

EPHING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Licensing Sub Committee **Date:** 5 July 2022
Place: Council Chamber - Civic Offices **Time:** 10.15 am - 3.45 pm
Members Present: J M Whitehouse (Chairman), J Jennings, A Lion and M Sartin
Other Councillors:
Apologies: D Stocker
Officers Present: A Hendry (Democratic Services Officer), D Houghton (Licensing Compliance Officer), D King (Licensing Manager), N Cole (Corporate Communications Officer) and G Oakley (Senior Legal Executive)

5. WEBCASTING INTRODUCTION

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

6. SUBSTITUTES

It was noted that Councillor M Sartin was substituting for Councillor D Stocker.

7. DECLARATIONS OF INTEREST

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

8. PROCEDURE FOR THE CONDUCT OF BUSINESS

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

9. APPLICATION FOR A HACKNEY CARRIAGE DRIVER'S LICENCE - MR A W LEGGETT

The Sub-Committee noted that the Taxi Driver could not attend this meeting and so deferred this item to a future meeting.

10. LICENSING ACT 2003 - APPLICATION FOR A PREMISES LICENCE FOR SHISH MEZE, 18 MARKET PLACE, ABRIDGE, RM4 1UA

The three councillors that presided over this application were Councillors J M Whitehouse (Chairman), A Lion and J Jennings.

The Chairman welcomed Mr G Guner, the applicant, and Mr Robert Sutherland, his legal advisor to the meeting. Accompanying Mr Sutherland was Mr J Sollers and

accompanying Mr Guner was Mr M Gul, Premises Manager and Mr E Kom, General Manager.

Also, there was Louise Coveney, Environment and Neighbourhoods Officer; and Kelsey Dott and Gary Burke from Essex Police, Licensing.

Andy Newman, consultant, was representing Mr & Mrs Sampson and Mr & Mrs Vance, objectors to this application. Also in attendance was Mrs M Sampson and Mrs S Vance. On behalf of Lambourne Parish Council was Mr T Carter (Parish Clerk) and Councillor M Vance, Essex County Councillor.

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 by Complete Licensing Limited on behalf of Shishessexlounge Limited for a new premises licence at Shish Meze, 18 Market Place, Abridge, RM4 1UA.

The application was for:

Live Music (Indoors), Recorded Music (Indoors), Performance of Dance (Indoors) and Anything of a similar description to Live Music, Recorded Music or Performance of Dance (Indoors)

Monday – Sunday 10:00 – 00:00

Late Night Refreshment (Indoors)

Monday – Sunday 23:00 – 01:00

Sale of Alcohol (On and Off)

Monday – Sunday 10:00 – 01:00

Opening Hours

Monday – Sunday 10:00 – 01:00

The applicant has also sought to increase the licensable area to include the first floor.

The application was received on 4th May 2022.

Owing to a failure to display the blue notice as required, the consultation was stopped and restarted on 11th May 2022.

The Operating Schedule sets out conditions which would be attached to the licence if this application was granted.

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 metres radius of the premises were individually consulted.

The authority had received nineteen representations in total.

Seventeen objecting; and two supporting. These were from residents, responsible authorities, and the Parish Council.

There were also responses from Environmental Health, Essex County Fire and Rescue Service, and Essex County Council Safeguarding; all of whom have no comments to make.

(b) Presentation of the Applicant's Case

Mr Southerland advised the Sub-Committee that this was a straightforward application. The applicant already has a licence at present. He drew attention to a table in their bundle of papers, published as a supplementary, that set out the differences asked for by their new licence compared to their existing one. The primary purpose was to enable the dispensing of alcohol on the first floor. A licence would be required to do this. At present drinks needed to be carried up to the first floor by staff.

