

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)

1. Appointment of Chairman

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

2. Declarations of interest

There were none.

3. 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 entertainment 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 14:04

CHAIRMAN