

EPHING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Licensing Sub Committee **Date:** 19 April 2022

Place: Council Chamber - Civic Offices **Time:** 10.32 am - 4.32 pm

Members Present: R Morgan (Chairman), P Keska, A Lion and K Williamson

Other Councillors:

Apologies:

Officers Present: A Hendry (Democratic Services Officer), H Ibrahim (Licensing Compliance Officer), S Mitchell (PR Website Editor), D King (Licensing Manager), N Glasscock (Environment and Neighbourhoods Officer), R Moreton (Corporate Communications Officer) and G Oakley (Senior Legal Executive)

61. WEBCASTING INTRODUCTION

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

62. DECLARATIONS OF INTEREST

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

63. PROCEDURE FOR THE CONDUCT OF BUSINESS

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

64. REVIEW OF PREMISES LICENCE - THE GARDENERS ARMS, 103 YORK HILL, LOUGHTON, IG10 1RX

The three Councillors that presided over this application were Councillors R Morgan (Chairman), P Keska and A Lion.

The Chairman welcomed Nicki Glasscock, representing the Council's Environment Enforcement section who brought the review. Also, in attendance in support of the review was G Grant, Barrister on behalf of some of the neighbours in support of the review along with D Wood, L Saggars, C A Connor, G Martin (Hills Amenity Society) and Judith Walker (LRA Plans Group). As objectors to the review were Andy Newman (Licensing Agent for the premises), P Roberts (Licence Holder), T Roberts (Previous DPS), L Walker (current DPS), D Craig, Barrister for the Premises, P Spratt, and A Mitchell.

Also in attendance was County Councillor Chris Pond and C Carroll representing the Ei Group Ltd. who hold a Notification of Interest on the premises.

The Chairman introduced the Members and officers present and outlined the procedure that would be followed for the determination of the application.

(a) Application before the Sub-Committee

The Licensing Manager, D King, informed the Sub-Committee that an application had been made for a review of a premises licence by the Community Resilience Team at Epping Forest District Council on 25th February 2022 in respect of a Premises Licence issued to The Gardeners Arms, 103 York Hill, Loughton, IG10 1RX. The application was seeking to add the following conditions to the Premises Licence:

- No music to be played outside;
- Outside areas to be cleared of customers by 21:00;
- After 21:00 people only to be outside for smoking. A maximum of 6 people outside smoking at any one time;
- A written dispersal policy shall be in place and implemented at the premises to move customers from the premises and the immediate vicinity in such a way as to cause minimum disturbance or nuisance to the neighbours;
- The dispersal policy must be agreed in writing with the Community Resilience Team and subject to regular review (minimum 6 monthly intervals);
- Members of staff are to ask customers sat on the terraced area who are excessively loud (shouting, yelling or screaming) to be mindful of neighbouring residential properties;
- Signage to be displayed at exits to the premises and external areas asking customers to be considerate of residents and to keep nuisance to a minimum.

The review application also sought to remove Ms Tracy Roberts as the Designated Premises Supervisor. However, the Licensing Sub-Committee were advised that subsequent to the application for review being submitted, the Licensing Authority received an application to vary the Designated Premises Supervisor. This application has been granted and the Designated Premises Supervisor was now Ms Laura Walker.

The Sub-Committee may also wish to note that the licensing agent, instructed on behalf of the licence holder, has confirmed his client's willingness to formally accept all the conditions proposed in the review application.

The application to review relates to the prevention of public nuisance licensing objective. The grounds for review were set out in the application and supporting documents in the agenda.

The Licensing Authority had received representations from Councillor Chris Pond, Loughton Town Council and Loughton Residents Association Plans Group. It had also received a representation from Gosschalks, solicitors acting on behalf of Ei Group Ltd, who have a Notification of Interest in relation to these premises and who was also the freehold owner of the premises.

The Licensing Authority had also received 15 representations from residents in support of the application to review and 23 representations from residents in support of the premises.

