity to the Essex Grill. These representations were based upon the prevention of public nuisance licensing objective.</p> <p><b><u>Responsible Authorities' representations</u></b></p> <p>Licensing Specialist Paul Campbell made representation against this application on behalf of Havering's Licensing Authority. The representation was based upon all four of the licensing objectives.</p> <p>There were no representations from any other responsible authority.</p> <p><b>6. Representations</b></p> <p><b>Licensing Authority</b></p> <p>The representation from the Licensing Authority addressed each of the licensing objectives.</p>

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		<p>The Licensing Authority representative, Mr Paul Campbell, commented that:</p> <ul style="list-style-type: none"> <li>○ On two occasions recently (28 April and 26 May 2013), Mr Gilgil (the applicant) 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.</li> <li>○ 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. Mr Campbell stated that on recent visits to the Upminster there had been very little, if any, footfall in the early hours of the morning. 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.</li> <li>○ 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 were 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.</li> <li>○ 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.</li> </ul> <p>In conclusion, Mr Campbell informed the Sub-Committee that he had little confidence in</p>

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		<p>the premises adhering to any new closure time (should any be granted) in the light of recent failures to observe the current allowance. Given the late hours applied for, the effect of any such breach would be exacerbated.</p> <p>Mr Finnis then addressed the sub-committee. Mr Finnis' argument was broadly similar to that of the Licensing Officer in-so-far as the issues concerning public nuisance were concerned. Mr Finnis commented that he held concerns with regards to car doors being slammed, increased noise from patrons talking loudly and a general increase in noise nuisance. This would be exaggerated late at night, as there was no other background noise. Mr Finnis also confirmed that patrons using the Essex Grill often parked their vehicles in surrounding roads.</p> <p><b>7. Applicant's Response</b></p> <p>In response, the applicant, 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 was what Mr Campbell had witnessed.</p> <ul style="list-style-type: none"> <li>The Applicant 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</li> </ul>

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		<p>honest business opportunity to ensure that customers were not sent elsewhere.</p> <ul style="list-style-type: none"> <li>• The applicant added that he had eight years of experience in the 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.</li> <li>• The applicant confirmed that he had tried opening earlier in the day to attract the lunchtime food trade but this had proved unsuccessful due to other businesses in the area offering lunchtime deals. Mr Gilgil confirmed that he wished to extend his trading hours to capture more of the evening food trade and that this would also allow him to offer his staff a full shift pattern.</li> <li>• The applicant also advised that he had never been in receipt of any complaints regarding public nuisance from local residents, the Council or the Police. Mr Gilgil advised that by extending the opening hours this would enable staff to manage the flow of customers better.</li> <li>• Mr Gilgil also confirmed that he did not believe that extending his opening hours would lead to other businesses in the area applying for later hours as the other businesses all opened earlier in the day.</li> <li>• The applicant also advised that notices were on display in his shop asking patrons to leave the premises quietly and in a diligent manner.</li> </ul> <p><b>8. Determination of Application</b></p> <p><b>Decision:</b></p>

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		<p><b>Consequent upon the hearing held on 2 October 2013, the Sub-Committee’s decision regarding the application for a variation to a Premises Licence for Essex Grill is as set out below, for the reasons shown:</b></p> <p>The Sub-Committee was obliged to determine this application with a view to promoting the licensing objectives, which were:</p> <ul style="list-style-type: none"> <li>• The prevention of crime and disorder</li> <li>• Public safety</li> <li>• The prevention of public nuisance</li> <li>• The protection of children from harm</li> </ul> <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><b>Agreed Facts</b> <b><u>Facts/Issues</u></b></p> <p>Whether the granting of a variation to the premises licence would undermine the licensing objectives.</p> <p><b>The prevention of public nuisance,</b> <b>The prevention of crime &amp;</b></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</p>



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		<p>the licence – not that it should not simply be selling any more food. He had apologised for that and had taken steps to ensure it did not happen again. The applicant advised that there was a market for the Essex Grill to remain open longer and that there had been an absence of complaints regarding public nuisance that could be attributed to the premises.</p> <p>The applicant concluded by saying that despite the objections advanced by the Licensing Service, he 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 permitted regulated trading until 00.30 hours – and the establishment already held a</p>

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		<p>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><b>9. Right of Appeal</b></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"> <li>1. dismiss the appeal; or</li> <li>2. substitute the decision for another decision which could have been made by the Sub Committee; or</li> <li>3. remit the case to the Sub Committee to dispose of it in accordance with the direction of the Court; and</li> <li>4. make an order for costs as it sees fit.</li> </ol> <p>Richard Cursons Clerk to the Licensing Sub-Committee</p>
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