

London Borough of Islington
DRAFT
Licensing Sub-Committee A – 23 May 2013

Minutes of the meeting of Licensing Sub-Committee A held at the Town Hall, Upper Street, N1 2UD on 23 May 2013 at 6.40 pm.

Present: **Councillors:** Jilani Chowdhury, Wally Burgess and Gary Poole.
Also **Councillor:** Paul Convery
Present

COUNCILLOR WALLY BURGESS IN THE CHAIR

204 **INTRODUCTIONS (ITEM A1)**

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

The procedure for the meeting was outlined and those present were informed that it was also detailed on pages 3 and 4 of the agenda.

205 **APOLOGIES FOR ABSENCE (ITEM A2)**

None.

206 **DECLARATION OF SUBSTITUTE MEMBERS (ITEM A3)**

None.

207 **DECLARATIONS OF INTEREST (ITEM A4)**

None.

208 **ORDER OF BUSINESS (ITEM A5)**

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

209 **MINUTES (ITEM A6)**

RESOLVED

That the minutes of the meeting held on the 23 March 2013 be confirmed as an accurate record of proceedings and the Chair be authorised to sign them.

210 **HOLLOWAY BEST KEBAB, 326 HOLLOWAY ROAD, N7 6NJ – APPLICATION FOR A NEW PREMISES LICENCE UNDER THE LICENSING ACT 2003 (Item B1)**

The licensing officer reported that the premises were in the Holloway and Finsbury park cumulative impact zone.

The noise officer informed the Sub-Committee that the noise conditions had been agreed by the applicant.

The police officer reported that the premises were in a cumulative impact zone and the hours applied for were outside the policy guidelines.

The licensing authority highlighted the special considerations described in paragraphs 5, 6 and 7 of the licensing policy and advised that there was no evidence in the application to indicate why there would be no adverse cumulative impact in granting the application. It was therefore considered that the application should be refused.

The health authority informed the Sub-Committee of their concerns regarding the high level of ambulance call outs in the area, especially those that occurred after midnight.

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Interested parties, Jeremy Ledlin and a local resident representing Milda Milevicute, raised concerns regarding the extractor fan, noise escape from music and also noise from people drinking and smoking outside the premises until after 5am in the morning.

The applicant, Mansur Duzgun, spoke in support of the application. He informed the Sub-Committee that local competition had late hour trading licences. He had a previous licence until 5am but this was handed back and he needed to reapply. CCTV had been installed in the premises and he had no problems with noise disturbances or the police. He would not be encouraging drinking outside the premises. Patrons would have alcohol with their meal and then would leave.

In response to a concern from Mr Ledlin regarding the noise from the extractor, Mr Duzgun reported that a silencer had been fitted in 2005 and it had caused no problems. However, the resident reported that the extractor system was very noisy and windows could not be left open at night due to the disturbance. The noise officer reported that there had been a noise complaint in January regarding the extractor but this had not been substantiated. The noise officer stated that there were conditions that could be applied to a licence to ensure that equipment did not create a noise disturbance.

In response to questions regarding how the impact on the cumulative zone would be addressed, Mr Duzgen informed the sub-committee that he would not be serving to people who were drunk. CCTV had been installed in the premises and he would not be serving alcohol outside the premises. He agreed that music would be background only and the application for recorded music could be deleted.

In response to a question from the police Mr Duzgen agreed that an off sales licence was no longer sought. The police officer informed the Sub-Committee that, in his experience, the patrons that frequented this type of premises at 4 am in the morning had already consumed alcohol.

In summing up, the police officer reported that high levels of crime and disorder were linked to alcohol consumption and granting the licence could only add to this. The noise officer reported that a condition could be applied to the licence to ensure that the extractor fan did not cause a noise nuisance. Local residents did not consider that customer dispersal measures at 04:00 am had been addressed and considered that officers could not control the impact of this premises all night. The applicant reported that this was not a large premises and would not have a large amount of people leaving the premises late at night.

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

RESOLVED:

That, the application for a new premises licence in respect of Holloway Best Kebab, 326 Holloway Road, N7 6NJ be refused.

REASONS FOR DECISION

The Sub-Committee listened to all the evidence and submissions and read all the material. The Sub-Committee reached the decision having given consideration to the Licensing Act 2003, as amended, and its regulations, the national guidance and the Council's Licensing Policy.

The Sub-Committee took into consideration Licensing Policy 002. The premises fall under the Holloway and Finsbury Park cumulative impact area. Licensing policy 002 create a rebuttable presumption that applications for new premises licences are likely to add to the existing cumulative impact and will accordingly normally be refused unless an applicant can demonstrate why the operation of the premises involved will not impact adversely on the cumulative impact or otherwise impact adversely on the promotion of the licensing objectives.

