

**MINUTES OF A MEETING OF THE
LICENSING SUB-COMMITTEE
VIRTUAL MEETING
17 January 2022 (10.30 am - 12.10 pm)**

Present:

COUNCILLORS

Conservative Group Philippa Crowder (Chairman) and Sally Miller

**Upminster & Cranham
Residents' Group** John Tyler

The Chairman reminded Members of the action to be taken in an emergency.

Present at the hearing were the applicant Ms Samanta Cepukaityte and their licensing consultant Mr Nira Suresh.

Also in attendance was the objector Mr Mike Richardson and Havering's Licensing Officer Paul Jones.

Also present were the Legal Advisor to the Sub-Committee and the clerk to the Licensing sub-committee.

No interests were disclosed at the meeting.

PREMISES

Aozora Sushi
13 Elm Parade Shops
Elm Park Avenue
Hornchurch
RM12 4SA

DETAILS OF THE APPLICATION

The Sub-Committee have considered an application for a new premises licence for Aozora Sushi, situated at 13 Elm Parade Shops Elm Park Avenue Hornchurch RM12 4SA, and representations against the application have been received from:

- The Council's Noise Team, on the grounds of the prevention of public nuisance.

SUMMARY

The Sub-Committee must promote the licensing objectives and must have regard to the Secretary of State's National Guidance created under S182 of the Licensing Act and the Council's own Statement of Licensing Policy. Where relevant representations are made, the authority must hold a hearing and then take such steps, as it considers necessary for the promotion of the licensing objectives (section 18(3), LA 2003). These steps may include rejecting the application, or modifying the conditions to the extent that the authority considers necessary for the promotion of the licensing objectives

DECISION

Having considered and heard all of the evidence, the Sub-Committee grant the application as follows

Premises Opening and Closing Times:

- i) Sunday to Thursday from 11:00 to 23:00 including Bank Holidays
- ii) Friday & Saturday from 11:00 hours to 00:00 hours

Provision of the sale of alcohol

- iii) Sunday to Thursday from 11:00 to 23:00 including Bank Holidays
- iv) Friday & Saturday from 11:00 hours to 00:00 hours

Provision of late night refreshment

- v) Friday & Saturday from 23:00 hours to 00:00 hours

In arriving to a determination, the members noted the Council's Noise Team made representations against the application as relevant authority. Representative authorities act as source of advice to members, and on this occasion, the members heard that the Council's Noise team expressed their concerns of noise nuisance to be caused to residents should the application be granted as requested.

Since the written representations against the application, The Council's Noise Team had examined the council's revised statement of licensing policy. During the hearing, they stated they take no issue with the premises being permitted to provide late night refreshment and provision of the sale of alcohol on Fridays and Saturdays up until midnight but maintain their position that the sale of alcohol and late night refreshment from Sundays to Thursdays up until midnight will cause public nuisance to residents.

The Council's Noise Team stated that although no complaints have been received concerning the premises, the premises sits directly underneath residential home. There are also residential homes opposite the premises. During the evenings, the area can be described as more of residential area than a commercial area. Given the location of the premises, permitting the premises to sell alcohol and late night refreshment after 11pm will cause residents above the premises to suffer from noise pollution caused by delivery drivers and patrons of the premises.

The members accepted this representation as the members were told by the applicant that the premises relies mostly on delivery sales. The members found that it is more than likely that delivery drivers attending and leaving the premises will cause noise pollution to residents. This will be caused by the noise generated from the vehicles used by the delivery drivers, such as mopeds, and from the congregation of delivery drivers waiting to collect orders from the premises. The members found that their concerns are consistent with the council's statement of licensing policy and their own knowledge of the area as the hours of 11pm and beyond will fall within what is described as sensitive hours. These hours are sensitive as noise will be more audible and will travel further around the premises.

The members concerns also extends to customers attending the premises after 11pm. Their entrance and egress from the premises will cause noise to travel to residents above and opposite the premises. The members are conscience that residents are likely to be sleeping after 11pm Sunday to Thursday in preparation for work and school.

The members did consider that the applicant has control over the delivery drivers who attend the premises but are equally aware this control is limited in that delivery partners employ the drivers and the driver's responsibility ultimately lies with their respective employers as opposed to the management of the premises. The Committee considered whether imposing conditions such a notices, dispersal policy or regular noise observations would be an appropriate step to promote the licensing objective, however, were satisfied due to the location of the premises, no condition will be able to competently prevent public nuisance. The Committee also reconciled the principle that beyond the immediate area surrounding the premises are matters for the personal responsibility of individuals under the law, however in this case, the immediate area around the premises are residential homes and naturally noise will be caused by customers.

Finally, the member are aware that no resident has made representations against the application however do give weight to the Council's Noise Team who are tasked to deal with noise nuisance within the borough. Therefore no licensable activity is permitted from Sundays to Thursdays after 11pm.

Additional Condition Imposed

1. Alcohol shall only be served ancillary to a table meal in the restaurant, or ancillary to an order of takeaway food for consumption off the premises.

The members were told during the hearing that the applicant seeks a licence to be permitted to sell alcohol on sales at the premises without the customer needing to order a meal. In the member's minds, this was contrary to their understanding of the application. The operating schedule, in particular condition 2, implied that the premises will only serve alcohol ancillary to a table meal and the applicant had described the premises as a restaurant. This was also the understanding of the Licensing Authority.

In any event, the members find that imposing such condition is proportionate and justifiable and will promote the licensing objective of prevention of public nuisance. The members were concerned that without such condition, the premises will effectively be operating as a bar as opposed to a restaurant. As such, the members expected appropriate conditions to be offered in the operating schedule to promote the four licensing objectives. Examples of such conditions include conditions such as preventing vertical drinking, drinks to be served only in shatter proof glass, having a DPS or personal licence holder present at the premises. The lack of conditions offered by the applicant demonstrated to the members the applicant does not know the value of having such conditions when seeking to operate a 'bar' or 'drinks establishment'. The members found that imposing conditions will be counter productive in promoting the licensing objectives as the applicant will not understand the necessity of such conditions when operating a Bar.

Moreover, the members find that allowing a drinks establishment in a location that has many residential homes is likely to cause Public Nuisance to the residents given the nature as the noise that will be generated drinkers at the premises will have a detrimental effect on the lives of the residents. Having a condition to requiring alcohol to be only served as ancillary with a meal reflects the true nature of the premises, as described by the applicant, a restaurant and will prevent public nuisance to the residents as also stated by the Council's Noise team.

Conditions agreed by the Applicant and the Council's Noise Team

1) Noise from deliveries of stock.

No deliveries shall be received at the premises outside of the following hours:

08.00-18.00 Monday-Friday

08.00-13.00 Saturday

No deliveries on Sunday, Public and Bank Holidays

Reason: To prevent a public nuisance from deliveries at unreasonable times.

2) Noise from waste collections

No waste collections shall occur at the premises outside of the following hours:

07.00-18.00 Monday-Friday

08.00-13.00 Saturday
No deliveries on Sunday, Public and Bank Holidays

Reason: To prevent a public nuisance from waste collections at unreasonable times.

3) Deliveries of food and alcohol

No deliveries of food and alcohol shall be collected from the premises outside the licensable hours.

Reason: To prevent a public nuisance from deliveries at unreasonable times.

4) Signage

Prominent signage shall be displayed at all exits from the premises requesting that customers leave quietly.

Reason: To prevent a public nuisance from customer noise.

Chairman