

London Borough of Islington

Licensing Sub-Committee A – 3 November 2011

Minutes of the meeting of Licensing Sub-Committee A held at the Town Hall, Upper Street, N1 2UD on 3 November 2011 at 10.20am.

Present: **Councillors:** Wally Burgess, Barry Edwards and Faye Whaley

COUNCILLOR FAYE WHALEY IN THE CHAIR

91 INTRODUCTIONS (ITEM A1)

Councillor Whaley welcomed everyone to the meeting and asked members and officers to introduce themselves.

Those present were informed that the procedure for the conduct of the meeting was detailed on page 3 of the agenda.

92 APOLOGIES FOR ABSENCE (ITEM A2)

Councillor Webbe.

93 DECLARATION OF SUBSTITUTE MEMBERS (ITEM A3)

Councillor W Burgess for Councillor Webbe.

94 DECLARATIONS OF INTEREST (ITEM A4)

None.

95 ORDER OF BUSINESS (ITEM A5)

The Sub-Committee noted that the order of business would be as set out in the agenda.

96 MINUTES (ITEM A6)

RESOLVED

That the minutes of the meetings held on the 8 and 20 September 2011 be confirmed as an accurate record of proceedings and the Chair be authorised to sign them.

97 CITY SUPERMARKET – 190-194 GOSWELL ROAD, LONDON EC1V 7DT – APPLICATION FOR A NEW PREMISES LICENCE UNDER THE LICENSING ACT 2003 (Item B1)

The Principal Trading Standards officer outlined the details of the case and the reasons for the objection to the licence. She highlighted that the applicant had been involved in the business as a Director since 2001 and the licence had been reviewed in 2006 and in 2011. The Sub-Committee noted the police objections and their concerns that the area already had a large number of off licences.

Leslie Smith, counsel, supported by Mahir Kilic, agent and Salman Capti, the applicant, reported that Mr Capti had suffered a heart attack in 2006/07 and at this time had entrusted his son-in-law with the running of the premises. Mr Capti had made an application for a new licence in June 2011 because of his concerns regarding the management of the premises. His health had improved and he intended to take an active role in the premises. He stated that his son was now 20 years of age, was reliable and would be assisting in the premises but the purchase of alcohol would be solely his responsibility.

The Sub-Committee asked Mr Capti directly what changes he had made in the shop, since the review of the licence. He informed the Sub-Committee that he would have sole responsibility for the

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premises, with the assistance of his sons and that he had been very upset to lose the licence as a result of the actions of his son-in-law.

Members of the Sub-Committee left the room to consider their decision, together with the legal officer and the clerk.

RESOLVED:

That, having considered all of the oral and written evidence and having given consideration to the Licensing Act 2003 and its regulations, the national guidance and the Council's licensing policy, the premises licence in respect of City Supermarket, 190-194 Goswell Road, EC1V 7DT be refused.

REASONS FOR DECISION

The Sub-Committee considered the submissions put forward by the Trading Standards team, the Police and the applicant.

The Sub-Committee noted that there had been a review of the licence following a seizure of illicit alcohol in January 2011. The licence had been revoked at the review hearing and was currently subject to an appeal at the magistrates' court. The Sub-Committee noted the Police's objection to the granting of a new premises licence and concerns of the Trading Standards Team.

The evidence before the Sub-Committee was that the applicant had been the sole director and owner since 2001. In 2006/07 he suffered a heart attack and entrusted the management of the premises to his son in law. The applicant had taken over management of the premises with his two sons; the applicant's son in law was no longer employed at the premises. The applicant stated through his representative that he would be the sole purchaser of alcohol for the premises. Although the applicant would not be at the premises every day, alcohol would not be purchased unless he was there.

The applicant addressed the Sub-Committee directly and stated that he was concerned about his business. However, he was not able to describe to the Sub-Committee the measures he had put in place and how he would be responsible for training staff and ensuring that the licensing objectives would be met. The applicant's representative did submit that the conditions proposed by trading standards were agreed and were already in place at the premises. However the applicant's failure to demonstrate his understanding of the conditions and his responsibility under the Licensing Act 2003 concerned the Sub-Committee.