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The Sub-Committee noted that the applicant had accepted the conditions put forward by the Noise Team. It also noted that the applicant was proposing to have background music only and that he implements Challenge 25 at the premises. The applicant submitted that the premises had been a restaurant for many years and that he had previously held a licence for late night refreshment at the premises. The applicant informed the Sub-Committee that although he had applied for off sales he was now seeking a licence for on sales only.

The Sub-Committee heard evidence from interested parties about disturbance from the extractor fan and concerns about disturbance into the early hours if the application was granted.

The Sub-Committee noted that the operating schedule did not (as required by Licensing Policy 9) set out how the applicant was going to cope with the additional hours sought and the applicant did not put forward any proposals at the meeting.

The Sub-Committee was concerned that the granting of the new licence would undermine the licensing objectives. In accordance with Licensing Policy 7, the Sub-Committee noted the cumulative impact that the proliferation of late night venues and retailers in the borough is having on the promotion of the licensing objectives.

The Sub-Committee concluded that the increased hours would add to the availability of alcohol in an area where there is already a large number of licensed premises with associated anti-social and criminal behaviour and therefore have a cumulative impact on the licensing objectives. In accordance with licensing policy 002, the Sub-Committee was satisfied that the grant of the application would undermine the licensing objectives. The applicant failed to rebut the presumption that the application if granted, would add to the cumulative impact area. The applicant did not show any exceptional circumstances as to why the Sub-Committee should grant the application.

211 **DA HAI CHINESE SUPERMARKET, 334-336 CALEDONIAN ROAD, LONDON, N1 1BB – APPLICATION FOR A NEW PREMISES LICENCE UNDER THE LICENSING ACT 2003 (Item B2)**

The licensing officer reported that the applicant was not present and this application had been deferred from a previous meeting which the applicant did not attend. The application was for a premises in the Kings Cross area of cumulative impact.

The licensing authority reported that the applicant had not been convincing in the application that there would be no negative impacts on the area. The applicant had not engaged with the licensing authority regarding the application.

The trading standards officer reported that the applicant had not engaged with the team, had not appeared at the meeting and considered that the application be refused.

The ward councillor, Paul Convery considered that the applicant in the application had not rebutted the presumption that new premises licences were likely to add to the existing cumulative impact.

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

RESOLVED:

That the premises licence in respect of Da Hai Chinese Supermarket, 334-336 Caledonian Road, N1 1BB be refused.

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REASON FOR DECISION

The Sub-Committee listened to all the evidence and submissions and read all the material. The Sub-Committee reached the decision having given consideration to the Licensing Act 2003, as amended, and its regulations, the national guidance and the Council's Licensing Policy.

The Sub-Committee took into consideration Licensing Policy 002. The premises fall under the Kings Cross cumulative impact area. Licensing policy 002 creates a rebuttable presumption that applications for new premises licences are likely to add to the existing cumulative impact and will accordingly normally be refused unless an applicant can demonstrate why the operation of the premises involved will not impact adversely on the cumulative impact or otherwise impact adversely on the promotion of the licensing objectives.

The applicant did not attend the meeting and the Sub-Committee noted that the applicant had failed to engage with trading standards or the licensing team.

The Sub-Committee concluded that granting the licence would add to the availability of alcohol in an area where there is already a large number of licensed premises with associated anti-social and criminal behaviour and therefore having a cumulative impact on the licensing objectives. In accordance with Licensing Policy 4, the Sub-Committee was concerned about the adverse impact on the Licensing objectives arising from the increasing numbers of shops selling alcohol for consumption off the premises in the vicinity.

In accordance with licensing policy 002, the Sub-Committee was satisfied that the grant of the application would undermine the licensing objectives. The applicant failed to rebut the presumption that the application, if granted, would add to the cumulative impact area. The applicant did not show any exceptional circumstances as to why the Sub-Committee should grant the application.

212 DENIZ SUPERMARKET, 520 HOLLOWAY ROAD, LONDON, N7 6JD – APPLICATION FOR A PREMISES LICENCE REVIEW UNDER THE LICENSING ACT 2003 (Item B3)

The trading standards officer highlighted the reasons for the review of the licence. He reported that a previous Licensing Sub-Committee had suspended the licence for three months following the seizure of illicit wine from the premises. The Sub-Committee noted that since the suspension there had been two underage sales. Following an underage sale by Mr Dag in July 2012, Mr Dag attended an officer panel in September 2012, but following this, Mr Macit, the partner in the business, made an underage sale in December 2012. The trading standards officer did consider that improvements in compliance had been made in the premises and recommended suspension of the licence.