An on-line petition in support of the premises had been organised by the Designated Premises Supervisor, Ms Laura Walker, and a link was included in an email attached to the supporting paperwork dated 24th March 2022.

(b) Presentation of the Applicant's Case

N Glasscock, Environmental Enforcement Officer outlined the case asking for the review of the premises. In receiving noise complaints, they would actively engage with the premises and give advice on how to control the situation prior to any more action being taken. It was common to recommend conditions to minimise noise to anyone within the immediate vicinity. She noted that a noise abatement notice to cover music and amplified sound had been served on Ms T Roberts, the DPS in 2017. The problem had been witnessed by an officer and was seen to be causing a statutory nuisance. In 2020 there was an increase in noise complaints again alongside several allegations of anti-social behaviour. An officer visited on 31 July 2020 and observed a large number of young adults standing outside the premises, blocking driveways and any passing cars and access. Lots of noise and shouting was audible and no social distancing was in place (Covid restriction were in place at this time). The concerns of the officer were also raised with Essex Police that night.

On 7th August 2020 a Community Protection Warning was issued to Ms T Roberts due to conduct at the premises having a detrimental effect on those in the locality. This was hand delivered and subsequently a lengthy meeting was held to outline what was needed to be done to comply; however, in the months that followed the complaints continued. Another meeting was arranged to discuss how to improve the situation and it was advised that if there was no improvement then they would have to review the premises licence. A number of conditions were then agreed with them, and a minor variation was granted in October 2020 and conditions added to the premises licence.

In 2021 we were still under Covid conditions, and we continued to receive noise complaints after April when premises were allowed to trade again. Again, we visited the premises and discussed the complaints received. Between January and December 2021, a further 81 complaints were received. We also received allegations that the premises were failing to comply with their conditions. Further visits were carried out in light of more complaints and breaches of their conditions were witnessed by officers.

A formal interview under caution with Ms T Roberts took place in September 2021 where she admitted that the premises had been in breach of the noise abatement notice and they had failed to comply with conditions on their licence.

A total of over 150 noise complaints along with further complaints of anti-social behaviour and breaches on their licence conditions in approximately 18 months could not be ignored. This decision to review the premises licence had not been taken lightly but only after a prolonged approach when officers had taken a stepped approach and had engaged with the premises and provided advice to assist them. Ultimately, we had lost confidence with the management of the premises and felt the need to request conditions that would further restrict the outside area and provide much needed respite for residents.

The Barrister on behalf of some of the neighbours in support of the review, Mr G Grant, made the following points in support of the review; that: they did not seek closure of the pub, they just wished for it to be run properly; all the proposals put in for remediation of this situation has been breached by the current operators of the pub; and what they were seeking, different from Ms Glasscock's recommended conditions, were set out in the agenda under Ms D Wood's submission.

He asked for a video to be played, this had been taken by Ms Wood from her front door. The meeting then viewed a short compilation video showing events at and around the pub over several dates throughout the year.

Mr Grant went on to note that this type of noise went into the homes of the residents in the immediate vicinity and amounted to a public nuisance, an unreasonable noise on a near daily basis. He referred to the noise diaries kept by the residents that were reproduced in the agenda. It showed that 53% of days were disrupted by noise from the pub between April to December 2021. This was a semi-rural oasis and used to be a quiet and pleasant pub. Two of the complainants have lived there for 23 years and others had also lived there for some time. Recent photos show external drinking and the creep to the external area has happened in recent year and now tables fill the whole of the parking area. The place now draws crowds of people but not the old regulars. This was a deliberate decision to pull in the younger crowd and people who live further away.

The Licensing Act was there to protect the wider community and we should ask ourselves if we trust the current operators to stick to the conditions imposed today, if not, then you should take away the licence. It was suggested that they cut the closing time to the outside area from 10pm to 9pm and we have made our own suggested conditions and they are in the agenda papers starting on page 141. He then asked for two more conditions to be added and they were that a) no outdoor cooking or BBQ's be held there; and b) no DJs, as this was not a party venue.

