

## Decision Notice – Premises Licence

MEMBERS PRESENT:	Councillor R van Dulken - Chairman Councillor P Heath Councillor G Prime Councillor W Taylor - Reserve
PREMISES:	Bakealicious 10-12 Market Hill Coggeshall, Colchester, Essex CO6 1TS
APPLICANT:	Miss J Nichols
DATE OF HEARING:	Monday, 27th November 2023
DATE OF NOTICE:	Friday, 1st December 2023
The decision of the Licensing Sub-Committee in respect of this application for a Premises Licence takes effect on 1st December 2023.	

The Licensing Sub-Committee has read the material presented to it and it has considered all the evidence and submissions.

In considering the provisions of the Licensing Act 2003, the Statutory Guidance issued under Section 182 of the Licensing Act 2003 (issued August 2023) and Braintree District Council's Licensing Policy, the Licensing Sub-Committee has decided to **GRANT** the application for a Premises Licence for Bakealicious, 10-12 Market Hill, Coggeshall, Colchester, Essex CO6 1TS as set out below:

- The licensable activities permitted under this Premises Licence are:

Note: The hours below take into account the amendments to the Licensing Act 2003 in respect of the deregulation of regulated entertainment.

Licensable Activity	Days and Hours			Place
E - Live Music	Mon	23:00	23:30	Indoors
	Tue	23:00	23:30	
	Wed	23:00	23:30	
	Thu	23:00	23:30	
	Fri	23:00	23:30	
	Sat	23:00	23:30	
Non-Standard Timing:	None			
F - Recorded Music	Mon	23:00	23:30	Indoors
	Tue	23:00	23:30	

	Wed	23:00	23:30	
	Thu	23:00	23:30	
	Fri	23:00	23:30	
	Sat	23:00	23:30	
Non-Standard Timing: None				
H – Anything of a similar description to that falling within E, F or G	Mon	23:00	23:30	Indoors  Note: E & F are indoors only therefore H can only be indoors
	Tue	23:00	23:30	
	Wed	23:00	23:30	
	Thu	23:00	23:30	
	Fri	23:00	23:30	
	Sat	23:00	23:30	
Non-Standard Timing: None				
I - Late Night Refreshment	Mon	23:00	23:30	Indoors and Outdoors
	Tue	23:00	23:30	
	Wed	23:00	23:30	
	Thu	23:00	23:30	
	Fri	23:00	23:30	
	Sat	23:00	23:30	
Non-Standard Timing: None				
J – Supply of Alcohol	Mon	09:00	23:30	On the premises
	Tue	09:00	23:30	
	Wed	09:00	23:30	
	Thu	09:00	23:30	
	Fri	09:00	23:30	
	Sat	09:00	23:30	
	Sun	09:00	23:30	
Non-Standard Timing: None				

2. The Premises Licence is subject to the Conditions offered by the Applicant in order to promote the four licensing objectives as set out in Section M of their application, the Conditions agreed by the Applicant with the Responsible Authority, Essex Police prior to the Hearing, as amended below, and the Mandatory Conditions attached to all Premises Licences.

## Reasons for Decision

Before announcing its decision, the Licensing Sub-Committee wishes to clarify the position of the Responsible Authority, Essex Police in relation to these proceedings under the Licensing Hearing Regulations and the Licensing Act 2003. To be a party to the proceedings, a Responsible Authority must have made a representation within the statutory consultation period and maintained that representation.

From the evidence seen by the Licensing Sub-Committee, it is noted that Essex Police as a Responsible Authority has entered into discussions with the Applicant and has agreed revisions to the application and conditions to be imposed upon the Premises Licence if granted by the Licensing Authority. However, Essex Police has failed to make a representation and therefore they are not a party to the Hearing. As a consequence, Essex Police do not have a right of appeal should they be aggrieved by the decision of the Licensing Authority.

No representations have been submitted by Responsible Authorities to this application and the single representation that has been submitted has been made by a local resident in respect of the Licensing Objective of the Prevention of Public Nuisance. The local residential was unable to attend the Hearing.

Having regard to the Statutory Guidance issued under Section 182 of the Licensing Act 2003 (August 2023), each application for a Premises Licence must be considered by a Licensing Authority on a case-by-case basis and representations submitted by other persons and the Applicant should be taken into account.

In addition, the Guidance states that the determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end.