In reaching their decision, the Sub-Committee took into particular consideration Licensing policy 028 regarding the highest standards of management in licensed premises. The Sub-Committee were not satisfied that the imposition of conditions would ensure that the licensing objectives would be promoted and therefore decided to reject the application. The applicant has been the owner/director since 2001 and during this time two reviews had been brought by trading standards. Even though the applicant had health problems, he remained responsible for the business and should have ensured that a high standard of management was in place to promote the licensing objectives.

98 104-122 CITY ROAD, LONDON EC2V 2NR – APPLICATION FOR A NEW PREMISES LICENCE UNDER THE LICENSING ACT 2003 (Item B2)

The Sub-Committee noted that the noise and health and safety conditions had been agreed by the applicant.

Local residents Patrick Von Sychowski and Robin Lisle, objected to the application for a new premises licence. They raised concerns regarding the age of the building and its suitability for an application to play music, the number of licensed premises already in the area, a possible breach of planning permission and the area that smokers would use outside the premises.

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Colin Daye, Director, Nathan Hughes, Designated Premises Supervisor and Paul Durand, security officer, spoke in support of the application. They informed the Sub-Committee that they had spoken with an acoustic engineer regarding noise levels and they were willing to work with residents regarding any security issues.

In response to questions from the Sub-Committee, the applicant reported that hours of operation on Mondays to Thursdays would mainly be until 11pm.

Following a short adjournment the Sub-Committee returned to ask the licensing officer to ascertain the situation regarding planning consent and to ask the applicant to consider reduced hours of operation on Mondays to Thursdays. There was a further adjournment for this information to be obtained.

The licensing officer subsequently confirmed that the premises had the correct planning consent. The applicant agreed to reduced hours Sunday to Wednesday and requested that Thursday be reduced to midnight only.

Members of the Sub-Committee left the room to consider their decision, together with the legal officer and the clerk.

RESOLVED:

a) That, having considered all of the oral and written evidence and having given consideration to the Licensing Act 2003 and its regulations, the national guidance and the Council's licensing policy, the premises licence in respect of 104-144 City Road, EC2V 2NR be granted to permit:-

i) The sale of alcohol for consumption on the premises, the exhibition of films, live music, recorded music performance of dance and provision of facilities for dancing from 10:00 until 23:00 Sunday to Wednesday, from 10:00 until midnight on Thursday and from 10:00 until 02:00 on Friday and Saturday.

ii) The provision of late night refreshment from 23:00 until midnight on Thursday and until 02:00 on Friday and Saturday.

b) That conditions as outlined in appendix 3 as detailed on page 88 of the agenda, with the following addition, be applied to the licence.

- A management policy to be agreed by the licensing team, to include the provision of door supervisors at the premises and the provision of a suitable external smoking area for patrons, away from residential properties.

REASONS FOR DECISION

The Sub-Committee considered the submissions put forward by the responsible authorities, the interested parties and the applicant and balanced the conflicting needs of residents and the business interests of the applicant.

The Sub-Committee noted that the applicant accepted the conditions put forward by the responsible authorities and the proposed hours of operation submitted by the Sub-Committee.

The Sub-Committee noted the concerns of the residents about potential noise nuisance caused from the premises and patrons going outside the premises to smoke. The Sub-Committee noted that the applicant had contacted a noise consultant regarding noise limits and indicated that he would be happy for the consultant to go into neighbouring flats as part of the process of setting a suitable limit. The Sub-Committee also noted that the applicant had employed security experts and

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that door supervisors would be provided at the premises. The applicant was willing to agree a management policy with the licensing team regarding provision of door supervisors and an external area for smokers to use.

The Sub-Committee received information from the planning department and were satisfied that the appropriate planning permission was in place.

In reaching their decision, the Sub-Committee took into particular consideration Licensing policy 023 regarding the location of the premises, character of the area, views of the interested parties and the proposed hours of operation and licensing policy 010 regarding the protection of the amenity of residents and business in the vicinity of licensed premises. The Sub-Committee also considered licensing policy 021 regarding flexibility in licensing hours.

The Sub-Committee considered that with the conditions detailed on appendix 3 on page 88 of the report subject to the amendment, the licensing objectives would be promoted.

99 **YAKITORI RESTAURANT, 55-57 EXMOUTH MARKET, LONDON EC1R 4QL - APPLICATION FOR A NEW PREMISES LICENCE UNDER THE LICENSING ACT 2003 (Item B3)**

The licensing officer reported that a number of objections had been withdrawn following an amendment to the original application and outlined to the Sub-Committee those that remained.

