

LICENSING SUB-COMMITTEE MINUTES

Monday 6 September 2021 at 2.00 pm
Microsoft Teams

Present: Councillor Fred Cowell, Councillor Emma Nye and Councillor Philip Normal

Apologies:

1 Election of Chair

MOVED by Councillor Philip Normal, SECONDED by Councillor Emma Nye
RESOLVED: That Councillor Fred Cowell be elected Chair for the meeting.

2 Declaration of Pecuniary Interests

None were declared.

3 Licensing Applications for the Grant / Review of a Premises Licence

3a Zapp, 19 East Place, SE27 9JW (Gipsy Hill)

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 to section 5 (Policies 1,3, 4, 8 and 16) 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 paragraphs 6 of the report on page 11 of the agenda papers.

The Licensing Officer confirmed:

- This was an application for a new premises licence.
- The applicant sought to permit the sale of alcohol from Monday to Sunday 24 hours a

day.

- The applicant had agreed a condition whereby alcohol would only be delivered from 08:00 to 00:00 as stated in proposed condition 36.
- The application had received five representations originally but the Licensing Authority, Public Protection and the Police had withdrawn their objections following conditions that had been agreed between all parties.
- There were two remaining objections submitted by residents however neither confirmed their intention to attend the meeting.
- Representations against the application could be found on pages 25-39 of the agenda papers.

Presentation by the applicant

The applicant, Mr Nils Howland and his representative, Mr Robert Botkai informed the Sub-Committee that:

- This was an application for a premises that would not be actively used by patrons as the premises would have no physical customers.
- All deliveries to customers would be made to their homes via the use of electric bikes and only small vans would be used for deliveries coming into the premises.
- The business operated a Challenge 25 policy and the applicant had agreed conditions with the Police, the Licensing Authority and Public Protection.
- The application was in line with three previous applications which had been granted by the Sub-Committee.
- In relation to the remaining objections, two residents had made representations, but it was difficult to see how these residents would be impacted by the premises.
- In relation to concerns regarding street drinking, the applicant would be delivering alcohol directly to people's homes and alcohol was not the only product that the business sold as the business also sold other goods.
- In relation to the premises being located in a cul-de-sac, the business did not make excessive amounts of deliveries per day.
- In relation to the concern regarding street urination, the business would provide delivery drivers with toilets that they could use at the premises and there would be no reason for drivers to be using the outside area at any time when not making deliveries.
- The business would not contribute to concerns regarding drugs and alcohol as the business was effectively a storage distribution facility and would have a physical presence.
- The business was projecting that deliveries would be made with electric vehicles in the future.

In response to questions from Members, Mr Howland and Mr Botkai informed the Sub-Committee that:

- Condition 29 related to deliveries being made into the premises.
- Whenever a sale of alcohol was refused, the delivery driver would complete an electronic log and was required to bring the alcohol back to the premises.
- It was extremely difficult to have conditions on delivering to a specific address and on this basis a degree of common sense had to be used by the applicant when making a delivery to an address.
- Part of the training for delivery drivers was not to deliver to underaged or intoxicated individuals. Generally, people treated the business as a convenience to-up in addition to their main shopping. Most of the deliveries would be made on electric bikes and larger deliveries would be made on a scooter.
- In relation to not contributing to house parties and public nuisance, the applicant would ensure that deliveries would be made to individuals who were not intoxicated. The business was operating over 20 premises in London and had not had any issues arise in relation to concerns regarding house parties.
- The applicant had ordered online yesterday and had been checked for identification. In some cases, the business had been blamed by some people claiming that the business was delivering late into the night and making deliveries at 03:00.
- Alcohol would only be delivered between 08:00–00:00 and therefore the business would not be able to fuel all-night parties with alcohol. Furthermore, the applicant would employ its own delivery drivers and therefore take responsibility for the sale and delivery of alcohol. This was inclusive from the order being submitted to the delivery being made and this was not the case for other companies. Many businesses would employ a third-party delivery driver which was not connected to the premises or the business.
- The applicant would take full responsibility for the sale and the delivery of the alcohol, whereas other delivery drivers did not have a legal duty to uphold when making deliveries.
- It was very difficult to exclude certain addresses from delivery of alcohol as the business could not be seen as being discriminative against its customers. At times, the law could have some unintended consequences, such as having a condition on the licence whereby deliveries could not be made to individuals who showed signs of intoxication as there were some people who had medical conditions which mimicked signs of intoxication.

