

LICENSING HEARING

Minutes of the meeting held on 14 October 2022 commencing at 10.30 am

Present: Cllr. Pett (Chairman)

Cllrs. Bonin and Raikes

Also Present Licence Holder
Licence Holder's Representative
Licence Holder's Representative
Licence Holder's Guest
Licence Holder's Guest
Licence Holder's SIA Owner
Interested party
Interested Party's representative

Kent Police Representative
Kent Police Representative

Environmental Health Team Representative (SDC)

Cllr Osborne-Jackson (SDC)

Susan Lindsey - Senior Licensing Officer (SDC)
David Lagzdins - Senior Solicitor (SDC)
Sharon Bamborough - Licensing Partnership Manager (SDC)
Charlotte Sinclair - Democratic Services Team Manager (SDC)
Phil Magee - Democratic Services Officer (SDC)

10. Appointment of Chairman

Resolved: That Cllr Pett be appointed as Chairman of the Licensing Hearing.

11. Declarations of interest

There were none.

12. LICENSING ACT 2003 REVIEW APPLICATION - Ephesus, 57-59 High Street, Sevenoaks, Kent. TN13 1JF

The Chairman welcomed everyone to the meeting.

Resolved: That, under section 100A(4) of the Local Government Act 1972, the public be excluded from the meeting when considering Appendices I,K,

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M, O and sections NC1, NC2, SDL/05 - SDL/15, SDL/19, and SDL/20 of Appendix AA of Agenda Item 3 above, on the grounds that likely disclosure of exempt information is involved as defined by Schedule 12A, paragraph 2 (Information which is likely to reveal the identity of an individual.)

The Hearing gave consideration to the report by the Senior Licensing Officer giving details of the review application which had been submitted by Susan Lindsey, of the Licensing Authority in relation to Ephesus, 57-59 High Street, Sevenoaks, Kent, TN13 1JF. The Head of Licensing Partnership advised that the reasons for the review were set out on pages 14 to 16 of the agenda pack. She also advised that following new representation for the Licence Holder, the first hearing date had been cancelled and all the relevant information was available in the agenda packs and supplementary agendas.

The Applicant advised the Hearing that on 27 May 2022 she had undertaken 'out of hours' monitoring following information that the premises were operating outside of its authorised licensable hours. She also advised that there had been a further incident over a weekend in August 2022, which undermined the Licensing Objective of the prevention of crime and disorder. The current licence allowed the sale of alcohol until midnight on Monday to Saturdays, and until 11:30pm on Sunday. The License did not include regulated entertained but certain music could be played until 11pm following deregulation.

Various clips of audio and video footage were shown to the Hearing. The Applicant indicated that music could be clearly heard from outside the premises when the doors were open including from her car parked 45m away with the car window open and also at the back of the property, but that when the doors were not open the music was barely audible. People were entering and exiting and there was no evidence to show that Ephesus would be closing.

She further advised that music could still be heard past midnight, and so she undertook further investigation. The Hearing was advised that she was able to purchase an alcoholic drink at 12:08am but she had to repeat her order to the bar staff as the music was loud. Further audible footage was heard and the timings of the recordings were as follows 12:09am and 12:13am. She stated the levels were not background music and users were there for the bar and DJ music set. People were still coming and going.

The License Holder had been reminded on numerous occasions of his responsibility under his licence and submitted two full variations to extend hours, of which both were withdrawn. She felt it was clear that the Licence Holder knew he could only operate until 12am. She continued to monitor back in her vehicle until 1.20am and advised she could clearly hear music when the door was open. Further audio recordings were heard and were taken at 12:45am, 1:15am and 1.06am.

