

**MINUTES OF THE MEETING OF THE PREMISES / PERSONAL LICENCES SUB-COMMITTEE,
HELD ON WEDNESDAY, 4TH NOVEMBER, 2020 AT 10.00 AM
IN THE MS TEAMS AND ROMM 101**

Present:	Councillors Casey, V Guglielmi, J Henderson and Winfield
Also Present:	William Moody (Essex Police), Rowan McManus (Essex Police), Ian Seeley (Solicitor, Ellisons) Baktash Roohrawan (Geisha Ltd), Nick Arora (Geisha Ltd), Charmaine Gibson (Pink Palace Hotel)
In Attendance:	Karen Townshend (Licensing Manager), Linda Trembath (Senior Solicitor (Litigation and Governance) & Deputy Monitoring Officer), Emma King (Licensing Officer), Debbie Bunce (Legal and Governance Administration Officer), Emma Haward (Leadership Support Assistant), Keith Durran (Democratic Services Officer), Marie Bryce (Temporary Licensing Support Assistant), Lisa Tappenden (Licensing Technical Officer), Mark Baker (Environmental Health Officer), Carol Archibald (Environmental Health Team Leader), Justin Baddeley (EHO Agency Officer), Karen Hades (IT Training Officer), Matt Schaffer (IT Support Officer), Matt Cattermole (Business Support Assistant).

7. CHAIRMAN FOR THE MEETING

It was **RESOLVED** that Councillor V Guglielmi be elected Chairman for the meeting.

8. APOLOGIES FOR ABSENCES AND SUBSTITUTIONS

There were no apologies for absence or substitutions.

9. MINUTES OF THE LAST MEETING

It was **RESOLVED** that the minutes of the previous meeting of the Personal/Premises Licences Sub-Committee held on Tuesday, 20 October 2020 be agreed as a correct record.

10. DECLARATIONS OF INTEREST

There were none.

11. REPORT OF CORPORATE DIRECTOR (OPERATIONS & DELIVERY) - A.1 - APPLICATION FOR THE REVIEW OF A PREMISES LICENCE - KASSABA, 7-9 MARINE PARADE EAST, CLACTON-ON-SEA, CO15 1PS

The Chairman (Councillor Guglielmi) welcomed everyone to the meeting and made introductory remarks.

The Council's Licensing Officer (Emma King) then gave a verbal summary of the written report and advised that the Sub-Committee had before it, for its consideration, as set out

in item A.1 of the Report of the Corporate Director (Operations and Delivery) an application for the review of the Premises Licence currently held by Geisha Ltd which had been submitted by Essex Police, being a Responsible Authority.

Section 2.5 of the written report set out the current opening hours for the premises which were:-

Sale of Alcohol only on the premises

Monday to Wednesday 11:00 - 01:00

Thursday to Saturday 11:00 - 02:00

Sunday 11:00 - 01:00

Performance of Dance

Monday to Wednesday 11:00 - 01:00

Thursday to Saturday 11:00 - 02:00

Sunday 11:00 - 01:00

Provision of facilities for dancing

Monday to Wednesday 11:00 - 01:00

Thursday to Saturday 11:00 - 02:00

Sunday 11:00 - 01:00

Performance of Live Music

Monday to Wednesday 11:00 - 01:00

Thursday to Saturday 11:00 - 02:00

Sunday 11:00 - 01:00

Provision of facilities for making music

Monday to Wednesday 11:00 - 01:00

Thursday to Saturday 11:00 - 02:00

Sunday 11:00 - 01:00

Performance of Recorded Music

Monday to Wednesday 11:00 - 01:00

Thursday to Saturday 11:00 - 02:00

Sunday 11:00 - 01:00

Provision of facilities Similar Entertainment

Monday to Wednesday 11:00 - 01:00

Thursday to Saturday 11:00 - 02:00

Sunday 11:00 - 01:00

Other Entertainment falling within Act

Monday to Wednesday 11:00 - 01:00

Thursday to Saturday 11:00 - 02:00

Sunday 11:00 - 01:00

Late Night Refreshment

Monday to Wednesday 23:00 - 01:00

Thursday to Saturday 23:00 - 02:00

Sunday 23:00 - 01:00

Non Standard Timings

Sale of Alcohol only on the premises, Performance of Dance, Provision of facilities for dancing, Performance of Live Music, Provision of facilities for making music, Performance of Recorded Music, Provision of facilities Similar Entertainment, Other Entertainment falling within Act, Late Night Refreshment
Christmas and New Year's Eve and Bank Holidays until 3 a.m

