

Havering Council – Decisions taken by the Licensing Sub-Committee on Thursday, 1 December 2022

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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 REVIEW A PREMISES LICENSE - ARRAY ESSEX	<p align="center">Licensing Act 2003 Notice of Decision</p> <p>PREMISES Array Essex 91 Shepherds Hill Romford RM3 0NP</p> <p>APPLICANT Councillors Martin Goode, Brian Eagling and Daren Wise</p> <ol style="list-style-type: none"> 1. The Licensing Sub-Committee considered an application for a review of the premises licence for 'Array Essex,' situated at 91 Shepherds Hill Romford RM3 0NP. 2. The review was submitted by ward councillors Martin Goode, Darren Wise and Brian Eagling on behalf of local residents on the grounds that for a protracted period of time – over 18 months – the residents in a half mile radius from the premises have been continually affected by the premises' alleged failure to promote the licensing objectives, in particular, the prevention of crime and disorder, the prevention of public nuisance and public safety. In addition, 43 local residents, the Council's Licensing team, the Council's Environmental Health team and the Metropolitan Police made respective supporting representations. 3. Having read all written representations and heard oral representations the
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		<p>members decided to modify the licensable hours and imposed additional conditions to promote the prevention of crime and disorder, the prevention of public nuisance and public safety licensing objectives.</p> <ol style="list-style-type: none"> 4. Please note that all parties were reminded that no fresh evidence could be adduced at the hearing without the consent of all parties, pursuant to regulation 18 of the Licensing Act 2003 (Hearings) Regulations 2005. 5. Please note that the parties were reminded that any allegation made against the councillors who brought the review further to public office misconduct was not an issue for consideration by the members under the licensing regime and any such allegation should be properly directed to the Council’s Monitoring Officer. 6. Please note that the parties were reminded the powers available to the licensing sub-committee are not limited to simply reducing licensable hours but rather as listed in section 52(4) of the Licensing Act 2003. The parties were also reminded that in deciding which of these powers to invoke, the expectation of the sub-committee is that it should so far as possible seek to establish the cause or causes of the concerns that the representations identify. Therefore, any remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review <p><u>Reasons:</u></p>
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		<p>7. The members found the representations collectively identified three causes of concern: parking issues in the environs of the premises, noise nuisance emanating from the premises and crime and disorder from patrons when leaving the premises.</p> <p><u>Parking</u></p> <p>8. The members reminded themselves that parking, in principle, is not a licensing issue, however, it can develop into a consideration for the committee if it can be demonstrated that the parking issues undermine any of the licensing objectives; in so doing, the issues can be causally linked to the premises.</p> <p>9. The members read written representations and heard that the central issues raised by residents concerning parking involved anti-social parking in the immediate and neighbouring locality of the premises. This included seventeen residents positively stating that patrons from the premises either had parked their vehicles on their respective driveways or parked their vehicles in a manner that blocked their driveways. One resident stated that patrons had knocked on her door and asked if they may park their car on her driveway.</p> <p>10. The members found that customers parking on residents' driveways or blocking driveways does undermine the licensing objective of the prevention of public nuisance as such actions by customers meet the common law definition of public nuisance. The issues are positively linked to customers leaving the premises given the fact that residents confirm that an overspill from the premises is causing the anti-social parking.</p>

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		<p>11. The members were conscious of the s.182 Guidance which states in paragraph 2.21, 'Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law'. The Guidance further states in paragraph 1.16 that conditions 'cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave.'</p> <p>12. In applying the above guidance, the members imposed conditions number 14 and 15 requiring the premises to obtain vehicle registration details of customers so that should a parking complaint be made by a resident to the premises, the customer can be identified by the premises' management and asked to move their car. The members welcomed that the premises had already adopted this system and also stated that if the premises find persistent offenders, the premises will ban those customers. The purpose of such conditions seeks to positively impact the parking behaviour of the customers entering or leaving the premises.</p> <p>13. The members accepted that beyond the premises adhering to these conditions, the premises cannot manage the parking behaviour of the residents due to the issue becoming a matter of the customer's personal responsibility.</p> <p><u>Noise Nuisance from the premises:</u></p> <p>14. The members noted that the premises accepted that the Bayou area of the premises was causing noise nuisance, albeit not a statutory noise nuisance. The</p>

