

EPHING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Licensing Sub-Committee **Date:** 7 July 2020
Place: Virtual Meeting on Zoom **Time:** 10.04 - 11.25 am
Members Present: R Morgan (Chairman), A Lion, S Neville and M Sartin

Other Councillors:

Apologies:

Officers Present: R Ferriera (Assistant Solicitor), A Hendry (Democratic Services Officer), D Houghton (Licensing Compliance Officer), V Messenger (Democratic Services Officer), S Mitchell (PR Website Editor) and G Oakley (Senior Legal Executive)

1. WEBCASTING INTRODUCTION

The Chairman made a short address to remind everyone present that the meeting would be broadcast live to the internet, and would be capable of repeated viewing, which could infringe their human and data protection rights.

2. DECLARATIONS OF INTEREST

There were no declarations of interest made pursuant to the Members Code of Conduct.

3. PROCEDURES FOR THE CONDUCT OF A VIRTUAL MEETING

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

4. LICENSING ACT 2003- APPLICATION FOR A PREMISES LICENCE FOR SMUDGE LTD, 26 REVIVAL COURT, HIGH ROAD, EPPING, ESSEX, CM16 4AE

The three Councillors that presided over this item were Councillors R Morgan, A Lion and S Neville.

The Chairman introduced the Members and Officers present and outlined the procedure that would be followed for the determination of the premises application. The Chairman welcomed the participants and requested that they introduce themselves to the Sub-Committee. In attendance on behalf of the applicant was Ryan Dowding (Barrister), A Naqui (Solicitor) and A Smith (Applicant). Mr B Brett was there as an objector.

(a) The Application before the Sub-Committee

The Licensing Compliance Officer, D Houghton, explained that this hearing was to hear an application by Smudge Ltd, 2nd Floor, Gadd House, Arcadia Avenue, London, Barnet, N3 2JU, for a new premises licence at 26 Revival Court, High Road, Epping, Essex, CM16 4AE.

The application was for the following licensing activities,

- **The Sale by Retail of Alcohol on the Premises only**
Monday to Sunday 12.00 – 23.30pm
- **The Provision of Recorded Music**
Monday to Sunday 12.00 – 23.30pm
- **The Provision of Late Night Refreshment**
Monday to Sunday 23.00 – 23.30pm
- **Opening Times of the premises**
Monday to Sunday 12.00 – 23.30pm

The Responsible Authorities had all received a copy of the application, it was also advertised at the premises and in a local newspaper.

All residences and businesses within 150 meters radius of the premises were individually consulted.

The authority had received 1 representation from a resident, a Mr Brett. The Objection related to the Prevention of Crime and disorder, Prevention of Public Nuisance, and Public Safety and The Protection of Children from Harm.

There was a response from Essex Police who had agreed recommendations with the applicant. There was also a response from the Safeguarding Team at Essex County Council which the applicant had addressed. Finally, a response from Essex Fire and Rescue who had advised the means of escape from the premises were adequate.

The Legal officer noted that Mr Brett's reference to the lease was not relevant to a Licensing Sub-Committee nor was Mr Naqui's reference of planning matters. And that all conditions must relate to the representations made and be enforceable and clear.

(b) Presentation of the Applicant's Case

The Barrister for the applicant, Mr Dowding, started by confirming that they were asking for a half hour wind down period from 11 to 11.30pm. The application was for the ground floor of 26 Revival Court, High Road, Epping to be converted into a restaurant. The applicant Mr A Smith had 30 years of experience in the running of restaurants and held an impeccable record. This was to be a high-end fish restaurant; alcohol would only to be served for patrons waiting to be seated and those already seated.

The planning conditions mentioned was only for information.

He noted that it was no longer a mandatory requirement to send out letters consulting nearby residents, but Epping Forest District Council continued to do this voluntarily. Over 200 letters were sent out and initially only 2 objections were received, one was subsequently withdrawn and now there was only one objector, Mr Brett. And if his objections were not relevant to the four licensing objectives, then the Sub-Committee should grant the licence.