The premises would not be operating as a nightclub but as a restaurant and bar with some entertainment provided. Live music permission was not now needed due to deregulation. As for recorded music they were asking for 10.00 to 00.00 Monday to Sunday. Alcohol sales would be – Sunday to Thursdays from 10.00 to 00.00 and Friday and Saturdays from 10.00 to 01.00; on a Sunday before a Bank Holiday, they would keep this to 01.00. General opening hours would be from 10.00 to 01.00. The premises generally closes at the last admission around midnight. As for additional hours they have removed the condition to extend their hours for the Chinese New Year.

The current premises licence authorises more than they were seeking. This application sought less. The key was having the first-floor bar area, so that people could go upstairs for a drink before or after their meal. The roof terrace would be used by smokers. He noted that this application was only dealing with the internal areas.

He then drew the Sub-Committee's attention to their report bundle, part of which dealt with the crime statistics for the area which showed that there was no crime as such originating from the premises.

Page 25 of this bundle set out the conditions that had been agreed with the responsible authorities and the local authority and he commended these conditions to the sub-committee. He then went through the conditions listed. He also drew attention to the draft dispersal strategy contained in the bundle to be agreed with officers.

He concluded that there was nothing hidden in this application, they were seeking to add the first floor of the premises for alcohol service.

(c) Questions for the Applicant

Mr Newman asked why have the live music as a condition as it was deregulated. Mr Sutherland replied that it had been agreed with the Local Authority Officers as they thought it would be helpful to have it.

Mr Newman then noted the plan for the premises showed licensable area, but there was concern that they would put a marquee at the back. What reassurance did he have that this area would not be used? Mr Sutherland replied that was not part of this application. If they did make an application to do this, then they would have to go through the consultation process again. This application was for the inside of the premises.

Mr Newman noted the CCTV condition and asked if it could be added that the CCTV recordings could be kept for a period of 28-31 days. Mr Sutherland said that they had been agreed with their expert advisors, the police. But if felt appropriate, then they could keep the recordings for 28 days.

Mr Newman noted that the application for the consumption alcohol was the same times as the closing hours, there was no 'traditional' drinking up time. Also, the hours of closing in exceptional circumstance had been changed to 01.30 as opposed to times shown on the documents. Mr Sutherland noted that the original licence had been granted in 2005 and they currently have the same times, sale of alcohol – 10.00 to 01.00 and opening hours 10.00 to 01.00, this had not been seen as an issue by the licensing authorities. How they would manage the premises within the licence was important; generally, because it operates as a restaurant, they effectively operate a last admission at midnight. People remain on the premises, although the last licensable activity finish at 01.00, people can remain but be off the premises by 01.30 (agreed with the Police), hence that condition.

Mr Carter (Lambourne Parish Council) noted that this was just for food and no other purpose and that you did not use the terrace; but I have an advert that says people can come in for £10 if they do not eat and could dance on the roof terrace. Could you clarify this. Mr Southerland replied that this was a one-off event for the Platinum Jubilee. Once highlighted as an issue, it did not go ahead. It was a one-off mistake.

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

The Sub-committee asked for clarification on crime in the area and any association with the restaurant. They were told that the figures did not support this assertion, there had been an incident in April, but it did not originate from the restaurant but happened outside the premises. The police have looked at our conditions and we have a winding down period at the end of the night, and no alcohol to be taken outside etc. Door staff will wear body video equipment in case of future problems. People do not leave all at once, but when they have finished their meal and drinks. Hence a 01.30 close.

The Sub-committee then asked if there would be door supervision every night. They were told that it would not be for every night, for example Monday and Tuesdays were not busy nights. It would be on a 'needs' basis based on the risk assessment. We were looking at Thursday, Friday, Saturday and Sunday nights but on a need to have basis depending if there were any events on that night.

The Sub-committee asked about the regulated entertainment asked for, they wished to know where would this take place, upstairs or downstairs; and how often would this happen? They were told it would happen on the ground floor, in the centre. They have a noise limiter in place. There would be no live entertainment on the first floor, but they might have a DJ upstairs, but not every week.

The Sub-committee then asked about the lounge area upstairs. If people went upstairs for a drink, did they have to have a meal? They were told that generally, yes, they would. An exception would be as a means to vet customers, as to who could be allowed to go upstairs. But this would not be advertised.

