



LICENSING SUB-COMMITTEE

Tuesday 8 October 2019 at 7.00 pm

MINUTES

PRESENT: Councillor Martin Tiedemann, Councillor Rezina Chowdhury and Councillor John Kazantzis

APOLOGIES:

ALSO PRESENT:

1 ELECTION OF CHAIR

Moved by Councillor Rezina Chowdhury, SECONDED by Councillor John Kazantzis and

RESOLVED: That Councillor Martin Tiedemann be elected Chair for the meeting.

2 DECLARATION OF PECUNIARY INTERESTS

None were declared.

3 MINUTES

RESOLVED: That the minutes of the previous meeting held on 5 September 2019 be approved and signed by the Chair as correct records of the proceedings.

4 LICENSING APPLICATIONS FOR THE GRANT / REVIEW OF A PREMISES LICENCE

4a TIA MARIA, 126 SOUTH LAMBETH ROAD, SW8 1RB (OVAL)

Presentation by the Licensing Officer.

The Sub-Committee was informed that this was an application for a variation of a premises licence. The Sub-Committee's attention was drawn to chapters 2, 3, 8, 9, 10 and 16 of the Statutory Guidance and Sections 5 (and polices 1, 3, 4, and 8) of the Statement of Licensing Policy as the ones particularly relevant to this application. The options available to the Sub-Committee were set out in paragraph 6.2 of the report on page 132 of the agenda papers.

The Licensing Officer confirmed:

- This was an application to vary operating hours and modify existing conditions.

- Two representations have been received against the application. These could be found on Annex C on pages 47-51 of the agenda papers.
- The representations made were from Licensing authority and one resident.
- Since the publication of the reports, the applicant had submitted two Temporary Event Notices.

Presentation by the applicant

Ms Michelle Hayworth, representative for the applicant and the applicant, Mr Eduardo Dantas informed the Sub-Committee that:

- The applicant had been operating on the premises since 2010. He had operated there for nine years.
- In 2012, a resident living adjacent to the premises submitted a review application and the operating hours of the premises was subsequently reduced. The applicant was not seeking to reinstate the hours at which the premises previously operated, but was seeking an extension of the current operating hours.
- Since 2014, the applicant had submitted several temporary event notices (TEN) which generally operated until 03:00 or 04:00. The applicant was not seeking to instate these hours either.
- The applicant had originally sought a terminal hour of 02:00 Friday and Saturday.
- Since 2012, the applicant had worked at the premises to ensure that the licensing objectives would be upheld and additional wall had been installed at the premises to stop noise penetration.
- Acoustic tiles have also been put in place and the wall had been attenuated.
- The levels of technology in the premises had improved. A sound limiter had been installed and the applicant used a decibel reader to check the noise levels emanating from the premises from the outside area.
- The applicant had operated the premises whilst holding events such as Brazilian dancing and other musical events including on bank holidays.
- When the notices for the application were put up, the applicant was surprised to have only received one representation. There was also one registered complaint (from June 2019 about noise).
- The applicant appeared to be managing the premises very well.
- The applicant also served food during lunch and in the evenings.
- The premises also held Latin American themed entertainment including music and samba on a regular basis.
- If the premises had an issue with noise, then the events that were being held at the premises would generate a lot of public interest via complaints and representations from the Police and Public Protection (neither of who had submitted a representation for this application).
- The premises was well 'landlocked'. It had a community centre behind it and the applicant worked closely with the community group. The premises was also near a large old school and a Travis Perkins Builders office.
- Page 24 of the agenda papers outlined the background of the premises and the outcomes of the review application in 2012. The Licensing Sub-Committee at the time did not address the times of regulated entertainment. This meant that the licence had some days where the premises would have peculiar closing hours.
- The application would be modified so that the terminal hour for licensable activity on Friday and Saturday would be 01:30 Friday and Saturday. The terminal hour for Sunday would be 00:30.
- The applicant would withdraw the request for the hours sought on bank holidays.
- The closing time for the premises should be 30 minutes after the terminal hour

for the sale of alcohol.