The Police had agreed further conditions with the applicant (which were attached to the agenda)

along with the Fire Authorities and the responsible authorities for child protection and safeguarding.

Mr Brett has also called for the hours to be curtailed but did not suggest what hours he would like in their place. The premises could currently be open until 11.00pm if it did not serve alcohol, a premises licence allows the serving of alcohol and just asks for an extra half hour at the end of the evening.

The map of the area shows that there is a pub nearby and a Shell petrol station open 24 hours a day. There were two restaurants just up the road and a Tesco superstore, and some takeaway places. Due to the nature of the area it was appropriate to have this premises situated here.

There was no need for a music licence as this would be only incidental, background music. This would deal with the objectors concerns and he thought it would be unnecessary and disproportionate to impose further conditions.

As for the suggestion of vertical drinking, this was to be a restaurant, and Police condition 8(iv) covered this. This was not a bar or a nightclub, so no dispersal condition was required as people would leave on a piecemeal basis and the Police had put in conditions to cover this (Police conditions 5 & 6).

(c) Questions for the Applicant from the Sub-Committee

The Sub-Committee asked about the provision for a late night refreshment would alcohol be served for the whole period. They were told that it would mean the serving of hot food after 11pm and they would need a licence to cover their close at 11.30pm.

The Sub-Committee asked if they really needed to sell alcohol for the last half hour. Mr Dowding replied that the point was, was there no good reason to restrict the sale of alcohol for this period. Other local premises had the same times as this and it enabled this premises to have one final call for last drinks at 11pm.

(d) Questions for the Applicant from the Objector

The objector asked about the closing hours being earlier on a Sunday, was that correct? He was told that they would still be closing at 11.30pm on a Sunday.

The objector asked about the bar area serving drinks to patrons. Could customers go there after they had finished their meal? He was told that it was a serving area, with no space for people to stand and drink. People would not be going to the bar area after they had finished their meal. This was also precluded by condition.

(e) Presentation of the Objector

Mr Brett commenced by saying that this was not a complaint, but he was just raising a few concerns. His main concern was around the opening times. He had been informed that normally the restaurant would finish at about 10pm most evenings. He would like it conditioned to have an earlier closing time from Sunday to Thursday also he would like it conditioned that patrons could not take drinks outside after 9pm and have it as a no smoking area so people did not go outside to drink and smoke. And, as for the music, what would be the level, would it be audible outside.

As they wished to serve alcohol up to 11.30pm it would make people louder and more of a nuisance.

As occupiers (freehold and leasehold) of the flats upstairs they had been told that the restaurant would not be proceeding, so a lot of people did not submit an objection, which is why he was the only objector.

The Legal officer noted that the Licensing Sub-Committee could not take the freehold and lease hold objections into considerations only the four licensing objectives could be taken into account. Also, the residents had knowledge of the application as it had been advertised.

(f) Questions for the Objector from the Sub-Committee

A member of the Sub-Committee asked what evidence the objector had that this establishment would cause these problems and noted that if it did, the premises could always be called in. Mr Brett said that he did not have any evidence as yet.

(g) Questions for the Objector from the Applicant

The Applicant, Mr Smith commented on the objector's proposal to close earlier during the week (Sundays to Thursdays) noting that during the week the majority of people would leave by 10 or 10.30pm but there would still be some who would stay until 11.30pm. he also noted that in 30 years in the business he had never experienced any trouble.

(h) Closing statement from the Objector

The objector had nothing further to add to his previous statement.

(i) Closing Statement from the Applicant

Mr Dowding acknowledged that there was no previous evidence at this stage, but he could have looked at the record of the previous restaurants owned by Mr Smith and noted that he had not had any problems in 30 years.

Also, there was no way of knowing what was told to Mr Brett by other residents and so this was a moot point for this Sub-Committee.