In determining an application for a Premises Licence, the Licensing Authority should consider wider issues such as other conditions already in place to mitigate potential negative impacts on the promotion of the licensing objectives, and the track record of the business. Furthermore, the Guidance reminds the Licensing Sub-Committee that it is imperative that the factors which form the basis of its determination are limited to the consideration of the promotion of the licensing objectives and nothing outside those parameters. Consequently, the Licensing Sub-Committee's decision cannot be based on matters which fall outside of the provisions of the Licensing Act.

The decision of a Licensing Authority should be evidence-based, justified as being appropriate for the promotion of the licensing objectives, and proportionate to what is intended to be achieved.

In considering this application for a Premises Licence, the Licensing Sub-Committee has had regard to the application in its revised form, the

submissions made at the Hearing by the Applicant, and written representations submitted by the local resident.

The application considered by the Licensing Sub-Committee was for a Premises Licence for:

- a) The supply of alcohol (on the premises) – Monday to Sunday from 09:00hrs to 23:30hrs
- b) Live Music (Indoors) – Monday to Saturday from 18:00hrs to 23:30hrs and Sunday from 18:00hrs to 22:30hrs
- c) Recorded Music (Indoors) – Monday to Saturday from 09:00hrs to 23:30hrs and Sunday from 10:00hrs to 22:30hrs
- d) Anything of a similar description to that falling within b) and c) above (Indoors and Outdoors) – Monday to Saturday from 18:00hrs to 23:30hrs and Sunday from 18:00hrs to 22:30hrs
- e) Late night refreshment (Indoors and Outdoors) - Monday to Saturday (excluding Tuesday) from 18:00hrs to 23:30hrs and Tuesday from 13:00hrs to 23:30 and Sunday from 18:00hrs to 22:30hrs.

In accordance with the provisions of the Licensing Act 2003, live and recorded music between the hours of 08:00hrs and 23:00hrs on any day does not require a licence on a premises which is authorised to sell alcohol for consumption on the premises and where the audience does not exceed 500 people.

With regard to licensable activities, because of the “deregulation” provisions of the Licensing Act 2003, the Licensing Authority cannot seek to control live and recorded music, similar activities and late-night refreshment at the premises between 08:00hrs to 23:00hrs where they take place with an audience of less than 500 people as these are activities which may take place without a licence provided that the sale of alcohol is permitted.

Activities taking place on the premises between 23:00hrs and 23:30hrs would constitute licensable activities for which a Premises Licence would be required. The Licensing Authority may only remove the effect of the deregulation provision of the Act when imposing a condition on a Premises Licence as a result of a licence review. This is a separate legal process to the Sub-Committee’s consideration of the application for a Premises Licence.

As a consequence, the Licensing Sub-Committee, at this stage, is restricted as to what it may consider to address the concerns of the local resident in respect of noise caused by music emanating from the licensed premises between the hours of 08:00hrs and 23:00hrs where the audience does not exceed 500 people.

The site to be licensed is 10-12 Market Hill, Coggeshall and it is located in the centre of Coggeshall. The premises currently operate as a café and

Temporary Event Notices have been obtained to enable licensable activities to take place at the premises. These have included the sale of alcohol and regulated entertainment.

The Applicant, in her submission, has advised that she does not intend to operate at all times as applied for in the Premises Licence application. The Applicant has explained that the intention behind the application was to have flexibility to be able to operate and to hold events within the terms of the Licence. The Applicant explained that she does not intend to become an entertainment venue/destination, but wants to be able to offer alcohol with her current café operation, and also to hold evening events at which there may be live and recorded music, such as tapas evenings, or hosting events such as wreath making where she would like to provide alcohol. The Applicant explained that her current clientele is of the age range 30-70 years and that it was not a venue which currently attracted younger people.

The Applicant advised that the type of music to be played could be incidental to the event/background music, but where music was a main feature of the event it would be similar to that which she had had in the past under Temporary Event Notices, such as soul music and similar. The Applicant advised also that it had been her practice to notify the residents living above the café of forthcoming events taking place and to invite them to attend and that this practice would continue in future.

It is noted by the Licensing Sub-Committee that when the premises has operated in accordance with Temporary Event Notices there have been no complaints received by the Council in respect of noise. This is corroborated by the lack of representations to this application by Responsible Authorities such as Environmental Services.

The Applicant has advised that the premises has limited space, which will affect the size of the events which she may hold. The Applicant stated that the premises seats approximately 30 customers.

Within the representations submitted, reference had been made to the "need" for the premises. The Licensing Authority is mindful of the Statutory Guidance, which advises that need is not something that it can consider in determining the application.