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		<p>members heard from the Council’s Noise team who said that they have recorded noise from the premises but they will require further visits to determine if the noise nuisance meets the statutory threshold for noise nuisance. In any case, the members were told by the premises noise from the premises was due to the Bayou area structure being modified so that shisha can be provided to customers without the premises falling foul of section 2(4) of the Health Act 2006. This was confirmed by an officer of the council’s health team who said they had directed the premises to remove panels from the Bayou area to ensure it was compliant with the relevant provisions of the Health Act 2006.</p> <p>15. This submission also corroborates the representations made by the council’s noise team who said that the issue of noise is mainly caused by music from the Bayou area located at the rear of the premises.</p> <p>16. The members welcomed a condition proposed by the premises’ management that they will cease the service of shisha to promote the licensing objectives and therefore revert the structure of the Bayou lounge to stop sound escaping from the premises.</p> <p>17. The members also welcomed that the premises will close the Bayou area to customers at 11pm.</p> <p>18. The members were of the view that the above actions will help to minimize noise nuisance caused to residents from the premises.</p> <p><u>Crime and Disorder & Public Nuisance from patrons leaving the premises.</u></p>

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		<p>19. As mentioned above, the members reminded themselves that the s.182 Guidance to the Act states that ‘beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law.’</p> <p>20. The members also reminded themselves that the behaviour of customers beyond the immediate of the premises cannot be deemed as a relevant representation unless if it can relate to any of the four licensing objectives and be positively tied or linked by a causal connection to the premises.</p> <p>21. The members found that the following were common issues identified by residents and councillors:</p> <ul style="list-style-type: none"> - Customers ‘shouting, urinating, vomiting, fighting or being abusive to residents’ in particular when leaving the premises - Customers ‘slamming car doors, hooting their car horns, revving their car engines and speeding.’ <p>22. The members identified that the above customer behaviours appeared to peak from around 11pm to the early hours of the morning. At least eleven residents cited such hours as a window during which the issues arise. Other residents say they and/or their children are awoken by the anti-social behaviour of patrons leaving the premises which again points towards 11pm and the early hours of the morning being the problematic time.</p>

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		<p>23. The members were also told that Array Essex is the only licensed premises in the vicinity of the residents' homes. The members were satisfied that the complaints of the residents demonstrated a causal link and a positive connection to the premises and that these complaints relate to the prevention of crime and disorder and the prevention of public nuisance. The members recognised that the behaviour of some of the customers is causing residents and their children to suffer on a daily basis and, in particular, on the weekends.</p> <p>24. The members were unable to depart from the fact that the residents reside next to the premises and therefore have a first-hand day to day experience of customers entering or leaving the premises. Further, the sheer number of residents who in effect communicated very similar issues cannot have concocted the issues they have raised relating to crime and disorder and anti-social behaviour and therefore cannot be discredited or reduced to incidental issues. In addition, some of the incidents they raised conform to the Police CAD reports, strengthening their representations.</p> <p>25. The members acknowledged that the council's noise team visited the premises on fourteen occasions and some of the report supports the residents' complaints while other parts of the report do not. The members, however, found that the visits to the premises were often before 11pm and it appeared from the report that the officer was primarily focused on music issues at the premises. The members also noted that the contents of Mr Adrian Studd's report did not support the residents' representations; however, the members also noted that</p>

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		<p>the report only covered one night of observations and did not provide great detail as to the precise instructions received to conduct the report. Therefore, limited weight was given to this report.</p> <p>26. On balance, the members were satisfied that the licensing objectives of the prevention of crime and disorder and the prevention of public nuisance were being undermined by customers of the premises and are occurring from 11pm to the early hours of the morning.</p> <p>27. Given the above, the members considered which step is the most appropriate to promote the licensing objectives.</p> <p style="padding-left: 40px;">a. <u>Revocation</u></p> <p style="padding-left: 80px;">The members found that revoking the licence would be a disproportionate response in this case and unfair to the wider users of the night-time economy at this premises. The members noted that the respondent has, to some extent, worked with the responsible authorities to address issues from the premises, namely closing the Bayou lounge by stopping the provision of shisha and offering to close the Bayou lounge at 11pm every night, regardless of whatever future endeavours the premises may provide in that area.</p> <p style="padding-left: 40px;">b. <u>Suspension (with or without conditions)</u></p>