She explained that following the incident she spoke to the Licence Holder on 7 June 2022 and because of the matters witnessed, she advised that she would write to him requesting he attend for a formal interview, and for the CCTV and receipts of sales that night to be provided. The Licence Holder attended the meeting but was unable to provide this information. He was advised that it was not the Local Authority's intention to prosecute under the Licensing Act but would be looking to review the Licence. The review hearing was requested to highlight the severity of

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the actions undertaken and that Sevenoaks District Council want to work with businesses as far as possible to help support local businesses and communities.

Following this incident and formal interview under caution, there was a further complaint which went through to Environmental Health out of hours over the weekend of 16 and 17 August from a local resident, due to excessive noise. The Environmental Health Manager had produced a statement and evidence which was included within the agenda papers. The Hearing watched the evidence provided of a video taken at 12:20am.

The Environmental Health Team had written to the Licence Holder following the complaint. The bass and sound from the amplified music was considered to be intrusive to neighbours. A Temporary Event Notice (TEN) had been submitted for the weekend without objection, but it did not include licensed entertainment. The Licence Holder was written to under 136 of the Licensing Act highlighting that the further 3 TENs submitted did not include the provision of regulated entertainment and therefore all music had to end at 11pm.

The three TENs were withdrawn and a further Late TEN for alcohol and regulated entertainment had been received but a counter notice was issued due to comments received by the Police and Environmental Health and so the event could not go ahead. On 15 August a local resident called the local authority with video footage of a fight outside of Ephesus, the same night as the noise complaint. Video footage was submitted and additional footage was submitted by the CCTV control room which showed the individuals involved were from Ephesus. On page 147 of the agenda the timings were indicated and the exempted still images were considered. The Hearing watched the exempted videos which were recorded around 2am. It was apparent to the Applicant that had Ephesus not been open past its licenced hours then the fight would not have broken out.

A minor variation had been submitted and been approved with additional conditions, she thanked the Licence Holder for the action taken to add the conditions which were in effect.

The Applicant finished her presentation setting out the action she would like undertaken due to the objectives of the Licensing objectives of avoidance of public nuisance and the prevention of crime not being adhered to.

The Sub-Committee asked questions of clarification of the applicant.

The Licence Holder's representative also took the opportunity to ask questions of clarification and the Hearing was advised that the suspension requested was with a view to the business taking steps to develop policies to manage the business so that it is compliant henceforth and train staff appropriately to prevent similar situations happening again.

The Hearing heard from the Police who supported the Local Authorities review request and had met with the License holder previously to remind him of his duty under the Licensing Act. He advised of the contact which had taken place with Environmental Health Team and the Licensing Team regarding the concerns which had been raised, in particular noise outside of the licensed hours.

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The Hearing then heard from the Environmental Health representative who advised of the noise complaints which had been received, communication with the Licence Holder and of the action taken to control noise late in the evening.

The Sub-Committee asked questions of clarification regarding noise recording equipment.

The Licence Holder's Representative took the opportunity to ask questions of clarification from the Police Representatives and the Environmental Health Representative. It was stated during the questions that Environmental Health were willing to work with the premises to set a noise level limit which all parties would be happy with.

The Chairman invited the Licence Holder's Representative to address the Hearing.

He advised the Hearing that the Licence Holder was happy to work with Environmental Health to set an agreed level for the noise limiter, and they had spoken to some of the closest neighbours to Ephesus and had provided his mobile number to them, for them to contact him with any concerns.

He addressed the concerns raised, including the incident on 27 May 2022, accepting that there had been sales of alcohol outside of the licenced hours and music was played past 11pm, perhaps louder than anticipated but as the Applicant had stated in her statement that it was barely audible when the doors were closed. He advised that the Licence Holder had not been there during that week and a new Manager had been in place. He advised that there had been a breakdown in understanding and that Manager no longer worked at Ephesus. He advised that the Licence Holder had held a personal licence for more than 5 years and had similar premises in Orpington and Sittingbourne. He further advised that the incident that took place in August did have a TEN applied for but as detailed in the agenda papers did not cover regulated entertainment. He advised that the previous consultants used were for Planning and they had advised that it was acceptable. This was an error and why the Licence Holder had appointed new representatives.