When my clients have tried to speak to the manager, Ms T Roberts, and in particular, her son, they have been met by abuse and intimidation. On one occasion this led to a Police complaint.

My clients cannot mitigate the sounds coming into their homes; cannot use their outside spaces; had to cancel dinner parties; and were unable to sleep and were thus driven to despair.

We were not trying to close the pub; this was a more proportionate approach with our suggested conditions, and other bodies have also made similar suggestions.

Ms D Woods then made her statement. She noted that for the last few years her home life had been disrupted by the Pub and their mismanagement. It used to be a nice village pub, but it was now very noisy and has lots of Anti-Social Behaviour (ASB). She did not want to see the pub closed but was asking the Sub-Committee to get her life back, without the ASB, intimidation, fighting and contempt. There were now more tables put in front of the pub and there were around a 100 people talking, shouting, screaming and singing for anything up to 12 hours a day; she could not open her doors or windows. And when they complained they were verbally abused and intimidated. There was continual ASB which the pub was either encouraging or just couldn't manage. Please stop the outside use which would stop the outside fighting and screaming.

County Councillor Chris Pond then made his comments. He started by saying that he was a long-time occasional user of the pub (since 1967), and he had nothing against this pub until 2016/17. Up to 5/6 years ago he would have defended it; but the pub has now changed, and it was now rowdy because of exterior drinking. In his submission in the agenda, he noted that part of the Highway has been taken over for use of the pub, it was a footway, but now people must walk in the road. Since 2016/17 his phone has rung fairly constantly during the summer months with complaints about the pub. He asked if the new DPS was sufficiently distanced from the management team and conduct of the premises as she was previously part of that team. He asked that a condition be introduced that a gap of 3 feet was kept from the highways and that the tables outside be reduced in number. He did not want to see the pub closed as it was a potential asset to the area, but currently it was not.

Ms J Walker, on behalf of the Loughton Residents Associations Plans Group made the following points. She had reviewed the evidence and noted that problems had grown worse in recent years. 153 complaints had been made, and something had changed. The cause was the increase in outside tables, which had intensified the problem. The only solution was to have no tables outside. A 9pm finish was not good enough. A secondary issue was the noise generated outside the pub. No form of outside music was acceptable. She noted that the new DPS had previously worked there as an Events Manager and she did not think swapping the DPS role to another member of staff would make any difference whatsoever. She concluded that they had not operated well within the scope of their licence and requested that the Sub-Committee limit the pub to indoors drinking only, no outside music, a challenge 25 rule and strict closing at 10pm and designating the horseshoe area as a smoking terrace only.

Mr G Martin, on behalf of the Hill Amenity Society, made the following comments. He noted that it was a quiet area, entirely residential except for the pub. Parking was no longer available and the roads could not accept the larger delivery lorries. Often, while trying to reverse into the pub car park they damage the surrounding bollards protecting the green opposite. The pub had changed the use of the land to outside seating without permission which had resulted in an increased intensification of use which has resulted in Anti-Social Behaviour. The licensee did not engage with the local residents and had a blatant disregard of them. He asked that there be no deliveries before 10am and no food prepared outside and no music outside.

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

Members of the Sub-Committee asked the following questions.

They asked for clarification from Councillor Pond on his map in the agenda showing a shaded area. They were told that it showed an undefined area of the public highway which, during lockdown, the pub erected a picket fence.

They asked if the front area that was a car park was in the licensable area or was it just a car park. They were told that it was on the original plan so it could be used as a licensed area.

Asked if the noise abatement notice was served on the property or on the DPS, Ms Glasscock said it had been served on the previous DPS and now she was no longer the DPS, it was no longer in force.

Asked if the noise limiter was conditioned, where should it be for, inside or outside, Ms Glasscock said that when she visited the music was happening inside the premises. However, during lockdown, the music was outside. We would not like them to have music outside anyway and the music inside limited.

