

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Licensing Sub-Committee **Date:** 19 September 2016

Place: Council Chamber, Civic Offices, **Time:** 10.00 am - 1.05 pm
High Street, Epping

Members Present: R Morgan (Chairman), D Dorrell and M Sartin

Other Councillors:

Apologies: J Jennings

Officers Present: N Clark (Licensing Compliance Officer), J Leither (Democratic Services Officer) and A Mitchell (Assistant Director (Legal Services))

21. DECLARATIONS OF INTEREST

There were no declarations of interest pursuant to the Council's Code of Member Conduct.

22. PROCEDURE FOR THE CONDUCT OF BUSINESS

The Sub-Committee noted the agreed procedure for the conduct of business.

23. REVIEW OF PREMISES LICENCE - IL BACIO, 19B FOREST DRIVE, THEYDON BOIS, CM16 7EX

The Chairman of the Sub-Committee, Councillor R Morgan welcomed the participants and introduced the Members and Officers present. The three Councillors that presided over this item were Councillors R Morgan, D Dorrell and M Sartin. The Chairman then requested that the participants introduced themselves to the Sub-Committee.

In attendance on behalf of the premises were; R James, Counsel for Il Bacio and A Sini, the Manager of Il Bacio, Theydon Bois.

In attendance representing Essex Police were; A Ranatunga, Counsel for Essex Police, S Sparrow, Essex Police County Licensing Officer and P Jones, Essex Police, Epping and Brentwood Licensing Officer.

In attendance representing the Home Office Immigration Service were: J Davis, Chief Immigration Officer; M Gear, Immigration Officer and J Denham, Immigration Officer.

Also in attendance were; Mrs J Hirst and Dr D Hirst, supporting the Police Review and J Flaig, reporter from the Guardian.

The Chairman then outlined the procedure that would be followed for the determination of the application.

(a) The Review before the Sub-Committee

The Licensing Officer apologised to the Sub-Committee informing them that there were two errors in her report which were as follows:

- Page 9, Item 1: The word Summary be removed before Review as this was a Review and not a Summary Review; and
- Page 9, Report, Item 3: 4th line down interested parties should now read 'any other persons who wish to make relevant representations'.

The Licensing Officer informed the Sub-Committee that on 28 July 2016 an application for a Review of a Premises Licence under Section 51 of the Licensing Act 2003 had been received from Essex Police in respect of a Premises Licence issued to Mr Luigi Funedda, Il Bacio, 19B Forest Drive, Theydon Bois, CM16 7EX. Essex Police were seeking revocation of the premises licence based on the Prevention of Crime and Disorder and Public Safety. A copy of the application for review under Section 51 was served on the holder of the Premises Licence and all responsible authorities.

(b) Submission by Essex Police

A Ranatunga advised that it was for the Sub-Committee to consider what was proportionate and appropriate for the Premises Licence in order to prevent Crime and Disorder and Public Nuisance.

A Ranatunga highlighted the fact that neither the Premises Licence Holder, Luigi Funedda nor the Designated Premises Supervisor, Andreea Michela Mosteanu, who was in control of the day to day running of the premises, were not in attendance. He also noted their apologies, given by Mr James, who stated that they were otherwise engaged on another business appointment but that they had no objections for this hearing to continue with Mr James and Mr Sini representing them.

A Ranatunga advised that following information and intelligence held by the Home Office Immigration Services, a Magistrates Court Warrant was obtained and on the 30 June 2016 at approximately 4.50pm Immigration Officers entered the premises of Il Bacio, 19B Forest Drive, Theydon Bois. A Colombian male was identified, Mr Romero, who was working in the kitchen of the premises. On being questioned Mr Romero advised that he had been working at Il Bacio for a couple of months and was paid wages depending on the amount of hours he worked.

Subsequent checks were made and identified that Mr Romero was working illegally, the premises was searched and a Colombian ID card was found.