The Hearing was shown an exempted video. The Licensee's Representative indicated to the Hearing that the SIA licensed personnel could be seen trying to break up the fight that had started. He stated that the Licence Holder accepted that two individuals had been drinking at Ephesus and at another pub before, but stated they were assisted away and then Ephesus closed and the fight re-started shortly after.

The Hearing also heard from the owner of the security company used, who had had a contract with Ephesus since 2021. He explained the hours his staff were on site for.

In summing up, the Licence Holder's Representative advised that they were seeking to take steps following the incidents that had happened, and the Licensee had attended meetings with Officers when requested, as well as additional conditions on his licence following the minor variation, which he had proactively put in place. He was seeking to work with his neighbours and suggested some extra additional conditions to be added to the licence including last entry and noise

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limiters. He advised that anything more than a two week suspension would cause serious financial implications on the business and staff employed.

The Sub-Committee took the opportunity to ask questions of clarification. Some of the questions focused on the incident over the weekend in August and their security team's involvement, as well as a focus on the regulated music after 11pm, and questioning for clarification on some of the suggested further conditions put forward.

The Chairman of the Hearing, gave the opportunity for the Applicant and Licence Holder's representative to give a closing statement.

The Applicant advised that the activities undertaken in May and August were unauthorised and she had concerns that not all of the objectives under the Licencing Act were being adhered too.

The Licence Holder's representative closing remarks detailed some additional conditions that they would agree to being on the Licence, and the impact any closing would have on the business.

At 12.50pm the Hearing Members withdrew to consider the issues raised, accompanied by the Council's Legal Advisor, Clerk to the Hearing and Head of Licensing Partnership, for the purpose of providing advice only.

At 1.55pm the Hearing Members, Council's Legal Advisor, Clerk to the Hearing and Head of Licensing Partnership returned to the Council Chamber.

The Chairman confirmed that the full detailed decisions would be made and provided to the interested parties thereafter by the notice of the determination. He advised that the evidence heard and in the agenda papers suggested that due regard had not been taken of the legal constraints applicable to the premises in the past, despite ongoing approaches by various Officers of this Council. On the balance of probabilities, the Sub-Committees considered unregulated entertainment had been continued beyond current permitted hours for the sale of alcohol.

For this reason, the sub-committee felt that a proportionate response was to suspend the premises license for a period of two weeks to enable the business to reflect upon the consequences of non-compliance, to develop policies to manage the business so that it is compliant henceforth and train staff appropriately. It would also enable sound levels to be agreed with Environmental Health. Additionally, the conditions volunteered by the business relating to noise, SIA security presence, last entry policy, the introduction of a dispersal policy and outside operation.

Resolved: That the Licence be suspended for a period of two weeks with additional conditions, be applied to the Licence, with the full reasoning as detailed in the Notice of Determination as attached as an appendix to these minutes.

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THE MEETING WAS CONCLUDED AT 2.04 PM

CHAIRMAN

Notice of determination of application for a review of premises licence

To:

Of: Ephesus, 57 - 59 High Street, Sevenoaks, Kent TN13 1JF

Ref: 22/03351/LAPMV

Sevenoaks District Council being the licensing authority, on the 12 July 2022 received an application for a review of the premises licence in respect of premises known as Ephesus, 57-59 High Street, Sevenoaks, Kent TN13 1JF

On the 14 October 2022, there being a valid application for review, a hearing was held and, having considered the application and representations made, the Licensing Sub-Committee determined as follows:

To modify the existing conditions of the licence in the following respects, namely

- Details of the noise limiter that will be used at the premises must be submitted to the Environmental Health Team for prior approval. The noise limiter must be set at a level in consultation with the Environmental Health Team and agreed by 30 November 2022 that ensures neighbours are not caused nuisance or significant loss of amenity at any time and is to be used to control noise from amplified music and sound at all times during regulated entertainment. In the event that noise complaints are received and substantiated by the District Council, the premises licence holder must reduce the level set on the noise limiter to the satisfaction of the District Council.