Asked if there had been any response from the DPS to the council's letter the member was told nothing had been received in writing nor had there been any calls from them. They had since received a draft dispersal policy.

Asked if there was any information on any breaches in 2022. They were told there was nothing as yet. It was usually weather dependant. However, Ms Glasscock had heard of a breach of conditions as recently as February 2022, but there was no evidence so far.

(d) Questions for the Applicant from the Objectors to the Review

Is your opinion still that the extra conditions needed to be added as well as the removal of the DPS? In answer he was told that yes, their conditions were considered to be acceptable.

In answer to a question, Ms Glasscock said she was aware of the representation made for the premises, these were expected. She had also briefly looked at the dispersal policy and it seemed satisfactory depending on the conditions imposed. She also acknowledged that she had received an email from the premises agreeing to her suggested conditions.

In answer to a question Ms Glasscock acknowledged that during the lockdown periods she had received a lot of complaints about other premises, but they had not the evidence that these premises were causing a nuisance, but they did have it for this premises.

The meeting then took a break for lunch.

(e) Presentation from the Objectors to the Review

The Barrister on behalf of the premises, Mr D Craig, made his formal presentation. He noted that if the external area was removed from the licence, then the business would not be viable. The business was evolving with the current circumstances, as long as they lived with the people living nearby.

Here we had a licence holder for 34 years and her daughter for 31 years. Prior to 18 months ago there were no conditions on the licence apart from the mandatory ones. The last few years has been a catastrophic period for the licensing trade. Up until then there had been no problems at this pub.

He was not suggesting that they left things as they were, and he accepted the conditions as set out by the Council's Environment Enforcement section. He noted that 2020/21 were very challenging times, people had been shut away for some months, so they did have some problems there. They have had a good 2022 so far with no evidence of complaints.

He noted that:

- The officers have not asked to push back the end time of the premises of 11pm;
- The Green outside the premises was not a licensable area, not part of the pub, but had been used by members of the public to drink, smoke and engage in anti-social behaviour. Ms T Roberts has indicated that they helped to clear the area and endeavoured to keep their patrons away from it, although it had nothing to do with the pub;
- We have been presented with matters of fact but no evidence to back it up;
- No one was asking to revoke the licence. So, you are left with putting in stronger conditions, doing nothing, or follow the guidance of your officers who have proposed conditions that are proportionate and not as extreme as Mr Grants conditions;
- He agreed with the officer's conditions as set out on page 13 of the agenda;
- As for the conditions set out in Ms D Wood's submission on page 141 of the agenda – these went over and above what your officers considered as proportionate, they would be difficult to live with and would ruin the business;
- They agreed to have a noise limiter and had one on their premises now – but no officer had been down to advise them on what setting should be used;
- They agreed with the CCTV condition, but it be kept for 28 days not 31;

- They had asked about conditioning having no BBQ's outside, this was not a licensable condition;
- We are content to limit the outside area to 100 people.

As for the personal, he said it was valuable to have female licence holders as they can be a real asset to a community pub. This was also Ms T Roberts' home; she's a traditional landlady with wide experience. She had accepted that there were a lot of issues last summer and understands she would be under close observation by the local residents and the Environmental Health officers from now on.

He then went through the representations made in support of the pub.

He noted that the son of Ms T Roberts had been interviewed and cautioned but this had not been taken further and we completely deny any allegations. The Police have not made a representation on this review and have not attended today.

They cannot have any responsibility for car parking in the area. There have been a number of falsehoods and inaccuracies made in relation to this. They had got rid of their security company. The picket fence was to separate it from the highway, and they had not organised a music event.

Please take account of the positive representations made and that only one responsible authority had brought this case forward.

Other speakers added that:

- I am a member, but no one had consulted them on the Hills Amenity Society comments;
- Noise in my garden generally come from private parties from other houses;
- As the new DPS I have not had a hand in the incidents that had led to this. I would not encourage Ms Roberts to break the terms of the licence. We have installed a noise limiter but are still waiting for council officer to set a decibel limit.