There were no interested parties present at the meeting.

Kevin Baumber, counsel, supported by the applicant Ronnie Truss, spoke in support of the application. He reported that the application for live and recorded music until 23:00 hours was made in error and had therefore been withdrawn from the application. He proposed an amendment to a condition regarding the use of the outside tables and chairs and agreed to the operation of Challenge 25.

Members of the Sub-Committee left the room to consider their decision, together with the legal officer and the clerk.

RESOLVED:

a) That, having considered all of the oral and written evidence and having given consideration to the Licensing Act 2003 and its regulations, the national guidance and the Council's licensing policy, the premises licence variation in respect of 104-144 City Road, EC2V 2NR be granted to permit:-

- i) An alteration to the internal layout of the premises.
- ii) An increase in the maximum capacity of the premises to 100 people.
- iii) The front doors and windows of the premises to be opened to allow for an external seating area.
- iv) The provision of food and drinks in the outside eating area at the front of the premises.
- v) A variation to condition 6 (Annex 2) to read that 'Persons under 16 years shall not be permitted on the premises after 20:00 unless accompanied by an adult'.

b) That conditions as outlined in appendix 3 as detailed on page 150 of the agenda with the following amendments, be applied to the licence.

- Condition 7 be deleted.
- Condition 12 to read. Staff shall be trained to ask for photographic identification of any person ordering alcohol and suspected of being under the age of 25 years.
- Condition 14 to read. The outside area shall be closed and cleared of customers and usable chairs and tables by 23:00 hours.

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REASONS FOR DECISION

The Sub-Committee considered the submissions put forward by the responsible authorities, the interested parties and the applicant and balanced the conflicting needs of residents and the business interests of the applicant.

The Sub-Committee noted that the applicant accepted the conditions put forward by the responsible authorities. The Sub-Committee noted that there had been an error in the original application where a variation had been requested to allow live music and late hours of operation. Following the removal of these elements from the application a number of representations were withdrawn. The applicant described the specialist Japanese restaurant that he proposed to run and the type of clientele he would be attracting.

The Sub-Committee noted that the responsible authority for health and safety had not made a submission about the capacity of the premises and therefore the Sub-Committee decided this should be fixed at a maximum of 100.

In reaching their decision, the Sub-Committee took into particular consideration Licensing policy 023 regarding the location of the premises, character of the area, views of the interested parties and the proposed hours of operation and licensing policy 010 regarding the protection of the amenity of residents and business in the vicinity of licensed premises.

The Sub-Committee considered that with the conditions detailed on appendix 3 on page 150 of the report subject to the amendments, the licensing objectives would be promoted.

100 BROTHERS SUPERMARKET, 60 FONTHILL ROAD, LONDON N4 3HT – APPLICATION FOR A PREMISES LICENCE REVIEW UNDER THE LICENSING ACT 2003 (Item B4)

The trading standards officer outlined the reasons for the review. She highlighted that guidance had been sent to the premises in March 2011 but in May 2011 there had been a successful test purchase of non duty paid tobacco. In June 2011 there had been a joint visit by trading standards and HMRC officers but no illicit alcohol was found at the premises. At the time of the visit Mr Koca asked officers to check his stock of wine and 62 bottles of counterfeit wine were identified. Officers informed the Sub-Committee that Mr Koca had provided some invoices and had also advised officers of the telephone number of a recent seller and registration number and that seller had not been traced.

Haydar Koca, the licensee, supported by his nephew, Onder Bingol, spoke against the review. Onder informed the Sub-Committee that he had bought the Jacobs Creek from a cash and carry and did not realise that there was any problem with Jacobs Creek until he had read about the issue in the Turkish local press. As Mr Koca had been worried about the Jacobs Creek in the premises, he invited trading standards officers to check their stock. He also asked trading standards to supply him with a UV torch and gave officers the telephone number and registration number of an attempted seller.

Members of the Sub-Committee left the room to consider their decision, together with the legal officer and the clerk.

RESOLVED:

That, having considered all of the oral and written evidence and having given consideration to the Licensing Act 2003 and its regulations, the national guidance and the Council's licensing policy, the Premises Licence in respect of Brothers Supermarket, 60 Fonthill Road, N4 3HT be suspended for a period of two weeks and conditions as detailed on page 173 of the agenda be applied to the licence.