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		<p>The members cite the same reasons as above further to revocation.</p> <p>c. <u>No Action</u></p> <p>The members found that taking no action or giving an informal warning would undermine the licensing objectives and would not act as a remedial step to deal with the issues accepted by the members.</p> <p>d. <u>Exclusion of licensable activity</u></p> <p>The members found no evidence to justify that the exclusion of any licensable activity would be a proportionate and/or an appropriate remedial step to deal with the issues accepted by the members.</p> <p>e. <u>Removal of DPS</u></p> <p>The members noted that the issues identified at the premises are as a result of a causal link with patrons leaving the premises and did not find any evidence to suggest the actual premises is being run poorly.</p> <p>Having said that, the members were not happy with the designated premises supervisor, Mr Nadir Gul, attending resident 20's home and behaving as described in page 56 of the agenda pack. Although this resident's details are redacted, the respondent did concede, to an extent, that Mr Nadir Gul is 'perhaps not the best person' to deal with residents' complaints.</p>

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		<p>On balance, the members decided not to remove Mr Nadir Gul, the current DPS from this role due to this single incident and also note that the respondent will substitute Mr Sager as the point of contact for residents.</p> <p>The members strongly remind Mr Gul that as the designated premises supervisor, he is the key person who will usually be responsible for the day to day management of the premises on behalf of the premises licence holder, whose duties include promoting the prevention of crime and disorder. Therefore it is not acceptable to behave in such manner to a neighbouring resident.</p> <p>f. <u>Modify conditions</u></p> <p>The members imposed the following additional conditions on the licence:</p> <ol style="list-style-type: none"> 1. A bespoke dispersal policy shall be adhered to at the premises at all times. Version 1 of the policy submitted to the Licensing Authority on 30/11/2022 shall be the working document. Any amendments to the policy shall only be made with the prior approval of the Licensing Authority and the Environmental Health department. Subsequent versions of the policy shall include a change log for reference and shall be lodged with the Licensing Authority in an electronic format. <p><i>(Agreed in principle by the Premises Licence Holder and the Council's</i></p>

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		<p align="center"><i>Licensing team)</i></p> <p>2. The premises shall not provide shisha and shisha shall not take place anywhere on the premises including any outside areas, the main restaurant area or the rear area currently known as Bayou.</p> <p align="center"><i>(Agreed in principle by the Premises Licence Holder and the Metropolitan Police. The members were of the view that this condition will help to minimize noise nuisance caused to residents from the premises caused by customers who would sit for shisha.)</i></p> <p>3. No amplified sound or other music shall be played via external speakers, or within the part of the premises currently known as Bayou after 23:00 hours.</p> <p align="center"><i>(The members adopt the Council’s Noise Team’s reasons, as stated in their written representations, for the imposition of this condition.)</i></p> <p>4. The Designated Premises Supervisor or any person managing the premises shall actively monitor the volume of music emanating from the premises and adjust the volume to ensure that any amplified sound or other music from the licensed premises does not cause a public nuisance.</p>

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		<p align="center"><i>(The members adopt the Council's Noise Team's reasons, as stated in their written representations, for the imposition of this condition.)</i></p> <p>5. Records of monitoring volume of music emanating from the premises and any action taken, shall be kept for a minimum of three months at the premises and shall be made available for inspection by the appropriate responsible authority immediately upon request.</p> <p align="center"><i>(The members adopt the Council's Noise Team's reasons, as stated in their written representations, for the imposition of this condition.)</i></p> <p>6. Doors and windows to the premises shall remain closed (save for entrance and egress) at all times when regulated entertainment is being provided.</p> <p align="center"><i>(The members adopt the Council's Noise Team's reasons, as stated in their written representations, for the imposition of this condition.)</i></p> <p>7. A self-closing device shall be fitted and used at all times on all doors leading to the external areas of the premises.</p>

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		<p align="center"><i>(The members adopt the Council’s Noise Team’s reasons, as stated in their written representations, for the imposition of this condition.)</i></p> <p>8. A complaints book or an electronic record shall be held on the premises to record details of any complaints made to the premises regarding amplified music, or other issues raised by local residents. The information shall include, where disclosed, the complainant’s name, address, date and time of the incident and any subsequent remedial action taken. This record shall be kept for a minimum of three months and shall be made available for inspection at all reasonable times upon request by the appropriate responsible authority.</p> <p align="center"><i>(The members adopt the Council’s Noise Team’s reasons, as stated in their written representations, for the imposition of this condition.)</i></p> <p>9. The designated premises supervisor, manager or a representative of the premises shall monitor activities in the car park/near vicinity to ensure that customers leave the premises and area quietly. If customers are unreasonable in their actions, the designated premises supervisor, or a representative shall politely remind customers to be mindful of neighbouring residents by leaving the premises and area quietly. A written record of such interventions shall be kept for a minimum of three months, detailing such interventions and persons</p>