- The applicant agreed the proposed maximum occupancy of 130 persons at the premises.
- To uphold the protection of children from harm licensing objectives, children under the age of 16 would not be allowed on the premises after 21:30 unless they were accompanied and dining with a responsible adult.
- Item 1 on annex 3 of the conditions contained a narrative. The licence would be a clearer if the narrative was not present.
- Condition 9 would remain as part of the licence but condition 21 would be changed to match Lambeth's standard model condition 21 (that two SIA staff would be present at the premises from 23:00 until the closure of the premises and 30 minutes thereafter).
- Condition 15 and 16 were not required.
- Condition 34 would be replaced and re-worded to state that "the last entry, re-entry time to be amended to 00:30 but such entry after 00:30 be permitted via a side door off Wheatsheaf Lane which is less proximate to residential accommodation. Such area to be used as a smoking area".
- Proposed condition 35 and 36 would be withdrawn.
- The applicant had also agreed to standard Licensing condition 100. This referred to the use of a noise limiter to ensure that noise nuisance was not caused to residents.
- The applicant hoped that the application would be accepted.
- The sound system had not yet been fully calibrated by Public Protection.
- The applicant had been measuring sound outside of the premises using his decibel reader to ensure that any noise issues were mitigated.
- One recent area of concern that had been recorded regarding loud noise was due to one of the events that have been held at the premises on a Thursday. The artist that held the event at the premises had been told to reduce volume levels but had refused to do so. The individual would not be invited back at the premises.
- The representation (from the resident) that had been made against the application was vague and the applicant had worked hard with the community and had built a rapport with the committee centre. He did not receive many complaints and tried to respond positively to members of the public.

In response to questions from Members, Ms Hayworth and Mr Dantas informed the Sub-Committee that:

- The hours being sought by the applicant would be used regularly. These would be for events that were already held at premises.
- The applicant may still apply for TENs for bank holiday weekends.
- The capacity limit on the licence stated 130 persons. The applicant would not be contesting this capacity limit.

Presentation from interested parties

The Licensing Manager, Ms Bina Patel informed the Sub-Committee that:

- The Sub-Committee had representation from the Licensing authority.
- She was happy with the conditions that had been proposed as they would resolve public nuisance issues.
- There was no issue with maximum capacity at the premises.
- Public Protection would be asked to ensure that the premises had suitable noise limiting equipment.

In response to questions from Members, Ms Patel informed the Sub-Committee that:

- There had been no complaints regarding the premises apart from the one

occasion where there had been complaints about the DJ who had refused to reduce the volume when asked to do so.

- The noise limiter would be set by a member of the Public Protection team.
- The applicant was meeting his objectives.
- If there were any issues at the premises then this could be dealt with in accordance with the Council's policies.
- She would recommend that the applicant employ a dedicated phone number taking calls in case of noise nuisance.

Mr Adrian Arbus, resident, informed the Sub-Committee that:

- Just because he was the only one to object to the application did not mean that he was the only one concerned about the application.
- Previously the premises was subject to a number of objections that had been raised by residents in 2012. This had followed on from a long period of excessive noise nuisance at the premises.
- He was not sure if the current licence holder was responsible for that noise but some time had been taken to deal with the noise issues at the premises.
- He was glad that issues at the premises had improved and hoped that the reduction of noise coming from the premises was permanent.
- A large number of residents needed to sleep on Saturday and Sunday nights.
- He did not wish to see the premises return to the conditions by which the premises operated in 2011.
- He was pleased to hear that noise limiting technology would be installed at the premises.
- If the premises displayed issues of noise nuisance again then action would need to be taken to revoke the licence. If this was assured, then he would withdraw his objection.

In response to questions from Members, Mr Arbus informed the Sub-Committee that:

- He was happy with the amended operating hours but premises operating with noisy events until 00:30 was still unacceptable.
- He did not usually attend the premises.
- He had not been aware of excessive noise levels at the premises in recent months.

Ms Patel stated that there was a dedicated council team and number that residents could contact on Thursdays, Fridays and Saturdays to make noise complaints. There was also a Licensing inbox which residents could use to send an email to raise concerns. The premises could also make available for residents a direct telephone number for the manager of the premises. Such a provision could be conditioned and was in fact something dealt with in the councils model set of licensing conditions (condition 98).