Adjournment and Decision

At 2:32pm, the Sub-Committee withdrew from the meeting together with the Legal Advisor 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 as sought.

RESOLVED: To grant the application as sought.

Announcement of Decision

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

The Sub-Committee had decided to grant the licence (subject to conditions found in pages 41-44) and was mindful of residents' concerns but felt these issues had been largely addressed by

the agreed reduction to the hours of delivery. The Sub-Committee also felt that the agreed conditions would satisfactorily address issues of antisocial behaviour and crime and disorder. The Sub-Committee noted that they would like the applicant to be proactive about considering where there might be issues of arising out of delivery to certain venues that may pose problems that go above issues relating to intoxication, such as hospitals. It would be useful to see this given that the business was welcomed in Lambeth and it was ideal for the applicant to address this so that it did not become an issue in the future.

3b Stars Square, 43 - 45 Tulse Hill, London, SW2 2TJ (Tulse Hill)

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 and 10 of the Statutory Guidance, and to section 5 (Policies 1,3, 4, 8 and 16) 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 paragraphs 6 of the report on page 53 of the agenda papers.

The Licensing Officer confirmed:

- This was an application for a new premises licence.
- The premises would be operated as a bar and restaurant with a takeaway facility.
- The applicant was seeking the sale of alcohol for consumption on the premises from 12:00-23:00 Monday to Saturday and 12:00-22:00 on Sundays.
- The application also sought late night refreshment Monday to Saturday from 23:00 to 00:00.
- The operating hours would be from 08:00 to 00:00 Monday to Saturday and on 08:00 to 23:00 on Sunday.
- A total of 21 representations had been made against the application including from the Licensing Authority, Police and Public Protection. A total of 18 residents had objected to the application.
- Two of the objectors had submitted additional representations.

Presentation by the applicant

In response to questions from Members, the applicant Ms Mireille Bazzani informed the Sub-Committee that:

- The premises would operate as a bar restaurant and a lounge and would serve hot food, alcohol and soft drinks.
- She had only found out later that the premises did not have a licence after she had taken it over.
- She had taken possession of the premises in November 2020.
- In relation to the flyer that could be found on page 85 of the agenda papers, she had given a notice for a Temporary Event Notice (TEN) for the event on 9 July 2021. The business had given notice for a TEN on all events that had taken place at the premises.

At 2:59pm, the Sub-Committee adjourned to address a minor technical issue and resumed at 3:04pm.

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

- The premises was not running a nightclub, but had run events and birthdays.
- The premises was not being run as a nightclub, but was in fact a restaurant.
- There were many restaurants which ran in different ways. For example, some restaurants had live music.
- One complaint had been received from an individual living directly above the premises pertaining to loud music. The music had been stopped and no music had been played since.
- The flyer pictured on page 85 of the premises was not representative of how the premises would conduct its business. It had previously been the case that events would be combined as part of the restaurant, but since complaints had been received, the business had changed the way the premises would be run.
- The premises would not host any events similar to the one displayed on page 85 of the agenda papers.
- The applicant would accept the condition on page 153, paragraph 1 of the agenda papers which specified that the supply of alcohol would only be to persons consuming a table meal or patrons sat at the bar which amounted to no more than 20% of all the patrons.
- The 10 shots advertised on the flyer were not 10 shots for one person, it was for one group of people. On occasions, the promoter for an event would be the person writing the advert.
- She would agree to a condition whereby she would be prohibited from allowing independent promoters to be running events at the premises or allow drinks promotions to be handed to third-party individuals.
- She had only received one complaint from a resident who lived above the premises who had informed her that the music was too loud and as a result a speaker was taken away from an area in the premises and had not been put back and events akin to club events would not be held at the premises.
- Patrons would be informed to not make noise once they left the premises and a direct telephone number was listed outside the premises and was available for residents to call in case they needed to contact her.
- The premises would sell Italian and African food.
- The capacity of the premises for seated patrons was 72-82 people and the bar could seat 14 people.
- She would agree to a condition which stated that a total of 14 people (or a maximum of 20% of the total amount of patrons at the premises) seated at the bar area could order alcohol without ordering a table meal.
- There was a sign outside the premises stating that patrons were not allowed to make phone calls on the pavement from 22:00. Whenever the premises ran an event, premises staff stopped people from standing in front of the premises to speak to other people outside whenever they left the premises or to get a car or taxi. The premises had also hired security staff whenever running an event and security staff would be