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REASONS FOR DECISION:

The Sub-Committee considered the submissions put forward by the responsible authorities and the licensee.

The Sub-Committee noted that the review was brought following counterfeit alcohol and smuggled tobacco being found at the premises by the responsible authorities. The Home Office guidance at paragraphs 11.26 and 11.27 identifies criminal activity which the Secretary of State considers should be treated particularly seriously, including the sale of smuggled alcohol and tobacco. It is envisaged that licensing authorities will use the review procedures to deter such activities and crime. Where licensing authorities determine that the crime prevention objective is being undermined, it is expected that revocation of the licence should be seriously considered.

The Sub-Committee noted that a test purchase of tobacco had taken place on 17 May 2011 and an officer from trading standards was sold a packet of smuggled tobacco. Eight further pouches of smuggled tobacco were seized by trading standards and the licensee admitted that the tobacco was illicit. Then on 15 June 2011, a joint visit from trading standards and HMRC officers to the premises found sixty two bottles of counterfeit Jacobs Creek wine.

The licensee had provided trading standards with some invoices for the wine but these did not cover all of the sixty two bottles that were seized. The licensee had recently advised trading standards of another attempted sale of illicit alcohol to him at the premises. The licensee provided the seller's telephone number and the registration number of the vehicle. Trading Standards reported that this had not provided information to assist the authority in tracing the seller although the licensee's co-operation was noted.

The licensee apologised to the Sub-Committee for the presence of smuggled tobacco on the premises. He stated he did not know that the Jacobs Creek was fake. The licensee's nephew was responsible for purchasing alcohol for the premises and had previously bought Jacobs Creek when it had been on offer. The applicant stated that he was aware of fake vodka and whisky but it was not until he had read about it in the Turkish newspaper that he realised fake wines were being sold. The Sub-Committee noted that on 15 June 2011, the licensee asked the officers to check if his stock of Jacobs Creek was genuine.

The Sub-Committee considered that revocation was not necessary or proportionate in this case. The Sub-Committee took account of the co-operation of the licensee, the small amount of smuggled and counterfeit items on the premises and the licensee's willingness to accept conditions proposed by trading standards. The Sub-Committee did consider that a suspension of the licence for two weeks and the imposition of the additional conditions was proportionate in the circumstances to ensure that the licensing objectives were upheld.

101 ROHAT'S FRUIT BASKET, 93A STROUD GREEN ROAD, LONDON, N4 3PX – APPLICATION FOR A PREMISES LICENCE REVIEW UNDER THE LICENSING ACT 2003 (Item B5)

The trading standards officer outlined the reason for the review. It was highlighted that advice had been sent to the premises regarding smuggled goods in March 2011 and in June 2011, 137.4 litres of vodka and 565 bottles of wine were seized by HMRC. At the time the report had been written, this had been the largest seizure of smuggled goods that trading standards had made. Invoices had not been produced. The Sub-Committee noted that bottles of Wyborow, Stolichnaya, Soplita and Finlandia vodka all had duty stamps for Absolut vodka in addition to other typographical errors on other spirits which should have been noticed by the licensee.

The Sub-Committee noted the police request for revocation.

Mr Dadds, solicitor, representing Mustafa Danisan, the licensee, spoke against the review. He informed the Sub-Committee that the licensee accepted that he had bought alcohol from a door to

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door seller on two occasions. Mr Danisan did become suspicious when he chased the seller for receipts. Mr Dadds stated that the alcohol was not counterfeit which he considered worse than non duty paid. This was a first offence for which a suspension of one week and the addition of conditions was all he considered necessary. It was the intention of the licensee to sell the licence and he requested a smooth transition for the sale.

In response to questions, it was established that the licensee would not have known that the goods were counterfeit at the time of purchase.

Members of the Sub-Committee left the room to consider their decision, together with the legal officer and the clerk.

RESOLVED:

That, having considered all of the oral and written evidence and having given consideration to the Licensing Act 2003 and its regulations, the national guidance and the Council's licensing policy, the premises licence in respect of Rohat's Supermarket, 93A Stroud Green Road, N4 3PX be revoked.

REASONS FOR DECISION:

The Sub-Committee considered the submissions put forward by the responsible authorities and the licensee.