(f) Question for the Objector from the Sub Committee

Asked if the outdoor seating had been increased Mr Craig accepted that it had.

Letters of support had not mentioned noise or ASB, but we have heard from Council Officers there was; do you accept this was the case. Mr Craig agreed they accepted the findings, but a lot of the allegations had not been substantiated.

Asked if she lived on the premises, Ms L Walker said she did not.

Asked if the outside seating was restricted to what it used to be, would the pub close. Ms Walker replied that it would.

It was noted that things had not been complied with since 2017, will they be dealt with going forward? Mr Craig gave his assurance that they would abide with the conditions imposed.

Asked if they had other personal licence holders other than Ms Walker the sub-committee were told that they had a second and Ms T Roberts.

(g) Question for the Objector from the Applicants

Ms Walker was asked if she was still a full time Bachelor of Arts student at Goldsmiths College. She replied that she had deferred it for now.

Then she was asked who her employer was. She replied that it would be Pat Roberts, but she answered to Tracy Roberts as well.

N Glasscock took the opportunity to clarify that although she had been informed that they had a noise limiter, no one had been in contact with her to set the noise limiter and they had not refused to come out to do this.

(h) Closing Statement from the Applicant

Mr Grant noted they had suggested that the front area be limited to 100 people. This had caused a gasp of despair from my clients as this would condemn my clients to suffering for many more years to come.

They had readily agreed to the officer's conditions but, to be charitable and fair, this may have been set too low by the officer because this would not have much effect on the intensification of use of the outside area, even if just up to 9pm. It was not unsurprising that my clients that live closest to the pub suffer the most.

For 150 years this was a viable pub with the horseshoe area with a few tables that worked just fine, that is, the pub was viable and did not cause a public nuisance to the residents.

Ms Glasscock could only make suggestions on what her officers had witnessed. Having heard the evidence given her today it was not unreasonable to suggest we need more robust conditions to strike the right balance.

In the spirit of compromise, he suggested that for condition (a) under the representation made by Ms Wood, it was added "...save for a maximum of 25 people seated at tables within the horseshoe terraced area only and the tables and chairs in other outdoor areas be removed. And the horseshoe area to be cleared by 9pm."

This would put it back to before the intensifications over the last 7/8 years or so, where it can operate as a viable business but is likely to cause the levels of nuisance that my clients had to suffer. The no DJ condition has been accepted and he asked that the 'no outside cooking' condition be added. That we felt, would be a reasonable compromise.

There was no viability study to suggest that they could not operate successfully within these conditions. None of the resident in support of the pub lived as close as my residents.

The new DPS Ms Walker was already in a management role in June 2021 and had attended the meeting with the council officer to discuss the noise abatement notice and within two months of this there were two further breaches.

The pub has divided the community and we have now suggested a way forward.

(i) Closing statement from the Objector

Mr Craig made a closing statement to the Sub-Committee. He noted that Mr Grant had asked you to consider a new proposition at the last minute. The area manager and the pub management have made it clear that the pub would not be viable without the external area. This had not been challenged at the time.

I don't agree that the people who Mr Grant represents were all the people who live near the pub. A number of people who live locally did not agree with this review.

We have agreed a number of conditions suggested by officers and most of the conditions suggested by Ms D Wood. That was a compromise that we have made. We cannot turn the clock back to 2013, but the world has changed. I invite you to add the conditions we have agreed to the licence.

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

The Council's Legal officer made the following statement. He noted that article 1 of the first protocol of the Human Rights Act that everyone is entitled to the peaceful enjoyment of their possessions, in this case their licence, and no one should be deprived of their possessions except in the public interest and subject to conditions provided for by law and by the general principles of international law and had been said in this meeting that any decision made in respect of a premises licence be appropriate and proportionate.

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

During their deliberations the Sub-Committee received no further advice from the Legal Officer present. The Sub-Committee considered what was appropriate to promote the four licensing objectives and the relevant parts of the Council's Licensing Policy and the Home Office's guidance.