During the time of his arrest Mr Romero informed Immigration Officers that he had entered the United Kingdom in a friend's car and did not have a visa for the United Kingdom. He also advised the arresting officer that he had been working at Il Bacio for a couple of months and depending on the hours he worked he was paid £300-400 per week. He would not disclose to officers where he was living.

The restaurant manager entered the back of the premises approximately 5 minutes later and was identified as Mr Sini. Mr Sini appeared to be angry and said 'that man is not illegal, I have known him for 20 years, he works for me, he is not illegal'. Mr Sini was advised that the team who investigated illegal working would be in contact and that he would need to provide evidence that the correct right to work checks were made on Mr Romero. Mr Sini advised officers that Mr Romero lived above the

restaurant. Officers carried out a search at the premises above and found a Columbian ID card.

A Ranatunga advised that illegal working had wide ramifications::

- Non payment of tax and national insurance;
- Cheap labour – paying below the minimum wage; and
- Undercutting other British businesses.

A Ranatunga also pointed out that Mr Funedda knew that documents should have been provided for the meeting but they had not, he therefore advised the sub-committee that they would have no knowledge of how Il Bacio employed staff.

(c) Questions by the Sub-Committee

Councillor D Dorrell referred to page 17 of the agenda which said ‘there were a number of warning markers allegedly linked to the subject that indicated he was a heavy drug user and seller and had been known to threaten people with knives’. Could the applicant give any further information..

S Sparrow advised this was the intelligence that was held about the man that had been arrested.

Councillor D Dorrell asked when was the HMRC Civil Penalty issued and for how much.

J Davis replied that the Penalty was issued on the day of the arrest and the amount was for £10,000.

(d) Questions by the Premises Counsel

The Premises Counsel had no questions at this time.

(e) Statement from Dr D Hirst, resident of Forest Drive in support of the Applicant

Dr D Hirst advised that an extension to the licence of Il Bacio was granted in March 2016, with conditions. This was a residential area and the conditions that were imposed earlier in the year were not adhered to. Dining and drinking still occurred on the outside terrace after 8.00pm and the bi-fold doors were kept open well after 8.00pm. A member of staff was not always supervising the outside area and the tables and chairs were not cleared away by 8.30pm. Taxis still pulled up outside and beeped their horns and patrons did not leave the premises in a quiet and orderly manner often heard shouting and swearing well after midnight.

Earlier this year, when the licence extension was sought he had petitioned his neighbours and 30 out of 32 people signed the petition which gave a strong indication of how the nearest neighbours felt about Il Bacio.

(f) Questions by Applicant

The Applicant had no questions at this time.

(g) Questions by the Premises Counsel

The Premises Counsel had no questions at this time.

(h) Submission by the Premises

R James advised that he would firstly like to deal with the reason that L Funedda and A Funedda were not in attendance, this did not indicate that they were not taking this matter seriously. When L Funedda found out about the date he informed the Licensing Officer that he would not be able to attend due to another business appointment that he had which could not be moved. Therefore, A Sini, the restaurant manager and a business partner in the restaurant was in attendance on their behalf.

R James advised that the objections by Dr and Mrs Hirst were those submitted in February of this year and considered at that time, L Funedda and A Sini did not accept the objections as they were repetitious and had been previously dealt with. R James stated that he would focus on the Police application for a review and that the sub-committee would decide whether to take into account the objections of Dr and Mrs Hirst.

R James advised that the markers in respect of Mr Romero concerning the matter of intelligence regarding heavy drug use, selling drugs and threatening people with knives had not been proven and no information had been provided to substantiate this statement. Therefore we do not consider him to be a concern of public safety.

R James stated that Mr & Mrs Funedda and Mr Sini employed Mr Romero not knowing he was an illegal worker. Mr Sini had known Mr Romero for the best part of 20 years working in various restaurants and he therefore believed him to be a legal worker.

His employment came about because Il Bacio urgently required a chef, they had exhausted all other avenues of finding one. Mr Romero had been recommended and they had informal confirmation from other restaurants that he was a good chef and due to the urgency of filling the vacancy proper checks has not been carried out.