informed that no one should be on the pavement making noise.

- SIA staff would be appointed one hour before the start of any event and would be off duty at the time the event had concluded.

At this point in the proceedings, the Licensing Officer informed the Sub-Committee that they often did not recommend any premises running as a restaurant to employ SIA staff and in the event that SIA staff need to be employed, a risk assessment would have to be carried out prior to the appointment of SIA staff.

Presentation from interested parties

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

- She was not convinced that the applicant had a full understanding of the requirements the applicant needed to fulfil in order to meet the licensing objectives.
- Although the applicant had stated that she was no longer looking to hold events at the premises, the applicant had still made references to SIA staff and the holding of events.
- She did not think that the premises would operate solely as a restaurant.
- There appeared to be confusion over capacity of the premises. Licensing understood that the premises could hold 120 persons. It was not clear if the applicant was aware of the capacity of the bar area.
- It was not clear how the next-door area would be used for takeaway purposes.
- There were issues regarding the applicant's request to run the premises during non-standard times.
- She was minded to agree to the condition regarding the prohibition of third-party promotional events being held at the premises.
- It was not clear if the applicant would be able to manage the premises without breaching conditions attached to the licence. The application should be refused.

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

- The applicant had applied for various non-standard times on certain days such as Valentine's Day, New Year's Eve and bank holidays whereby, on occasions, the premises would operate until 03:00.
- She would revise condition 1 on page 153 of the agenda papers to remove the proposed percentage of 20% and have a fixed number of 14 persons only at the bar area allowed to consume alcohol without ordering a meal.
- The capacity as stated in condition 28 needed to ensure that fire risk assessments were in place as the fire escape routes were not clearly defined and appeared to only have one escape route which was the front door.
- More clarity was required on how the second half of the premises would be used relating to the takeaway service as the premises was split across two buildings. The entrance to the restaurant would be at number 45 only, but the takeaway would operate at number 43. The plans looked as if the locations were attached and there needed to be no passage between the two buildings.

The Sub-Committee was then addressed by residents. Mr Peter Lennard informed the Sub-Committee that:

- The condition whereby patrons would be served alcohol with food only was a positive contribution, but this was negated by 14 patrons being allowed to drink at the bar without ordering food.
- The premises had not been running as a restaurant and had largely been empty save for two or four patrons at a time. The premises would also sell various dishes which were expensive at prices between £20-£40.
- The area was a residential area and the terminal hour for licensable activity was 23:00 and allowing licensable activities to continue until 00:00 was too late into the night.
- The condition of allowing 14 patrons being allowed to drink at the bar without ordering a meal made the premises a drinking establishment. Alcohol should only be served with a meal at the premises.
- There appeared to be errors regarding the plans submitted by the applicant as the first version of the plan excluded stairs to the basement and had been mislabelled. In the second version of the plan, the entrance hall to the staircase had been completely removed and the stairs at the back of the premises had been labelled 'for staff use only'. There was a through-route from the back of the premises, down the stairs through the basement leading through to the street exit (next to the takeaway) which had been used for club style activities. The applicant had appeared to conceal this part of the building.
- It was not clear what the basement area would be used for and the website displaying the advert of the flyer had not yet been taken down.