The Sub-Committee noted that the review was brought following smuggled alcohol being found at the premises by the responsible authorities. The Home Office guidance at paragraphs 11.26 and 11.27 identifies criminal activity which the Secretary of State considers should be treated particularly seriously, including the sale of smuggled alcohol. It is envisaged that licensing authorities will use the review procedures to deter such activities and crime. Where licensing authorities determine that the crime prevention objective is being undermined it is expected that revocation of the licence, even in the first instance, should be seriously considered.

The Sub-Committee noted that on 15 June, 137.4 litres of smuggled spirits and 565 smuggled bottles of wine were seized by HMRC officers during a joint HMRC/Trading Standards visit to the premises. At the time that the report was prepared, this was the largest seizure with which Trading Standards had so far been involved. The Sub-Committee noted that trading standards had previously sent business guidance on smuggled alcohol to the premises as part of a mailshot to all independent off licences. The Sub-Committee further noted that the licensee had not supplied any invoices or receipts to Trading Standards.

The licensee accepted that the smuggled goods were found on the premises. It was submitted that the smuggled goods were purchased on two occasions from door to door sellers. The applicant submitted that the goods had been purchased at a not particularly cheap price and customs and excise had given the licensee a warning. The licensee through his representative submitted that the imposition of the proposed conditions from trading standards would be proportionate to promote the licensing objectives. The representative further submitted that if the Sub-Committee was of the view that it was necessary to ensure a deterrent, a suspension rather than revocation would be all that was necessary and proportionate. It was stated that the licensee's intention was to sell the business.

In reaching their decision the Sub-Committee took into consideration licensing policy 039 regarding the sale of smuggled goods. The Sub-Committee also considered the Guidance and were of the view that even though this was the first time that such matters were brought before the Sub-Committee, the quantity and variety of smuggled goods at the premises made this a serious case and one where revocation was necessary and proportionate.

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102 ROHAT'S FRUIT BASKET, 93A STROUD GREEN ROAD, N4 3PX - APPLICATION FOR A NEW PREMISES LICENCE UNDER THE LICENSING ACT 2003 (Item B6)

The licensing officer reported that the applicant had agreed a reduction in licensing hours following consultation with the police.

The trading standards officer tabled an additional proposed condition that would satisfy officers that the sale of the business would be as detailed in the draft sales agreement. The condition would be interleaved with the agenda papers. The applicant agreed this condition.

David Dadds, solicitor, representing Mr Keles, the applicant, spoke in favour of the application. He confirmed that Mr Keles had no connection with the seller and that different solicitors were acting regarding the sale and purchase of the premises. He informed the Sub-Committee that there would be an appeal of the decision to revoke the licence and when the sale transaction was completed, the appeal would be withdrawn.

Members of the Sub-Committee left the room to consider their decision, together with the legal officer and the clerk.

RESOLVED:

a) That, having considered all of the oral and written evidence and having given consideration to the Licensing Act 2003 and its regulations, the national guidance and the Council's licensing policy, a new premises licence in respect of Rohat's Fruit Basket, 93A Stroud Green Road, N4 3PX be granted to permit the sale of alcohol for consumption off the premises from 08:00 until 23:00 Monday to Sunday.

b) That conditions as outlined in appendix 3 as detailed on page 227 of the agenda with the following amendments, be applied to the licence.

- Condition 6 to read. The licensee shall adopt the Challenge 25 and the BII National Proof of Age Scheme.
- Additional condition. The licence will only come into effect when the sale of the business to Mr Keles is completed and the Licensing Team have been provided with a solicitor's letter to confirm this.

REASONS FOR DECISION

The Sub-Committee considered the submissions put forward by Trading Standards, the Police and the applicant.

The Sub-Committee noted that the applicant had agreed with the reduced hours of operation proposed by the police and the conditions put forward. The Sub-Committee also noted that Trading Standards did not object to the licence being granted, subject to the conditions proposed by them being imposed on the licence. The applicant indicated that these conditions, including the condition tabled at the Sub-Committee were agreed. The applicant advised that the lease to the premises had not been granted to him because it was subject to the determination of this application. It was submitted that the applicant intended to purchase the premises as an ongoing concern. The applicant confirmed directly to the Sub-Committee that he had not previously been involved in the business and had no connection to the seller.

In reaching their decision, the Sub-Committee took into particular consideration Licensing policy 028 regarding the highest standards of management in licensed premises.

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The meeting closed at 2.20pm

CHAIR