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		<p>involved, and shall be made available at all times upon reasonable request for inspection by the appropriate responsible authority.</p> <p><i>(The members adopt the Council’s Noise Team’s reasons, as stated in their written representations, for the imposition of this condition.)</i></p> <p>10. There shall be a minimum of two door supervisors on duty from 21:00 to 00:30 on Fridays and Saturdays who shall remain on duty until the premises closes and is empty of patrons.</p> <p><i>(The members impose this condition as the members accept that customers entering and, in particular, leaving the premises have undermined the licensing objectives of the prevention of crime and disorder and the prevention of public nuisance. The condition will minimise the risk of customers behaviour at these sensitive hours identified. Please also note, this condition is an extension of the measures already put in place within the dispersal policy)</i></p> <p>11. All outside areas, including barriers or gates to the premises, must be closed and cleared of customers 30 minutes after the premises’ closing times. Adequate notices shall be displayed to inform patrons of this requirement.</p> <p><i>(The members heard that customers would loiter around the premises</i></p>

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		<p align="center"><i>after closing times, this condition will prevent customers loitering at the premises)</i></p> <p>12. A clear notice shall be displayed at every exit from the premises to politely request customers to respect the needs of local residents and to leave the premises and the area quietly.</p> <p>13. In relation to the area known as 'Bayou' (or formerly known as 'Bayou'), this area shall be closed to all patrons every day from 23:00 to the following opening time of the premises.</p> <p align="center"><i>(This condition was effectively offered by the premises licence holder during the hearing)</i></p> <p>14. A clear notice shall be displayed at every entrance to and exit from the premises to request customers to respect the needs of local residents by parking considerately, not parking on residential driveways and not to block residential driveways.</p> <p align="center"><i>(Please see paragraph 10 above for justification of this condition)</i></p>

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		<p>15. The premises shall ask customers upon entry to the premises if they have attended the premises by vehicle and if so, have the customers parked their vehicle in residential roads around the premises? Should the customers confirm that they have parked their vehicle on the surrounding roads the premises shall obtain the registration details of the vehicle.</p> <p><i>(Please see paragraph 10 above for justification of this condition)</i></p> <p>16. The premises shall make available to the residents via the premises' web site and/or social media pages a direct contact number and direct email address of the manager of the premises with the exception of Mr Nadir Gul. This will provide a channel for residents to raise any relevant licensing complaint to the management of the premises.</p> <p>28. The members considered whether the imposition of the above conditions by itself would be an effective remedial action; however, the members found that a reduction of hours in conjunction with these conditions is imperative to promote the prevention of crime and disorder and the prevention of public nuisance licensing objectives.</p> <p>29. The evidence presented by the residents clearly demonstrated to the members' satisfaction that customers leaving the premises from, and after, 11pm were</p>

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		<p>undermining the said licensing objectives. The imposed conditions detailed above in conjunction with the reduction of hours will help to minimise the disruption to local residents.</p> <p>30. The members also found that the reduced hours are aligned with the council’s statement of licensing policy, in particular section 12. The premises is located in a residential setting with minimal public transport infrastructure. The character of the area cannot be ignored, nor may the lack of public transport available to customers entering or leaving the premises. This is further exacerbated by the fact that the members’ local knowledge strongly indicates that responsible authorities are focused on high streets and town centres when managing the night time economy as opposed to a residential area containing only one licensed premises.</p> <p>31. The reduction of hours is also intended to protect from unwanted nuisance working persons and children, giving them a better quality of sleep and therefore improving their lives.</p> <p>32. For the reasons given above the premises licence is restricted to:</p> <p><u>Late night refreshment</u></p> <p>Friday and Saturday – 23:00 to 00:00</p> <p><u>Plays, films, live music, recorded music, performances of dance, anything of a similar description to live music, recorded music or performances of dance, supply of alcohol</u></p>

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		<p>Sunday to Thursday – 08:00 to 23:00 Friday and Saturday – 08:00 to 00:00</p> <p><u>The opening hours of the premises</u></p> <p>Sunday to Thursday – 08:00 to 23:30 Friday to Saturday – 08:00 to 00:30</p> <p>33. The non-standard hours listed in annex 2 condition 11 remains the same.</p> <p>Right of Appeal</p> <p>Any party who has made a relevant representation may appeal to the Magistrates' Court <u>within 21 days of notification of the decision.</u></p> <p>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.
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A2		