Ms Camilla Walker informed the Sub-Committee that:

- Although the applicant had stated that events would not be held at the premises, she had also cited events and parties throughout her representation.
- Frequent references to parties and requirements for SIA staff was not encouraging and implied that the premises would be used for more licensable activities than what was typical for a restaurant.
- A terminal hour of 23:00 for licensable activity was more than suitable on weekdays for restaurants.
- There had been noise disturbances created from some of the ticketed events held at the premises.
- If the premises was able to hold between 50 to 70 people, it would increase noise nuisance in a quiet and residential area.
- Taxis would be turning into corners and into residential roads and creating more noise.
- References to drinks packages encouraging people to attend appeared that the premises would be used as a nightclub and restaurants were places where people often went for food rather than drinks.
- It was not clear why the business would need SIA staff if it was being run as a restaurant.

- There would be noise and road pollution.

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

- Many restaurants operated a counter, but he was not happy that the restaurant could operate as a bar. Alcohol should be served with food at the premises.
- The application should be refused and the applicant should put in a new application without an active website advertising dancing and nightclub activities.

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

- An event had been held at the premises with no licence in place and it was not clear how the applicant could be trusted to not break the conditions of the premises licence if it was granted.

The applicant recalled to address matters arising. In response to questions from Members, Ms Bazzani and Mr Andrew Kitchlew, speaking on behalf of the applicant, informed the Sub-Committee that:

- The applicant had not updated the website as a new premises licence had not yet been granted and once it had been granted, the website would be updated.
- There had been a financial cost to putting up the website and when the conditions on the licence would be updated, then the flyer advertising dancing would be removed.
- The applicant felt that she was being harassed and had cooperated with residents.

At this point in the proceedings, the Sub-Committee sought clarification from the Licensing Officer regarding the TENs that the applicant had given for the premises. The Sub-Committee established that the only dates in which a valid TEN had been given was for the night of 29 May 2021 and the night of 27 July 2021. The Chair noted that there was no valid TEN in place for the night of 6 June 2021.

In response to further questions from Members, Ms Bazzani and Mr Kitchlew informed the Sub-Committee that:

- On 6 June 2021, the premises was visited by a Licensing Officer and informed that the premises was not allowed to sell alcohol and the premises ceased all activities.
- There was no event held at the premises on 6 June 2021.
- Prior to the incident, the applicant was not aware of how licensed premises were supposed to operate, but did become aware after 6 June 2021.
- The basement area had nothing to do with the application as the licensable activity would take place on the top floor of the premises.

- The applicant had read the conditions as listed on page 153–155 of the agenda papers and felt that the use of the premises would be safe for the public.
- The applicant confirmed that she had withdrawn the application made regarding live music, recorded music and general regulated entertainment and any TENs given by the premises would be given by the applicant and not by a third-party representative.
- The applicant agreed to a change whereby the capacity of the premises would be limited to 60 people.
- The applicant would not agree to the amendment of the terminal operating hour to be changed to 23:00.
- The applicant would agree to a condition which read “the Licensee shall not permit the premises, or parts of the premises to be hired out to third parties or used by events promoters at any time”.

Adjournment and Decision

At 4:23pm, the Sub-Committee withdrew from the meeting together with the Legal Advisor 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 refuse the application.

RESOLVED: To refuse the application.

Announcement of Decision

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

The Sub-Committee wanted to thank all parties for attending the meeting and had decided to refuse the licence. The Sub-Committee was not satisfied that given the nature of the application and the conditions offered that if the licence were to be granted, the applicant would be able to uphold the licensing objectives. The Sub-Committee was satisfied that this was an appropriate and proportionate position to take and in reaching this decision the Sub-Committee, in particular, had regard and was not satisfied by the explanation given by the applicant regarding the occurrence of the sale of alcohol without a licence. The Sub-Committee would invite the applicant to reapply with an application taking into consideration the nature of the discussions held at this meeting and make it clear in the application that the premises would be operate as a different type of premises than the one it had operated as before.

The meeting ended at 4:30pm

CHAIR
LICENSING SUB-COMMITTEE
Tuesday 21 September 2021

Date of Despatch: Tuesday 14 September 2021

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