Mr Romero at the time of his employment had been asked to provide the necessary documentation. He advised his employers that his paperwork was at his brothers and as soon as he could he would get them.

R James disputed that Mr Romero got paid £300-400 per week, he advised the Committee that Mr Romero was given living accommodation, food and pocket money until he could provide the required documentation..

Mr & Mrs Funedda and Mr Sini accepted that they should have checked up on the paperwork but it was a busy time for the restaurant. Mr Romero was advised that he would not be able to receive all of his salary as some would have to be kept back for tax and national insurance. R James advised that Mr Funedda had run restaurants for years and he had never employed an illegal worker before. This was a one-off and should not have happened and a lesson had been learnt.

R James advised that the civil penalty had already been paid and this demonstrated that they were determined to put matters in order it was negligence of their behalf would never be repeated again.

(i) Questions by the Sub-Committee

Councillor M Sartin stated that the evidence given was that Mr Romero was given free lodgings, food and small amounts of money for expenses. She asked how much would be considered as small amounts and where were the records to show what these amounts were, how frequently they were paid and how much was owed to Mr

Romero. R James advised that a note was kept every time Mr Romero had a sub against his wage but there was no formal record as the accountant was not in receipt of the information.

Councillor M Sartin asked if records were kept of the exact date Mr Romero stated working at Il Bacio. R James replied that a record would have been noted but Mr Sini cannot answer that now. They do not dispute the time period Mr Romero worked of 6-8 weeks.

Councillor M Sartin asked why no records had been brought forward as submissions and why were Mr and Mrs Funedda were not present. R James advised that given Mr Sini's position as a partner and manager of Il Bacio, Theydon Bois he would be able to answer any questions from the Committee. Mr Sini advised that Mr and Mrs Funedda had personal problems and Mrs Funedda may not be involved with the business in the near future.

Councillor D Dorrell asked what hours and how many days a week did Mr Romero work. R James advised that there were daily and weekly variations in the hours worked but he worked approximately 40 hours a week over 6 days.

(j) Questions by the Applicant

A Ranatunga asked where was Mr Funedda and what was so important that he could not change his appointment to attend this meeting. R James advised that Mr Funedda was at a business appointment for another premises which could not be changed.

A Ranatunga asked Mr Sini, if, in his opinion, the statement of one of the arresting officers was accurate:

“A male walked towards me and at this time I asked him if he was the manager, the male ignored me, walked past and towards the other immigration officers speaking to the staff. I asked the male once again if he was in charge or the manager to which he stated he was. I explained to him that a search warrant had been issued from the magistrate's court in order to search the restaurant for a suspected immigration offender. The manager I now know to be Mr Sini looked at the warrant and stated words along the lines of 'that man is not illegal, I have known him for 20 years, he works for me, he is not illegal.' I stated to Mr Sini that the target of the warrant was an immigration offender and that he had been arrested and would be taken to the local police station. I asked Mr Sini for his details for the purpose of the Notice of Person Liable, at this time he threw his driving license on the bar counter and took his jacket off in a very aggressive manner and threw this on the floor. I asked Mr Sini to calm down and explained that he was liable to a fine and that he had employed Mr Romero when he had no permission to be in the United Kingdom.”

Mr Sini explained that he had received a phone call advising that the police were at the restaurant, when he arrived he was upset as the staff were lined up at the wall and there were police everywhere, the chef was in handcuffs and he lost his temper he apologised but stated that he was upset as he never thought for one second that Mr Romero was illegal.

A Ranatunga asked Mr Sini if he could give the exact dates that Mr Romero's employment started. Mr Sini replied that he could not.

(k) Questions from the Objectors

The objectors had no questions at this time.

(l) Closing Statement by the Premises

The Premises Counsel advised that he had nothing more to add.

(m) Closing Statement by the Police

A Ranatunga advised the sub-committee that he would like to summarise the main points of this case:

- Was there no proper explanation why the Licence holder or the Designated Premises Supervisor did not attend this meeting;
- The need to focus on the explanation that Mr Romero was employed for 6-8 weeks earning in the region of £300-400 per week which wasn't actually paid to him in full, only living expenses but there were no supporting documents;
- That the date of his employment was not recorded, a record of his expenses were not kept, no National Insurance number was received, no paperwork was received from Mr Romero proving he was legally entitled to work in the United Kingdom.