The applicant was recalled to address matters arising. In response to questions from Members, Ms Hayworth and Mr Dantas informed the Sub-Committee that:

- The community hall had sent a letter of support in which they cited the applicant as being a valued member of the community.
- The applicant had a good relationship with the local network of people living and working in the area and believed in building relationships within the community.
- He was happy to provide his contact number to residents. Many residents had his contact details already.

At this point in proceedings, the Legal Officer informed the Sub-Committee that the standard condition regarding the provision of a telephone number read "a direct telephone number of the licence holder, DPS and the manager of the premises shall be made

publicly available at all times the premises is open. The number is to be made available to residents and businesses in the vicinity”.

Ms Patel stated that the main issue for them was ensuring an individual at the premises would act as a single point of contact to deal with any matters that may arise regarding noise issues.

Adjournment and Decision

At 9:05pm the Sub-Committee withdrew from the meeting together with the Legal Adviser and Clerk to deliberate in private. The Sub-Committee had heard and considered representations from all those who spoke. Legal advice was given to the Sub-Committee on the options open to them and the need for any decision to be proportionate.

The Sub-Committee decided to grant the application subject to conditions and amendments.

Announcement of Decision

Members returned to the meeting and the Chair informed those present of the decision to grant the application subject to conditions and amendments.

The Sub-Committee stated that after hearing from all parties, the Sub-Committee was satisfied that granting the application with all the agreed amendments to the operating schedule and conditions discussed during the course of the hearing was appropriate and proportionate and would serve to promote the licensing objectives.. The Sub-Committee determined to impose on the premises licence the agreed model conditions referred to above in respect to the distribution of a telephone number for the premises licence holder and DPS (model Condition 98) and the installation of a noise limiter (model condition 100).

4b 401 COLDHARBOUR LANE, LONDON, SW9 8LQ (COLDHARBOUR)

Ms Isabella Buono, representing the applicant, informed the Sub-Committee that:

- She would like to seek an adjournment.
- The applicant hoped that after taking legal advice he would be able to resolve the concerns raised from all interested parties.

In response to questions from Members, Ms Buono informed the Sub-Committee that:

- The applicant's solicitor was instructed a day before this meeting and she received instructions to act on behalf of the applicant this morning.
- The applicant had been advised of the hearing date one month previously.
- The applicant had hoped that he would be able to progress with his application without legal assistance but later realised that he needed legal help.

In response to questions from Members, Ms Bina Patel, Licensing Manager, informed the Sub-Committee that:

- The application to adjourn and the reasons for doing so had been submitted with late notice but she was happy to agree an adjournment in the circumstances.

Adjournment and Decision

At 7:23pm the Sub-Committee withdrew from the meeting together with the Legal Adviser and Clerk to deliberate in private. The Sub-Committee had heard and considered representations from all those who spoke. Legal advice was given to the Sub-Committee on the options open to them and the need for any decision to be proportionate.

The Sub-Committee decided to grant the application to adjourn.

Announcement of Decision

Members returned to the meeting and the Chair informed those present of the decision to grant the application to adjourn.

The Sub-Committee stated that, after taking into consideration Regulation 12 of the Licensing Act 2003 (Hearing) Regulations 2005, it was content that adjourning the hearing was in the interest of all parties as this would ensure the Licensee had adequate representation when the application was determined. The application would be heard on 12 November 2019. This would give the licensees representative sufficient time to consider the application further.

4c DUKE OF EDINBURGH, 204 FERNDALE ROAD, SW9 8AG (FERNDALE)

The Sub-Committee sought clarification of the applicant's representative regarding the basis of his presentation at the Sub-Committee.