The Sub-Committee then asked how did the private dining room function. They were told that it could be booked for up to 10 people for dinners only.

The Sub-committee noted that this premises was near to residential areas. This raised concerns about you having DJs upstairs. It was looking like a night club if they could just go upstairs for a drink. Mr Southerland replied that they currently had a 01.00 licence that effectively had no conditions on it, that covers the ground floor but could through waiter service provide alcohol upstairs; they could provide entertainment upstairs until it closes with no conditions at present. Our application

has reduced the hours except for Friday and Saturday and the licensable activities would be controlled by tighter conditions. The Police were satisfied that this was not a nightclub, but a restaurant, and we will have a noise limiter in place.

The Sub-committee noted that the last admission would be at 12 midnight. This would not be enough time to have a meal, could this be expanded on? They were told that the customer may not be going in for a main meal, may be just a desert or a drink. A balance had to be struck. Generally last orders would be around midnight. It was how they were operating at present.

The Sub-committee then asked how the smoking area could be controlled for drinking and the noise managed effectively. They were told the area was small and that not many people could use it. Their staff would monitor and patrol the area. Asked if there was any CCTV in this area, they were told that could be suggested.

The Sub-committee noted that this was an application for inside the premises; what was the intended use of the outside area. They were told that there were two outside areas, one was the roof terrace, and one was the marquee area. The roof terrace could form part of a separate application and as for the marquee area, it was hoped they could use it, but that was a work in progress at present.

The Sub-committee asked what their intention for their existing licence was. They were told that it was not held by them but by the landlord of the property.

The Sub-committee noted that a condition to only have alcohol served with meals was quite common for restaurants, have you considered this. They were told that it had been considered, but they needed to make sure they were viable. The premises has been a restaurant since 2005 at least and there has never been such a condition in place. If thought appropriate this can be conditioned for after midnight.

The Sub-committee asked if there was to be any door staff for the regulated entertainment from Monday to Wednesday. They were told that they would finish at midnight on Monday to Wednesday, so no door staff were anticipated to be needed.

The Sub-committee then asked what "similar activities" were asked for in the application. They were told that they could only say it would be similar to live or recorded music, it was a catchall application.

The applicant was asked why they needed both on and off sales for alcohol. They were told that their current licence was for on and off sales, and that if unfinished, customers can take away their food and drink with them.

The applicant was then asked if the calibration of their noise limiter had been agreed with officers. Mr Sutherland replied that he understood that it had been agreed by officers. The Environment and Neighbourhoods Officer agreed this was the case.

(e) Questions for the Applicant from the Objector

Mrs Vance asked if she could just go to the restaurant with some girlfriends to have drinks in the upstairs area without having food. She was told that would depend on the size and demeanour of the group she was in.

(f) Presentation of the Objectors

Mrs Sampson clarified that she lived just under 4 meters from the premises, not 30 meters as had been stated. There had been large fight there in April when the Police had to be called. The problems started when the live music started, although it had calmed down in the past 3 weeks.

Mr Sutherland asked Mrs Sampson if the applicant had been able to allay her concerns. She replied that she had been assured that there would not be any more live music.

Mr Southerland said he understood that the noise limiter had been set with her involvement. Mrs Sampson said that it had.

The Sub-committee then confirmed Mrs Sampson's address and its location with the restaurant.

Mr Carter asked if there was to be no live music, then why ask for it in the application. He was told that any music generated inside the premises will not cause a disturbance to people living nearby. Mr Newman speaking on behalf of his client Mr & Mrs Sampson noted that Mrs Sampson was told, by the general manager, that there would be no live music, which was misleading.

The Environment and Neighbourhoods officer did not wish to make a statement, and there were no questions for her.

The members of Essex Police present noted that the CCTV at the premises already records for 28 days but they had no problems with that being added as a condition. They had agreed conditions with the applicant's agent and wished that the Sub-committee added these conditions to the licence.