A Ranatunga put it to the Sub-Committee were these the actions of a responsible licensee.

(n) Consideration of the Review by the Sub-Committee

The Sub-Committee withdrew from the chamber whilst they considered the application in private. During their deliberations the Sub-Committee received advice from officers present of the possible conditions that could be considered if the Sub-Committee thought it appropriate.

That to determine an application for a Review of the Premises Licence at Il Bacio, 19B Forest Drive, Theydon Bois and to consider the four licensing objectives and the relevant representations as a result of the review application were as follows:

RESOLVED:

That the decision of this Sub-Committee was that the following steps were necessary for the promotion of the licensing objectives:

- (1) To remove the designated premises supervisor from the licence; and
- (2) To suspend the licence for a period not exceeding three months or such earlier date if the Licensing Manager agrees in writing that the licensing conditions specified in (1) to (4) below have been complied with.

To modify the conditions of the premises licence as follows:

- (1) That the Premises Licence holder will operate a full digital or paper HR management system where all relevant documents are stored for each individual member of staff and must include the Home Office Right to Work Checklists and other required documents;

- (2) That the Premises Licence holder would work with an appropriate agency, for example, People Force International and carry out checks on the Home Office website to verify identification, visa and right to work documents;
- (3) No new member of staff would be able to work at the premises (including any trial period) unless they had provided satisfactory proof of identification and right to work; and
- (4) All documents for members of staff would be retained for a period of 12 months post termination of employment and should be available on the premises at all times to police, immigration or licensing officers on request.

The reasons for the sub-committee's decision were as follows:

For the prevention of crime and disorder

In relation to the prevention of crime and disorder, the Sub-Committee found that having taken account of the evidence provided and lack of documentary evidence to support the case being put forward by Il Bacio the Sub-Committee found that the case for the prevention of crime and disorder had been supported.

The Sub-Committee found that the designated premises supervisor had a lack of management control and oversight which allowed the employment of an illegal worker to happen

For the prevention of public nuisance

The sub-committee took account of the relevant representations of Dr and Mrs Hirst and found that a noise nuisance was being caused by the doors to the premises being kept open at times other than when used for entering and leaving the premises. The conditions were to be kept the same as that which were imposed on 23 February 2016, with an amendment to condition 6:

- (1) The premises licence holder shall ensure that any patrons eating, drinking and/or smoking outside the premises do so in an orderly manner and are supervised by staff so as to ensure that there is no public nuisance or obstruction of a public highway. A member of staff shall be stationed outside to supervise the front and side terrace when in use until 8.30pm. The member of staff will remind customers, should it be necessary, to keep their voices down and when leaving to do so quietly and be respectful of the neighbours;
- (2) The use of the terrace will be restricted to a maximum of 12 seated diners;
- (3) The number of smokers outside will be limited to 5 at any one time;
- (4) The outside area must be cleared of customers by 8.00pm daily save for smokers using the bonafide smoking area and tables and chairs removed from the outside by 8.30pm;
- (5) No food or drink to be consumed on the patio area after 8.00pm;
- (6) The Bi-fold doors and the main entrance door were to be kept closed after 8.00pm except for entry and exit;
- (7) Signs would be displayed at all times reminding customers to respect neighbours when leaving or using the outside area;

- (8) No drinks or glassware will be permitted in any outside area after 8.00pm; and
- (9) The Premises License holder will have in place an agreement with a local taxi company with an agreed pick-up and set down policy. This will include a requirement that the drivers will not double park or use their horns and that the drivers will call the restaurant when they were 5 minutes from pick up to reduce the waiting times.

24. EXCLUSION OF PUBLIC AND PRESS

The Sub-Committee noted that there was no business for consideration that necessitated the exclusion of the public and press.

CHAIRMAN