The police officer reported that the area did suffer from a high level of anti-social behaviour which was fuelled by alcohol. He considered that the proposed conditions from the trading standards would help to uphold the licensing objectives.

The health authority was concerned with the underage sales and supported the review of the licence.

Mr Mahir Kilic, agent, supported by Bulent Dag the licensee, spoke against the review. He reported that Mr Dag had learned from his past failures. At the time of the sale in July 2012, he reported that his wife had recently given birth and Mr Dag was tired and not fully concentrating on his business. Also, at the time of the sale, he was unloading a delivery. He did maintain a refusals register and all staff had signed their training record. Mr Macit had various health problems when he made the sale in December 2012. Mr Dag was expecting to buy his share of the business once he had the money to do so. Mr Kilic asked for a two week suspension of the licence.

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In response to questions, Mr Kilic reported that staff had been sent on an accredited course for training. These were the first underage sales he had made in nine years of running the business. He considered that the previous three month suspension had been harsh.

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

RESOLVED:

That the premises licence in respect of Deniz Supermarket, 520 Holloway Road, N7 6JD be revoked.

REASON FOR DECISION

The Sub-Committee noted that the review was brought following underage sales at the premises. The Home Office guidance at paragraph 11.27 identifies criminal activity which the Secretary of State considers should be treated particularly seriously including the illegal purchase of alcohol by minors. Paragraph 11.28 of the guidance states that the review procedure can be used to deter such activities. Where reviews arise and the licensing authority determines 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 the underage sale on 30 June 2012 was by Mr Dag and the underage sale on 22 December 2012 was made by Mr Dag's partner, Mr Macit. The Sub-Committee noted that, at the time of the second underage sale, Mr Macit had not received training. Mr Dag submitted that the rest of his staff had received training. He stated that he made the sale on 30 June because he was not fully concentrating as he was unloading a delivery at the time and was also tired following the recent birth of his daughter. Mr Dag submitted that Mr Macit had been suffering from various health problems in December 2012 and that he had received verbal training from Mr Dag. Mr Dag indicated that he was willing to accept the conditions put forward by trading standards.

The Sub-Committee decided that the licence should be revoked and that this was a proportionate response to the review. The Sub-Committee noted that the premises are in an area that suffers from anti-social behaviour caused by youths and street drinking. The Sub-Committee concluded that to promote the licensing objectives the revocation was necessary to prevent sales to children where anti-social behaviour is being fuelled by under 18s having access to alcohol.

The Sub-Committee were also of the view that Mr Dag had been given an opportunity to remedy management failures at the premises and he had failed to address these. In accordance with licensing policy 030 the need for improvement had gone unheeded by the management and the Sub-Committee were not confident that the management could promote the licensing objectives. Furthermore the Sub-Committee were concerned that Mr Dag and his partner were selling alcohol at the premises when they were fatigued and unwell and therefore not properly focussed on this task.

213 ZUBI, 144 HOLLOWAY ROAD, LONDON, N7 8DD – APPLICATION FOR A TEMPORARY EVENT NOTICE UNDER THE LICENSING ACT 2003 (Item B4)

The Sub-Committee noted that this application had been withdrawn.

214 RATTLESNAKE, 56 UPPER STREET, LONDON, N1 0NY – APPLICATION FOR A TEMPORARY EVENT NOTICE UNDER THE LICENSING ACT 2003 (Item B5)

The Sub-Committee noted the additional papers circulated separately from Dadds solicitors, in support of the TEN application and crime data from the police. These would be interleaved with the

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agenda papers.

The police officer reported that the premises were situated in a cumulative impact area and a locality where there was traditionally high crime and disorder. He reported that there were already four licensed premises within 250-500 metres of the premises which were open until 4am. Allowing another to open at this time and over a Bank Holiday weekend when resources were already stretched, would be one too many. There had been other TENs applied for over the weekend which had also been objected to. Transport levels were reduced and five premises turning out late would lead to problems in the area. Although crime could not be specifically linked to Rattlesnake it would be safe to assume that some victims or suspects came from that location. It was accepted that offences from Rattlesnake were for theft and not violent crime.

Alan Aylott, solicitor, supported by Paul Davy, licensee, spoke against the objection. He asked that the Sub-Committee consider the application on its merits and reported that there was no link of crime to Rattlesnake. He reported that of the 17 incidents on the CAD sheet, only four had occurred during the hours of 2am and 4am. He referred members to paragraph 9.12 of the home office guidance which stated that the police representations should withstand scrutiny. He reported that other TENS had been agreed since August 2012, and one had been agreed for the 5/6 May bank holiday weekend. There were no problems on this evening and yet this application had been objected to.