So, was there any evidence to base any further conditions or change any conditions asked for by the applicant. He concluded there was not. Other similar establishments in the area had similar hours, and this was a family, high end fish restaurant. The Police and other responsible authorities have considered the application and had agreed a set of conditions with the restaurant and he asked the Sub-Committee to grant the licence using those conditions.

(j) Consideration of the Application by the Sub-Committee

The Chairman advised that the Sub-Committee would go into private deliberations to consider the application.

During their deliberations the Sub-Committee received advice from the officers present on the options available to them and that any conditions imposed must be appropriate, be capable of being enforceable and must not undermine the licensing objectives and also that each case must be determined on its own merits.

RESOLVED:

The decision of the sub-committee was that the application for a premises licence in respect of: Smudge Ltd, 26 Revival Court, High Road, Epping, Essex CM16 4AE, be granted subject to:

- (A) the conditions as submitted by the applicant 04.03.2020; and
- (B) the additional conditions which have previously been agreed between the applicant and Essex Police, relating to the prevention of crime and disorder, prevention of public nuisance and protection of children from harm, which the Sub-Committee considered were reasonable and proportionate and would not undermine the licensing objectives. The conditions were:

Prevention of Crime and Disorder

1. The premises shall have installed and maintain a closed circuit television surveillance (CCTV) system which at all times complies with the below requirements:

- i. CCTV will be provided in the form a recordable system, capable of providing pictures of evidential quality in all lighting conditions particularly facial recognition;
- ii. CCTV cameras shall cover all entrances and the areas where alcohol sales take place;
- iii. Equipment must be maintained in good working order, be correctly time and date stamped, recordings must be kept in good working order and kept for a minimum period of 31 days;
- iv. Upon the reasonable request of the police or licensing authority staff, within 48 hours viewable copies of recordings will be provided.

2. An individual may not supply alcohol unless that individual has the written consent of the Designated Premises Supervisor or other employed Personal Licence Holder. A written record of this consent will be retained on the premises at all times when such an individual supplies or proposes to supply alcohol and be made available immediately upon reasonable request of the police or licensing authority.

3. Substantial food and non-intoxicating beverages shall be available in all parts of the premises where alcohol is sold or supplied for consumption on the premises at all times.

4. In addition to water, other non-alcoholic beverages shall be available at all times whilst alcohol sale or supply takes place.

Prevention of Public Nuisance

5. Clear and legible notices must be prominently displayed at any area used for smoking requesting customers to respect local residents and use the area quietly. These signs shall be a minimum size of 200mm x 148 mm.

6. Clear and legible notices must be prominently displayed at all exits requesting customers to respect local residents and leave the area quietly.

7. After 21:00hrs patrons permitted to temporarily leave and then re-enter the premises, e.g. to smoke, shall not be permitted to take drinks or glass containers with them.

8. The premises must operate as a restaurant:

- i. In which customers must be seated at a table, waiting to be seated at a table or waiting for a meal to be prepared;
- ii. Which provides substantial table meals that are prepared on the premises and are served and consumed at the table;
- iii. Which do not provide any take away service of food or drink for immediate consumption; and
- iv. Where alcohol must not be sold, supplied, or consumed on the premises otherwise than to persons who are taking or waiting for substantial table meals and provided always that the consumption of alcohol by such persons is ancillary to taking such meals.

9. At all times there will be provided a minimum of 60 'covers' where table meals may be consumed.

Protection of Children from Harm

10. A Challenge 21 scheme shall be operated, whereby any person ordering or consuming alcohol who appears to be under the age of 21 years of age and is not accompanied by an adult is required to produce on request an item which meets the mandatory age verification requirement and is either a:

- Proof of age card bearing the PASS Hologram;
- Photocard driving licence;
- Passport; or
- Ministry of Defence Identity Card.

(C) The applicants and the objector were reminded of their right of appeal to the Magistrates Court within 21 days of date of the written notification of this decision.

CHAIRMAN