Mr Newman drew attention to the Human Rights Act on the article that entitled people to the peaceful enjoyment of their possessions and that this applied to people's home. The premises was very close to the local residents and noise emanating from there deprived them of their enjoyment of their home. A restaurant had been there for many years, first as a Chinese, then as an Italian restaurant. There had never been any problems. Now we have Shish Meze and at first there were no issues. Licensing has to be a balance and when you are so close to residents you must have consideration for your neighbours. You should have consulted your neighbours and the Parish Council; they did not do this. My clients say the problems started when the current applicants took over the premises. There had been alleged drug dealings, excessive noise, litter problems and broken glass, bad parking, and possible driving under the influence, also music played at excessive levels emanating from the premises. Windows and doors have to be kept closed to keep out the noise. Customers leaving late at night will not be leaving quietly. When management or staff have been approached about this, they have been rude and dismissive. Police have expressed concerns over the use of the upstairs area which had not been licenced and did not have planning permission to use. He asked that these premises needed to be appropriately conditioned and that they had a period of time to prove that they could adhere to these conditions and adhere to their promises.

Mrs Vance gave the Sub-committee a flavour of the problems that she and her family had had to endure over the last year. She lived less than 5 meters away from the restaurant. She spoke about the lack of sleep due to the noise emanating from the premises, the rubbish and anti-social behaviour from their clientele and the recent street fight. They now have a noise limiter, but this happens 7 days a week and even at a low level it was disturbing. They had a complete lack of care for the local residents, they can't even be bothered to fix a broken window.

(g) Questions to the Objectors

Mr Southerland asked Mr Newman if he was representing two families and not the other representations made. Mr Newman agreed it was only the two families, but the other representations gave a flavour of the problems.

Mr Southerland noted that the complaint for 18 June on noise from the premises was not correct as they were not open then. Mr Newman accepted that this had been a mistake.

Mr Sutherland asked about the £8k asked for by Mr & Mrs Vance to withdraw their objection. Mr Newman explained that they had been quoted this figure by a builder to put in sound reducing measures.

Mr Southerland asked if a reduction in hours in the sale of alcohol to midnight on Sundays to Thursdays would be helpful. He was told that would be helpful, however their concerns were the other nights.

Mr Southerland then asked if the objector was satisfied with having SIA on the door would be helpful as well as not having glassware outside and in general having conditions in place was better than not having conditions. Mr Newman replied they may be helpful to a degree, but it depended on the behaviour of the premises and if using the upstairs would cause more harm. Would they operate in a better manner?

The Sub-Committee asked Mrs Vance what kind of noise she suffered from. She said that it came from the street (people arguing or shouting) and from music from inside the restaurant, with the base line coming across very clearly. She had known the tables to be moved away to facilitate dancing. It was turning into a nightclub.

The Sub-committee then asked her which conditions they had an issue with. Mr Newman replied that it was with the CCTV and the SIA attendance (not just having them attend on a risk assessment basis) should they be there every Friday and Saturday nights. This should be conditioned to act as a control measure and not at the whim of the management.

The meeting then took a comfort break of 15 minutes.

Mr Southerland queried a photograph taken from inside a house showing the proximity of the premises. If it was Mr & Mrs Vance's house, then it showed that they had double glazing installed, but the £8k asked for was for double glazing. Mrs Vance replied that to be clear, the premises came to them with an offer to withdraw their objection, we did not request anything. We were offered some gates to assist with the parking problem, but we thought double glazing would be better as we do not have double glazing.

The Chairman asked for the parish council to make a statement. Mr Carter, the clerk for Lambourne Parish Council reprised his response as printed in the agenda; that they were not agreeable to this application and had many concerns. The Parish council has since received the premises suggested conditions, but it arrived too late to be considered by the council.

Mr Sutherland asked Mr Carter if he had seen the letter from the applicants asking for a meeting with them. Mr Carter said that it had arrived too late to consult the councillors and then hold a meeting with you.

(h) Closing statements

The relevant officers had no more to add.