Section 177A of the Licensing Act 2003 does not apply to this condition

- All doors and windows must be kept closed, other than for access and egress, during the playing of regulated entertainment.

Section 177A of the Licensing Act 2003 does not apply to this condition

- The door that connects the main restaurant the (currently unlicensed) glazed seating area at the side must be closed and locked after 22:00 hours.

Section 177A of the Licensing Act 2003 does not apply to this condition

To impose the additional conditions on the licence as follows:

SIA conditions

- There shall be two SIA registered security staff employed at the premises after 19:00 on Fridays and Saturdays and up to 30 minutes after the latest terminal hour for licensable activities.
- The SIA staff shall wear high visibility jackets in order to be easily identifiable.
- The SIA staff will manage the outside operation of the premises to ensure

that patrons congregating keep noise to a minimum and move on if they are not re-entering the premises after closure.

Dispersal Policy

- The Licence Holder shall have a dispersal policy in place which has been agreed with Licensing Officers. This policy shall be put forward for consideration by 21.10.2022
- The dispersal policy shall form part of the conditions of the licence.
- The dispersal policy may thereafter be altered in future with the agreement of the licensing officer or other appropriate officer (without a variation application being required.)

Last entry

- There shall be no new entry to patrons after 23:00

Outside Operation

- After 22:00 there shall be no more than 5 patrons permitted to congregate outside (for the purposes of smoking or socialising and with a view to re-entry).

Mandatory Conditions:

The supply of alcohol

Where a premises licence authorises the supply of alcohol, the licence must include the following conditions:-

No supply of alcohol may be made under the premises licence -

- (a) at a time where there is no designated premises supervisor in respect of the premises licence, or
- (b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.

Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

Exhibition of films

Where the film classification body is specified in the licence, unless subsection (3) (b) applies, admission of children must be restricted in accordance with any recommendation made by that body.

Where -

- (a) the film classification body is not specified in the licence, or
- (b) the relevant licensing authority has notified the holder of the licence that this subsection applies to the film in question,

admission of children must be restricted in accordance with any recommendation made by that licensing authority.

In this section -

"children" means person aged under 18; and

"film classification body" means the person or persons designated as the authority under section 4 of the Video Recordings Act 1984 (c.39) (authority to determine suitability of video works for classification).

Door supervision

Any premises which includes a condition that door supervisors must be at the premises to carry out a security activity, shall ensure that each such person is licensed to conduct such activities by the Security Industry Authority.

Supply of alcohol for consumption off the premises

A club premises certificate may not authorise the supply of alcohol for consumption off the premises unless it also authorises the supply of alcohol to a member of the club for consumption on those premises.

A club premises certificate which authorises the supply of alcohol for consumption off the premises must include the following conditions:-

- (i) the supply of alcohol must be made at a time when the premises are open for the purposes of supplying alcohol, in accordance with the club premises certificate, to members of the club for consumption on the premises.
- (ii) Any alcohol supplied for consumption off the premises must be in a sealed container.
- (iii) Any supply of alcohol for consumption off the premises must be made to a member of the club in person.

Security Staff

Any security staff employed at the premises shall :

- (a) be authorised to carry out that activity by a licence granted under the Private Security Industry Act 2001; or
- (b) be entitled to carry out that activity by virtue of section 4 of that Act

Embedded Conditions:

Regulated Entertainment (from original Justices Licence)

- Unless otherwise specified on this licence no regulated entertainment shall take place at the premises with the exception of pre-booked private events limited to the provision of music and dancing for pre- invited guests.