The opening hours of the premises

Monday to Sunday 00:01 - 00:00

Christmas and New Year's Eve and Bank Holidays until 3 a.m.

It was reported that Geisha Ltd had been the Premises Licence holder since a transfer of the licence on 21 January 2019. The licence had subsequently been varied on 20 July 2020 to remove the Caribbean Restaurant off the licence. Mr Neeraj Kumar Arora had been the Designated Premises Supervisor (DPS) of the premises since 21 January 2019.

The Sub-Committee was aware that an application for the Review of the Premises Licence for Kassaba Turkish Grill and Meze had been submitted by Essex Police. This had been received by the Licensing Authority on 3 September 2020 on the grounds that the Licensing Objectives in respect of the Prevention of Crime and Disorder and Prevention of Public Nuisance had been breached.

It was the view of Essex Police that since the relaxation of lockdown rules for licensed premises, the Crime and Disorder and Public Nuisance objectives had been breached on a number of occasions at this premises, resulting in consistent calls to Police and significant disruption to neighbouring businesses.

As part of the Police evidence, "Exhibit 5" showed an underage person who had been identified to be drunk at the time by a Police Officer. Essex Police asked and the Sub-Committee agreed that the public be excluded during the showing of this video as it was in the public interest to protect the person's privacy due to their legal status as a child. Their name had been fully redacted from the submissions made by Essex Police which had been made available to the public.

It was confirmed that notice of the review application had been made and advertised in accordance with Section 51 of the Licensing Act 2003 and the regulations that accompanied it. In particular, a notice detailing the review application had been clearly displayed on the premises concerned and on the Council's Website for the prescribed 28 day period. Periodic checks had been undertaken by the Licensing Authority to ensure that this was the case. The notice period had expired on 1 October 2020.

The Licensing Authority had therefore accepted the review application and was satisfied that it had been properly served. The Council's Head of Customer and Commercial Services was satisfied that the application and the representations that it made were relevant to the licensing objectives and were not vexatious, repetitious or frivolous in nature.

It was reported that a letter from the Council's Environmental Health Officer had been submitted supporting the review application submitted by Essex Police. This followed a visit to the premises which had demonstrated poor control regarding the prevention of risk of transmission of COVID-19 and which was considered therefore to be a public safety issue relevant to the licensing objective.

The Sub-Committee was aware that other persons could also make representations in regards to review applications. Other persons in terms of the Licensing Act 2003 could include any individual, body or business and, in accordance with paragraph 8.13 of the Section 182 Guidance issued by the Secretary of State (April 2018 version) which accompanied the Licensing Act 2003, such persons were entitled to make representations to licensing authorities in relation to applications for the grant, variation, minor variation or review of premises licences and club premises certificates, regardless of their geographic proximity to the premises. In addition, such persons could themselves seek a review of a premises licence.

Such representations had to be relevant and not be considered by the Licensing Authority as vexatious, repetitious or frivolous and could be made in opposition to, or support of, an application and could be made by any individual, body or business that had grounds to do so. The Section 182 Guidance was silent on whether representations could be made against an application for a review, or in support of the respondent to the review (which in this case was the Premises Licence holder Geisha Ltd). However, given that the Guidance was silent on this question, but clearly indicated that other persons could make representations in regards to a review and that representations could be made in support of applications, it was therefore reasonable to assume that representations could also be made in support of the Premises Licence Holder (Geisha Ltd) in this matter for due consideration by the Licensing Sub-Committee and as part of the Review application hearing process.