RESOLVED:

This application has been treated on its own merits and this sub-committee has taken its decision based upon:

- The Application for a licence review;
- The policy of the licensing authority;
- The relevant representations received;
- Guidance issued; and
- The licensing objectives.

The decision of this sub-committee after considering the representations made in support and against this application is:

That the conditions of the Premises Licence are added to and modified as follows:

1. Customers are not permitted to take drinks outside the pub or to consume alcohol in any external area save for a maximum of 30 people seated at tables within the horseshoe area only and tables and chairs shall be removed from other outdoor areas.
2. The outside areas of the Premises to be cleared of customers by 21:00 hours.
3. After 21:00 hours customers shall only be permitted to be in the outside of the Premises for smoking.
4. No music shall be played in the outside area of the premises and under s.177A of the Licensing Act 2003 this condition shall apply during the de-regulated hours for regulated entertainment.

5. A noise limiter must be fitted to the musical amplification system and maintained in accordance with the following criteria:
 - i. The limiter must be set at a level as advised by an authorised Community Resilience Team Officer;
 - ii. The operational panel of the noise limiter shall then be secured by key or password to the satisfaction of the authorised officer and access shall only be by persons authorised by the Premises Licence holder;
 - iii. The limiter shall not be altered without prior written agreement from the Community Resilience Team;
 - iv. No alteration or modification to any existing sound system(s) should be affected without prior knowledge of the Community Resilience Team; and
 - v. No additional sound generating equipment shall be used on the premises without being routed through the sound limiter device.
6. Loudspeakers shall not be located in the entrance and exit of the premises or outside the building.
7. The premises shall install and maintain a comprehensive CCTV system where:
 - i. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition.
 - ii. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises and will include the external area immediately outside the premises entrance. The external cameras shall record audio as well as video.
 - iii. All recordings shall be stored for a minimum period of 28 days with date and time stamping.
 - iv. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 28-day period.
8. A staff member from the premises who is conversant with the operation of CCTV system shall be on the premises at all times when the premises is open. The staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum delay when requested.
9. A written dispersal policy shall be in place and implemented at the Premises to move customers from the Premises and the immediate vicinity in such a way as to cause minimum disturbance or nuisance to the neighbours.
10. The dispersal policy must be agreed in writing with the Community Resilience Team and subject to regular review (at a minimum of 6 monthly intervals).
11. Members of staff shall ask customers sat on the horseshoe area of the Premises who are excessively loud (shouting, yelling or screaming) to be mindful of neighbouring residential properties and be required to leave the Premises if they fail to do so.

12. Signage shall be displayed at all exits from the Premises and external areas requesting customers to be considerate of residents and to keep nuisance to a minimum.
13. No glasses or open bottles are to be removed from the Premises by customers.

Following the decision the legal representative acting on behalf of the objectors/residents, Mr G Grant, requested that the Licensing Department revise the premises plan to show the outside horseshoe area that the Members had agreed to be used under the above condition 1, as the outside area.

Our reasons are that in spite of attempts made by the Council's Community Resilience Team to engage with the former Designated Premises Supervisor and the Premises management, offering guidance and support, the number of complaints has continued to increase, and they have witnessed the breach of the Noise Abatement Notice, Community Protection Warning and Premises Licence conditions on numerous occasions.

The former Designated Premises Supervisor has been aware of the issues and complaints and has continuously failed to take the appropriate action to comply with conditions of the licence/notices and to act responsibly to minimise disruption for surrounding residents. The additional conditions are therefore appropriate and proportionate for the prevention of public nuisance. Notwithstanding the recent change of DPS we still believe that our decision is appropriate and proportionate.

Parties to hearings have the right to appeal against decisions of the Licensing Authority to the Magistrates Court within 21 days beginning with the date when the appellant is notified by the Licensing Authority of its decision.

CHAIRMAN