EC0601 Credit Sales (from original Justices Licence)

- Alcohol shall not be sold or supplied unless it is paid for before or at the time when it is sold or supplied, except alcohol sold or supplied:
 - (a) with and for consumption at a meal supplied at the same time, is consumed with the meal and paid for together with the meal;
 - (b) for consumption by a person residing in the premises or his guest and paid for together with his accommodation;

- (c) to a canteen or mess.

Conditions consistent with the Operating Schedule

- ID will be requested at the time of delivery, by the delivery driver or associated employee or third party, to confirm the age of the person accepting the alcohol and/or making the order.
- The premises will have a working CCTV system installed. All public areas of the licensed premises, including all public entry and exit points and the area immediately in front of the premises will be covered.
- The CCTV cameras shall continually record whilst the premises are open to the public and recordings shall be kept available for a minimum of 31 days with accurate date and time stamping.
- A staff member who is conversant with the operation of the CCTV system shall be present on the premises at all times when they are open to the public. This staff member shall be able to show the Police or a Licensing Authority Officer recordings immediately when requested.
- CCTV data will be downloaded and provided upon request by either the Police and/or a Local Authority Officer and this will be provided within 3 working days of receipt of the request. Should the CCTV system break, Local Authority Licensing will be notified within 48 hours.
- A staff member who is conversant with the operation of daily bar sales will be available at all times the premises is open to provide either Kent Police or a Local Authority Officer with a print-out of bar sales for the hours requested at the time of request.
- All staff will be trained in their roles and responsibilities under the Licensing Act 2003. This will include
 - a) Knowledge of the premises licensable hours
 - b) Knowledge of the Designated Premises Supervisor (in particular who they are, how they can be contacted at any time, and what his/her responsibilities are)
 - c) Knowledge of any conditions attached to the premises licence
 - d) The four licensing objectives
 - e) Underage Sales
 - f) Proxy Sales
 - g) The keeping and maintenance of a refusals log
 - h) Recognising signs of drunkenness and vulnerability
 - i) Actions to be taken in the event of an emergency, including the preservation of a crime scene and reporting an incident to the emergency services.
 - j) Documented records of training completed shall be kept for each member of staff.

- k) Training shall be regularly refreshed at regular 6 monthly intervals. Training records shall be made available for inspection upon request by Kent Police or an authorised Local Authority Officer.
- An incident report book will be kept on site and will be available for inspection by either Kent Police or a Local Authority Officer when requested. This book will contain information on all incidents at the premises and will include the date and time, staff names, a breakdown of each incident, and what remedial action was taken: if any.
 - A refusals register will be kept on site and will be available for inspection by either Kent Police or a Local Authority Officer when requested. This register will contain information on all refusals at the premises and will include the date and time, the product and reason for refusal,

To suspend the licence for a period of 2 weeks

Reasons for the Decision

The reasons for the decision are: Having had regard to the representations made by the Applicant, Licence Holder and interested parties, the Licensing Act 2003, Secretary of State's amended Guidance issued used Section 182 of the Act and the Council's Statement of Licensing Policy the Sub-Committee considered that, on the balance of probability and despite warnings and engagement by the authorities, there had been evidence of repeated non-compliance with the licensing regime. It was considered that the modified conditions, additional conditions and suspension of the License for a period of 2 weeks enable the business to reflect upon the consequences of non-compliance, to develop policies to manage the business so that it is compliant henceforth and train staff appropriately and to align the culture of the business to meet the four licensing objectives. It will also enable sound levels to be agreed with Environmental Health.

The determination will not have effect (a) until the end of the period given for appealing against the decision, or (b) if the decision is appealed against, until the appeal is disposed of. *

Dated: 19 October 2022

Please address any communications to:

Licensing Partnership
Sevenoaks District Council
Council Offices
PO Box 182
Argyle Road

Sevenoaks
Kent TN13 1GP

***Note:** Pursuant to Part 1 of Schedule 5 of the Licensing Act 2003 as amended, any party eligible to appeal must appeal to a magistrates' court within 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against.