The Licensing Sub-Committee has considered the representations made by the local resident on the basis of public nuisance. They were concerned about the possible extended use of the premises and that this could lead to parties with music and alcohol consumption taking place frequently and at night-time causing disturbance to herself and other local residents. The Sub-Committee is mindful of the concerns of residents in respect of noise and the change of character of the premises from a café.

However, the Licensing Sub-Committee in listening to the Applicant is persuaded that the character of the premises is not intended to change from a café to a music/drinking destination and that the premises will in effect operate in the manner in which it has, but with the ability to hold occasional

evening events. The Applicant has advised that events would not be every day, but could be a few times each month.

Based upon the manner in which the premises has been operated by the Applicant during the last two years, which has included licensable activities under the terms of a number of Temporary Event Notices that have taken place without complaints, or incidents, the Sub-Committee is persuaded that the Applicant will continue to operate the premises in a responsible manner consistent with the licensable objectives. The Sub-Committee commends to the Applicant that she should continue with her practice of notifying neighbours about forthcoming events, but it is not considered necessary to impose this as a Condition of the Licence. The steps taken by the Applicant on her own volition are considered by the Sub-Committee to be sufficient to promote the licensing objectives.

The Applicant prior to the Hearing has removed the outside area from the Premises Licence application limiting the Premises Licence to the inside of the building. The Licensing Sub-Committee considers that the removal of this area will assist in reducing the impact of the licensable activities on neighbouring properties including the properties above the café.

It is noted that the Applicant has, in discussing her application with the Responsible Authority, Essex Police agreed Conditions. The Licensing Sub-Committee has had regard to these Conditions and the reduction in the area of the proposed Premises Licence and has considered the Conditions in light of the Statutory Guidance. It is felt that some of the Conditions exceed the Statutory Guidance in that they are neither necessary, nor proportionate to the premises and the issues raised in the objection, in order to further the licensing objectives.

Taking into consideration the premises and the amendment made by the Applicant to remove the outside area from the application, the Licensing Sub-Committee considers that it is not necessary, or proportionate for the following Conditions proposed by Essex Police to be imposed on the Premises Licence:

- Customers will not be permitted to remove from the premises any drinks supplied by the premises in open containers.
- No music, nor late night refreshment, shall be provided to external areas at any time/after 21:00 hours.

The Sub-Committee considered that the proposed Conditions above were not necessary as there was no evidence to support these and that they were disproportionate now that the Premises Licence application had been revised to remove the outside area from the licensable area.

- Service of alcohol shall be by waiter/waitress only to patrons seated at a table.

The Sub-Committee considered that the proposed Condition above was not necessary having regard to the size and operational style of the premises. Furthermore, it was considered to be a disproportionate Condition as the premises is a 30 cover cafe and the Condition would place a disproportionate burden on the Applicant.

The Licensing Sub-Committee has taken into consideration the remaining Conditions proposed by the Responsible Authority, Essex Police and considers that they are an amplification of the steps to be taken in order to promote the licensing objectives as set out in Part M of the application. The Licensing Sub-Committee considers, that as the Applicant has agreed to these Conditions and they do not seek to place a disproportionate burden on the Applicant and the premises, they may be imposed upon the licence in order to promote the licensing objectives.

It is therefore considered that the application should be granted.

End of Decision.

### Right of Appeal

If you wish to appeal against the Council's decision you must do so in writing to the Magistrates' Court within 21 days of being notified in writing of the Council's decision. A fee must be paid to the Magistrates' Court and your application should be marked 'Pre-Court' and sent to the:-

Essex Magistrates' Court  
Court Administration Centre  
PO. Box 10754  
Chelmsford  
Essex  
CM1 9PZ

Telephone: 01245 313300  
Email enquiries: [esosprey@justice.gov.uk](mailto:esosprey@justice.gov.uk)

For further guidance on appeals to the Magistrates' Court please contact the Magistrates' Court or seek independent legal advice. Further information is also available at [www.justice.gov.uk](http://www.justice.gov.uk).

### Right to Request a Review

At any stage following the grant of a Premises Licence, you may be able to ask the Licensing Authority to review the Premises Licence. You will need to complete an application form which can be obtained from the Council or from [www.gov.uk](http://www.gov.uk). An application for a review must be about the effect that the Premises Licence is having on at least one of the four licensing objectives. Further information about reviews can be found at [www.gov.uk](http://www.gov.uk).