Mr Newman on behalf of his clients said that they had concerns which they had given over the course of the meeting. This has been an irresponsible premises and they would like you to take this into account and consider their closing hours. This appears to be an application for a night club.

Mr Southerland on behalf of the applicants made the following points. It was not their intention to make this into a nightclub. The hours have not increased or the activity. It already has a premises licence that would enable it to operate in a similar way, except for drinks upstairs. This application was a reduction in hours, not an increase. They had no need for permission to have live entertainment, but they have now put in a noise limiter and there would be no noise nuisance from the premises. They have an extensive set of conditions set out which they agreed with extra conditions that had been asked for and they would accept the retention of CCTV for 28 days, the other suggested condition was a limitation on persons entering the premises at midnight would require they had a meal, and if thought appropriate, we would not oppose this condition. Council officers and the police were supportive of this application, and he asks that the committee grants the application with the conditions.

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

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

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:

We consider that the application satisfies the necessary requirements in order to be considered as it is on the prescribed form, it has been advertised and relevant notifications given.

We are grateful to the parties for their presentations to us this morning.

We have taken these, and the written material submitted to us into account. We have considered what is appropriate to promote the four licensing objectives and the relevant parts of the Council's Licensing Policy and the Home Office's guidance.

During our deliberations our advisory officers gave us the following advice:

- conditions imposed must be appropriate, be capable of being enforceable and must not undermine the licensing objectives
- that each case must be determined on its own merits and
- the Committee was entitled to find its own facts, determine what weight should be given to the evidence before it, and to reach its own conclusions. The Committee, when finding facts, must apply the "civil test" of "the balance of probabilities". While the Committee was not, itself, a court. It had to apply the same test for evidence as a civil court.

The decision of this sub-committee is that the application for a premises licence in respect of: SHISH MEZE 18 MARKET PLACE ABRIDGE ESSEX RM4 1UA

Be granted for:

The provision of recorded music at the Premises as contained in the application

The provision of performance of dance at the Premises as contained in the application

The provision of anything of a similar description to Live Music indoors at the Premises as contained in the application

Late night refreshment indoors until midnight Sunday to Thursday except Bank holidays and otherwise as contained in the application

The sale by retail of alcohol as contained in the application as varied in the amended conditions below

Seasonal timings as contained in the application

Opening times of the Premises until midnight Sunday to Thursday except Bank holidays and otherwise as contained in the application, subject to:

1. the conditions as submitted by the applicant within their application
2. the conditions contained in the Applicants Supplemental bundle pages 25 to 27 save as varied below and the representations of Essex Police under the heading Protection of Children from Harm on pages 10 & 11 in so far as they add to or supersede the applicant's conditions
3. The provision of CCTV referred to in the conditions contained in the Applicants Supplemental bundle shall also include the requirement that recordings must be kept in good working order and kept for a minimum period of 28 days
4. All outside areas are to be cleared of customers by 21.00. After this time customers can only be outside for smoking.
5. The premises must operate as a restaurant after 23.30
 - I. Which provides table meals that are prepared on the premises and consumed at the table.
 - II. Where alcohol must not be sold, supplied, or consumed on the premises otherwise than to persons who are taking table meals and provided always that the consumption of alcohol by such persons is ancillary to meals.

To bring the conditions into line with those contained in the Applicants Supplemental Bundle but with timings varied as above -

6. All customers to have vacated the Premises by 00.30 Sunday to Thursday except Bank Holidays save for in exceptional circumstances

which we consider are reasonable and proportionate and will not undermine the licensing objectives.

We believe that our decision takes account of the licensing objectives relating to public nuisance including the trading requirements of the Applicant.

We are also attaching the mandatory conditions contained in Sections 19 -21 of the Licensing Act 2003.

The applicants and the objectors were reminded of their right of appeal to the Magistrates Court within 21 days of date of the written notification of this decision and of the review mechanism under the Licensing Act 2003 because of any matters arising in the future at the Premises in connection with any of the four licensing objectives.

CHAIRMAN