The applicant's representative, Mr Gary Grant, informed the Sub-Committee that he was conscious that members of the public had given up their time to be present at the meeting. There were approximately 906 pages of the agenda papers dedicated to the application. The principle issue for this application was whether or not there needed to be a maximum capacity limit imposed in respect of the beer garden at the premises and what that capacity should be. The projected figures ranged from 100 to 902 people. The applicant suggested a compromise figure of 550. Mr Grant complained that the Licensing Manager had assessed the capacity limit of the beer garden purportedly in accordance with fire risk safety regulations and that, this was not properly considered a matter for her or the Sub-Committee. He explained that it was not for the Licensing team to determine what was a safe capacity for these premises in fire safety terms, as this was properly speaking a matter for the London Fire Brigade (LFB) using its statutory powers set out in place the Regulatory Reform (Fire Safety) Order 2005. That provision dealt with the issue and provided for fire safety these assessments to be made by the relevant experts. The Licensing Manager was not an expert in the area of fire risk assessments and should rely on the assessments made by the LFB. The applicant wished to implement the capacity limit that their fire safety expert had assessed to be a safe number. Efforts had been made to liaise with the LFB but a definitive number could not be obtained from them. At 3:34pm yesterday, Mr Cordwall Thomas from the LFB had ventured a figure of a maximum of 100 persons but had provided no reasoning for how he had arrived at that number. No representative from the LFB was in attendance at this meeting indicating that they felt that fire safety issues were separate from licensing matters and would be dealt with separately. It was therefore reasonable that the Sub-Committee not consider representations (or parts of a representation) relating to fire safety with regard to the application and simply focus on issues more closely related to licensing matters. Although there remained areas of conflict remaining in terms of the licensing conditions Mr Grant felt these issues could be resolved quite quickly.

If the Sub-Committee took the view that commentary and consideration regarding fire safety needed to be considered, then the applicant would need to address the opinion expressed by the LFB at 3:34pm yesterday. Furthermore, a full day hearing would be required to address those issues. An issue such as this would take three days to be heard at the Magistrates Court.

The Sub-Committee noted that a representative from the LFB was not present at the meeting.

The Legal Officer informed the Sub-Committee that the Secretary of State's guidance issued under Section 182 of the Licensing Act 2003 stated that licence conditions should

not duplicate other statutory provisions. The Guidance was also clear that “Safe capacities” should only be imposed where it was considered appropriate for the promotion of public safety or the prevention of disorder on the relevant premises. The Guidance specifically warned that if a capacity limit had been imposed through other legislation, it would be inappropriate to reproduce it in a premises licence. It would also be wrong to lay down conditions which conflicted with other legal requirements. However, if no safe capacity had been imposed through other legislation, a responsible authority may consider it appropriate for a new capacity to be attached to the premises which would apply at any material time when the licensable activities are taking place and make representations to that effect. Paragraph 2.13 of the guidance stated that the permitted capacity was a limit on the number of persons who may be on the premises at any time, following a recommendation by the relevant fire and rescue authority under the Regulatory Reform (Fire Safety) Order 2005. For any application for a premises licence or club premises certificate for premises without an existing permitted capacity where the applicant wished to take advantage of the special provisions set out in section 177 of the 2003 Act, the applicant should conduct their own risk assessment as to the appropriate capacity of the premises. They should send their recommendation to the fire and rescue authority which would consider it and decide what the “permitted capacity” of those premises should be. The Legal Officer confirmed that Mr Grant’s comments were correct in principle. If the Sub-Committee was looking to impose a capacity limit on fire safety grounds, then this would be inappropriate for the Sub-Committee to do as it would involve Members exercising its functions in a way which would duplicate statutory provision elsewhere and potentially in a way which might conflict with that other provision.

Presentation by the Licensing Officer.

The Sub-Committee was informed that this was an application for a new premises licence. The Sub-Committee’s attention was drawn to chapters 2, 3, 8, 9, 10 and 16 of the Statutory Guidance and Sections 5 (and polices 1, 3, 4, and 8) of the Statement of Licensing Policy as the ones particularly relevant to this application. The options available to the Sub-Committee were set out in paragraph 6.2 of the report on page 132 of the agenda papers.