It was therefore reported that two letters of representations from other persons had been submitted.

The Sub-Committee also had before it the relevant sections/extracts of the Council's Statement of Licensing Policy in respect to Review applications.

Following Members' consideration of this review application submitted by Essex Police, Section 52 of the Licensing Act 2003 stated that Members of the Licensing Authority must, having had regard to the application and any relevant representations, take such of the steps mentioned in subsection (4) (if any) as it considered necessary for the promotion of the Licensing Objectives.

Those steps were:-

- (i) to modify the conditions of the licence
- (ii) to exclude a licensable activity from the scope of the licence
- (iii) to remove the Designated Premises Supervisor
- (iv) to suspend the licence for a period not exceeding three months
- (v) to revoke the licence

For this purpose, the conditions of the licence were modified if any of them were altered or omitted, or any new conditions were added as a result of this Review Hearing.

In addition to the above measures, Members were advised that it was also open to them that they may for example decide to take no action in respect of the review application, or issue an informal/formal warning letter and/or recommend improvement to the premises and its management within a particular period of time if they thought that on consideration of the facts and balance of probabilities, this was a reasonable, proportionate and appropriate approach to take in regards to this Review application.

No specific recommendation was made by Officers to the Licensing Sub-Committee in respect to this Review application other than in accordance with Section 52 of the Licensing Act 2003. Members of the Licensing Sub-Committee were asked to reasonably, proportionately and appropriately determine this application for a Review of a Premises Licence in respect of the premises and person named as the licence holder in its own right and on its own merits taking into account all matters detailed in in the agenda, report and accompanying papers and any other relevant matters that could be brought up at the hearing itself by any of the parties that had an interest in this Review hearing.

William Moody, Licensing Officer for Essex Police asked if all members of the Sub-Committee had had an opportunity to read the representations. The Chairman of the Sub-Committee confirmed that this was so. Mr Moody then addressed the Sub-Committee along the following lines:-

- *Following the easing of lockdown restrictions on 4 July 2020 and the re-opening of Kassaba several incidents had been reported which had led to Essex Police writing to the premises to require immediate improvements. Despite this on two occasions CCTV evidence had not been available to the Police on request.*
- *There was evidence suggesting underage drinking of alcohol including an incident when Police had had to remove an underage male from the premises who was seen on CCTV drinking alcohol.*
- *On 3 November 2020 at approximately 4.00 p.m. a further complaint had been received.*

The Sub-Committee decided that the latest complaint could not be accepted or taken into evidence as it had not been submitted as part of the original Police evidence.

Mr Ian Seeley, Solicitor representing the Premises Licence holder, referred to Mr Roohrawan's statement where he had expressed his grave concerns that the complaints against the premises were racially motivated. Mr Seeley asked Mr Moody if these allegations had been made known to the Police. Mr Moody confirmed that these allegations were known and were being investigated though he was not aware of the outcome of that investigation. Mr Seeley confirmed that Mr Roohrawan was also not aware of the outcome of the investigation.

Mr Seeley questioned whether the underage individual had been stopped and searched. Mr Moody replied that he was not obliged to say. Mr Moody confirmed that a Police Intelligence Report had been submitted in relation to drug claims. No Misuse of Drugs Act Search Warrant had been actioned as the Police had not been in a position to follow the due legal process.

Mr Moody brought to the Sub-Committee's attention the circumstances in relation to all nine reports received associating Kassaba with incidents such as: underage drinking, nuisance, violence and lack of social distancing during the Coronavirus pandemic.

The meeting adjourned at 11:25am to enable a comfort break to be taken. The meeting then resumed at 11:40am.

Exhibit 1 was then shown to the Sub-Committee. No further questions were asked.

Mr Seeley asked if all members of the Sub-Committee had had an opportunity to read the representations. The Chairman of the Sub-Committee confirmed that this was so. Mr Seeley then addressed the Sub-Committee.

Mr Seeley brought to the Sub-Committee's attention the circumstances in relation to all 11 statements and text messages received in support of Kassaba.