In response to questions from the applicant, the police reported that crime could not be linked directly to Rattlesnake except for 14 theft offences as detailed on the separate report. The police officer was unable to answer why previous TEN applications for the premises had not been objected to. The police officer stated that on this occasion, he had looked at the crime levels along Upper Street, particularly those that occurred between midnight and 6am. He had considered the number of premises that were open until 4am and in his opinion one more would be too many. He considered it was reasonable to deduce that crime could have been caused by patrons from the premises or that patrons would be victims of crime. He wanted to ensure that there were not so many people out in the area at that time of the morning.

Moving to his submission, Mr Aylott, asked that the Sub-Committee consider the home office guidance at paragraphs 9.12, 9.38 and 9.39. Objections should be evidence based and decisions must be appropriate and proportionate. An acoustic report had concluded that an extension in opening hours would not add to any public nuisance. The Sub-Committee were asked to consider the Thwaites case which concluded that decisions should be based on evidence and not just speculation. He reported that the premises had been open late on 46 occasions. This had been the first objection to a TEN application. The police had not considered that the longer hours would undermine the licensing objectives on any other application and Mr Aylott asked the Sub-Committee to consider that the licensing objectives were met at 02:00am but, according to the police objection, would not be met at 02:01 am. From the papers circulated he asked the Sub-Committee to consider paragraphs 24-29 on pages 42/43, the two acoustic reports, the two reports from retired police officers and the decision from *Brewdog v Leeds City Council*.

The Sub-Committee were shown a DVD that was filmed at 2.55am May bank holiday weekend. The police officer reported that no premises in the area closed at 3am so the DVD would not show dispersal from any of the premises in the area.

In response to questions from the Sub-Committee it was reported that the applicant spent £40000 a year on security which Mr Aylott considered would be a bonus to the community. He considered that there was no additional impact from the additional hours sought as any impact would be lessened by the security measures. It had been established by the previous TEN applications that the licensing objectives had been upheld. There was no evidence to suggest that crime and disorder would be created by the premises.

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

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RESOLVED:

That the application for a Temporary Event Notice be refused and the Licensing Authority be directed to issue a counter notice.

REASON FOR DECISION

The Sub-Committee listened to all the evidence and submissions and read all the material. The Sub-Committee reached the decision having given consideration to the Licensing Act 2003, as amended, and its regulations, the national guidance and the Council's Licensing Policy.

The applicant directed the Sub-Committee to consider paragraphs 9.12, 9.38 and 9.39 of the Home Office guidance. Paragraph 9.12 provides that the police should be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective. The licensing authority should accept all reasonable and proportionate representations made by the police unless the authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives. However it remains incumbent on the police to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.

The Sub-Committee were satisfied that the police representations did withstand scrutiny by the applicant's solicitor. The police officer identified specific offences of theft on the premises and other offences within the cumulative impact area. The police officer was clear about what offences had been committed on the premises and other offences committed in the cumulative impact area. Furthermore, in evidence the police officer stated that he had looked at the number of premises open at 4am and in his opinion one more would be one too many. The Sub-Committee concluded that the additional opening hours would be an additional stress to the area and undermine the licensing objectives.

Paragraph 9.38 provides that all licensing determinations should be considered on a case by case basis. To this end the Sub-Committee focussed on the submissions in relation to the case before it.

Paragraph 9.39 states that the authority's determination should be evidence based. The Sub-Committee satisfied this requirement by considering all the documentary and oral evidence presented to it. The Sub-Committee was shown a DVD filmed at 2.55 am on 4/5 May. The police officer clarified that the premises within the scope of the camera close at 2 am or 4 am and therefore the DVD did not capture dispersal.

The applicant submitted that there were limited offences committed between 2 am and 4am on the CAD sheet. The police officer submitted that the relevant period was between midnight and 6am, that was when there was greatest pressure on police and ambulance resources and this was supported by the crime type report for the period 1/9/2012 to 12/05/2013. The police officer also submitted that there is particular pressure during the bank holiday period for the police service to provide cover.

The applicant referred the Sub-Committee to the note of the decision of Leeds Magistrates Court in *Brewdog Bars Ltd v Leeds City Council*. This decision is not binding on the Sub-Committee.

The Sub-Committee were satisfied that the granting of the TENs would impact on the licensing objective of crime and disorder. The Sub-Committee noted that the offences recorded at the premises related to theft. However, to promote the licensing objective the Sub-Committee considered the wider area and the potential for Rattlesnake patrons to become victims or suspects of crime once they have left the premises.

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The meeting ended at 9.40 pm.

CHAIR