The Licensing Officer confirmed:

- This was an application for a premises licence under section 17 of the Licensing Act 2003. The application was submitted on 17th July 2019 by Solitaire Restaurant Ltd.
- This application received 101 representations, 17 of which were against the application, with 84 representations received in support.
- Of the 17 representations against the application, 13 were from residents and non-residents, one was a petition and the other three were from the responsible authorities namely Lambeth Public Protection, Police and the Licensing Authority.
- Videos in support of representations had been provided. 19 from Mark Buttery two of which are subsequent to the report, four from Miles Hillier and four from Zabeer Hussain. These have been circulated to the applicant and are available this evening for viewing.
- Since the issuing of this report, the applicant has provided supporting information which has been circulated to all parties.
- In response to the supporting information provided by the applicant, Brian Kearns, Mark Buttery and Tom Simpson who had made representations also sent in further information. This further information had been supplied to Members, the applicant and all parties.

- The Duke of Edinburgh had been served a Section 47 Notice under the Environmental Protection Act 1990. This notice requested that by 1st October 2019 the premises should have all waste receptacles within the boundary of their property, with the exception of waste being presented for collection between the hours 11:30 – 14:30 Mon – Fri and 09:30 – 12:30 on Saturdays.
- 29 residents and non-residents who had made representations had confirmed their attendance this evening, including the spokesperson for both resident petitions.

The Licensing Manager Ms Bina Patel, informed the Sub-Committee that it was important to note that the LFB was a responsible authority and that she was aware about discussions being held between the applicant an independent assessor and the LFB but the outcome of those discussions were not known. The LFB were invited to attend the meeting as they were best placed to venture an opinion in respect to whether the premises had a suitable means of escape. Her representation would be based on public nuisance in any event.

In response to questions from Members, Mr Grant reiterated to the Sub-Committee that:

- The Sub-Committee should not take into account fire safety issues.
- If the Sub-Committee wished to take into account the representations or parts of representations concerning fire safety issues, then this would need to be addressed with further expert evidence. The LFB deliberately chose not to make a representation and had only formally contributed to the discussion by sending an email to the Licensing Manager. The London Fire Brigade, therefore, were not a formal party to the hearing.

In response to questions from Members, Ms Patel informed the Sub-Committee that:

- There was a submission from the LFB which formed part of her representation.
- The LFB had not submitted an independent representation concerning the application.
- She wanted the LFB to address the issues relating to fire safety as it was an important factor in the application.
- No representative from the LFB was in attendance at the meeting but they had stipulated a maximum capacity to facilitate safe escape.

At this point in the proceedings, Mr Grant stated that it was important for the Sub-Committee to consider if it was lawful for it to make decisions regarding fire safety limits. If the Sub-Committee felt that it needed to make such a decision then the applicant would be seeking an adjournment, if not then the applicant was happy to proceed with the hearing as intended. However, if the Sub-Committee wished to consider fire safety issues at this meeting then he would advise that this was not legally relevant and the applicant would need an expert to specifically address fire safety issues at another meeting.

Adjournment and Decision

At 7:52pm the Sub-Committee withdrew from the meeting together with the Legal Adviser and Clerk to deliberate in private. The Sub-Committee had heard and considered representations from all those who spoke. Legal advice was given to the Sub-Committee on the options open to them and the need for any decision to be proportionate.

The Sub-Committee decided to adjourn the application.

Announcement of Decision

Members returned to the meeting and the Chair informed those present of the decision to adjourn the application.

The Sub-Committee determined that it was necessary to adjourn the application and did so in accordance with Regulation 12 of the Hearing Regulations. The purpose of the adjournment was so as to ensure that the Sub-Committee had before it all it needed to make full and informed decision about what was a safe capacity if the Sub-Committee felt it was appropriate to impose one on the licence. The Sub-Committee was not seeking to impose a capacity on fire safety grounds (or adjourning the hearing for that purpose), but it was clear that there was a wide gulf between the parties in terms of what was an appropriate capacity in licensing terms and understanding the best course of action required greater clarity from all parties about this aspect of the application. Therefore, the Sub-Committee proposed to adjourn the application until 28 November 2019.

The meeting ended at 9:12pm

CHAIR
LICENSING SUB-COMMITTEE
Tuesday 29 October 2019

Date of Despatch: Wednesday 16 October 2019

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