Mr Seeley also brought to the Sub-Committee's attention several previous incidents of violence in the Clacton area between October 2019 and February 2019, which had all occurred before the Coronavirus pandemic.

In summary to this hearing, Mr Seeley requested that the Sub-Committee issued a warning, or recommended improvements to the premises or imposed a short suspension of the premises license and not a revocation due to the lack of compelling evidence.

Councillor J Henderson asked if those representing Kassaba could explain the actions of the Head Chef as depicted in Exhibit 4 as it showed that he had left the premises and re-entered on two occasions. Mr Arora of Geisha Ltd confirmed that 3 security officials had been on shift at the time that he had requested that the Head Chef calmed the situation due to his knowing personally the persons involved. Exhibit 4 was replayed to the Sub-Committee.

Councillor J Henderson asked Mr Arora to explain how the Coronavirus regulations were enforced at the premises. Mr Arora confirmed that he had liaised with Mr Moody, restricted the premises to 30-35 people at a time and had charged a £10 entry fee. Mr Arora also confirmed that he had ensured that customers had maintained the required 2m distance at all times with the exception of one incident involving a group of people who had been refused entry. Following the two-week warning by Mr Moody, he claimed that Mr Moody had admitted that he was happy with Kassaba's improvements.

Councillor J Henderson referred to CCTV footage which purported to show members of the public walking back and forth into the kitchen. Mr Arora claimed that this was a family friend entering the kitchen.

Councillor J Henderson also referred to the CCTV footage on 28 August at 2:15am where an incident had occurred leading to an ambulance attending the scene. Cllr J Henderson asked if the Police had been called. Mr Arora stated that the premises had been closed at that time.

Mr Moody referred to the public nuisance aspect of the case and various statements received from neighbouring hotels. Mr Moody claimed that the statements were not from

people living in the Clacton area, but previous residents of those hotels. Mr Moody stated that these statements were unsubstantiated and asked the Sub-Committee not to take them into account.

Charmaine Gibson, owner of the nearby Pink Palace Hotel, then addressed the Sub-Committee. Ms Gibson had not received an agenda pack and therefore, had been unable to read the information submitted. Ms Gibson confirmed that the Pink Palace was a family-run business and that there was no 'jealousy' on their side. On the contrary when the premises had been taken over by Mr Arora, the Pink Palace had supported the business.

Ms Gibson stated that following lockdown, incidents had occurred and that the complaints received by the Pink Palace were true. Ms Gibson also stated that the CCTV of the Pink Palace did not cover Kassaba but was zoomed for the use of Essex Police.

Mark Baker, Environmental Officer for Tendring District Council also addressed the Sub-Committee to state that the level of cleanliness at the premises had been a major concern particularly during the present Coronavirus public health emergency.

Members then retired in order for the Sub-Committee to consider the review application and reach a decision. Members asked the Council's Solicitor and the Legal and Governance Administration Officer to retire with them.

12. ADJOURNMENT OF MEETING

The meeting was adjourned whilst the Sub-Committee made its deliberations.

13. REPORT OF CORPORATE DIRECTOR (OPERATIONS & DELIVERY) - A.1 - APPLICATION FOR THE REVIEW OF A PREMISES LICENCE - KASSABA, 7-9 MARINE PARADE EAST, CLACTON-ON-SEA CO15 1PS

After a period of time the Sub-Committee, the Council's Solicitor and the Legal and Governance Administration Officer returned to the meeting.

The Chairman of the Sub-Committee informed all parties present that, due to the amount of evidence that they needed to consider and the various considerations that needed to be taken into account, especially in view of the various and new restrictions due to the current Coronavirus Pandemic the Sub-Committee was not able to reach a decision at this time.

The Chairman stated that therefore the Sub-Committee would make its determination by Wednesday 11 November 2020 in accordance with Regulation 26(2) of The Licensing Act 2003 (Hearings) Regulations 2005. All interested parties would then be informed of the decision in writing.

The Chairman then formally closed the meeting.

The meeting was declared closed at Time Not Specified

Chairman