

London Borough of Islington

Licensing Sub-Committee A – 3 October 2013

Minutes of the meeting of Licensing Sub-Committee A held at the Town Hall, Upper Street, N1 2UD on 3 October 2013 at 6.30 pm.

Present: **Councillors:** Jilani Chowdhury, Wally Burgess and Gary Poole.

COUNCILLOR WALLY BURGESS IN THE CHAIR

222 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 5 and 6 of the agenda.

223 APOLOGIES FOR ABSENCE (ITEM A2)

None.

224 DECLARATION OF SUBSTITUTE MEMBERS (ITEM A3)

None.

225 DECLARATIONS OF INTEREST (ITEM A4)

Councillor Gary Poole informed the meeting that he was the Ward Councillor for St Mary's ward but had not made any representations regarding Items B1 and B2.

226 ORDER OF BUSINESS (ITEM A5)

The Sub-Committee noted that the order of business would be B5, B1 and B2, that would be taken together, B3 and B4.

227 MINUTES (ITEM A6)

RESOLVED

That the minutes of the meeting held on the 29 July 2013 be confirmed as an accurate record of proceedings and the Chair be authorised to sign them.

228 MEM AND LAZ, 8-10 THEBERTON STREET, N1 0QX – APPLICATION FOR A PREMISES LICENCE REVIEW UNDER THE LICENSING ACT 2003 (Item B1)

Anna Matthias, counsel for the applicant, informed the Sub-Committee that the licensee recalled seeing correspondence from Councillor Poole in support of the review. This correspondence could not be produced at the meeting.

Councillor Poole stated that he had no recollection of any correspondence.

RESOLVED:

That the meeting be adjourned in order that the Sub-Committee consider the representation put forward by the applicant.

Following the adjournment it was:-

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RESOLVED

That the application be adjourned in order that the licensee produce correspondence as stated within seven days to the licensing department and a future meeting date be notified to the applicant and interested parties.

229 LE VITA E BELLA, 16 THEBERTON STREET, N1 0QX – APPLICATION FOR A PREMISES LICENCE REVIEW UNDER THE LICENSING ACT 2003 (Item B2)

Anna Matthias, counsel for the applicant, informed the Sub-Committee that the licensee recalled seeing correspondence from Councillor Poole in support of the review. This correspondence could not be produced at the meeting.

Councillor Poole stated that he had no recollection of any correspondence.

RESOLVED:

That the meeting be adjourned in order that the Sub-Committee consider the representation put forward by the applicant.

Following the adjournment it was:-

RESOLVED

That the application be adjourned in order that the licensee produce correspondence as stated within seven days to the licensing department and a future meeting date be notified to the applicant and interested parties.

230 CO-OPERATIVE FOOD, 271-273 CITY ROAD, EC1 – APPLICATION FOR A NEW PREMISES LICENCE UNDER THE LICENSING ACT 2003 (Item B3)

The noise officer stated that she would be withdrawing the noise representation as conditions had been agreed by the applicant. These had been revised and the amended version was circulated to the Sub-Committee and would be interleaved with the agenda papers.

The police officer reported that this premises was in the Bunhill cumulative impact area. There were 47 licensed premises within 500 metres and 17 of these were off licences. Islington had double the national average of licensed premises per resident. The hours requested in the application would impact adversely at the peak hours for crime and disorder when already the level of crime in the area was unacceptable. He requested that the application be refused.

Richard Arnot, solicitor, supported by licensee Guilio Divaira, spoke in support of the application. He reported that the premises would open as a convenience store which would allow the sale of alcohol. The turnover of alcohol in this premises would be approximately 15% of sales. This was not a dedicated off-licence. The Co-operative had 3,800 stores nationwide and had thorough training policies with a four hour induction programme. These included a buddy system from day one, a lock down system if required, conflict training, CCTV cameras and age prompt tills. There were three personal licence holders on the premises.

He circulated a set of conditions that had been agreed with police on another application for consideration and comment. These would be interleaved with the agenda papers. He reported that the interested party would need to refer to the licensing objectives and as he had not done so the objection was not relevant. The premises did already have a public house licence that operated until 2am. This licence would be surrendered if the application was granted. This meant that they would not be adding to the number of licensed premises in the area.

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In response to questions it was noted that this was a cumulative impact area. There was a premises with a 24 hour licence 50 yards away and two others nearby with late night licences. It was stated that another outlet for off sales would add to the cumulative impact in the area. It was reported that the shop stocked good value alcohol, not cheap alcohol, the premises had a well lit frontage, would have CCTV cameras and would work with the police. If customers found the area intimidating they would not want to frequent the shop which would not be in the Co-operative's interests. Mr Arnot reported that they should be able to sell at 7am as they can at lunchtime and for the same hours as the premises is open for shopping as stated in paragraph 10.13 of the home office guidance. Customers may wish to buy alcohol for their evening meal on their way to work. If there were customers under the influence of alcohol they would not have them in the shop and would not be selling to those already drunk.

In response to the conditions circulated by the applicant the police reported that they would ask for a lower strength of 5 or 5.5%ABV and he asked that CCTV recordings would be kept for 31 days. This was acceptable to the applicant. The police reported that despite these conditions he would still have concerns with the grant of the licence due to the large number of premises in the area. It was noted that packs of four cans could still be opened up once purchased.

The applicant stated that this would be a well run convenience store and the Sub-Committee could see this application as an exception. The shop would not open as a convenience store which did not sell alcohol if the licence was not granted.

In response to questions the police officer reported that crime levels peaked between 8pm and midnight. He appreciated the additional conditions but considered that the sale of a four pack at 7am in the morning was not appealing. In his opinion, a licence should commence at 9am. The applicant responded that people would shop in other premises if the licence was not granted and it was not logical to suggest that more alcohol would be sold in the area. He stated that the times suggested by the police were arbitrary and that although a lot of alcohol was sold at that time of the morning there were a number of people who did buy alcohol at that time of day.

RESOLVED:

a) That the new premises licence in respect of Co-Operative Food, 271-273 City Road, EC1 be granted to permit the premises to sell alcohol off supplies from 09:00 until 21:00 Monday to Sunday.

b) That the following conditions be applied to the licence.

1. The premises shall maintain a CCTV system which gives coverage of all entry and exit points. The system shall continually record whilst the premises are open and conducting licensable activities. All recordings shall be stored for a minimum period of 21 days. Recordings shall be made available upon receipt of a request by an authorised officer of the police or the local authority.
2. There shall be a 'CCTV in operation' sign prominently displayed at the premises.
3. An incident log (whether kept in written or electronic form) shall be retained at the premises and made available to an authorised officer of the police or the local authority.
4. The premises shall operate a proof of age scheme, such as Challenge 25, whereby the only forms of acceptable identification shall be either a photographic driving licence, a valid passport or any other recognised form of photographic identification incorporating the PASS logo.
5. The premises shall be fitted with a burglar alarm system.
6. The premises will be fitted with a panic button system for staff to utilise in the case of an

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emergency.

7. The premises licence holder shall ensure that the appropriate fire safety, health and safety regulations are applied at the premises.
8. A complaints procedure will be maintained in order that local residents have a means of contact if necessary. A contact number will be posted for residents in the premises window.
9. All staff will receive comprehensive training in relation to age restricted products and in particular the sale of alcohol. No member of staff will be permitted to sell age restricted products until such time as they have successfully completed the aforementioned training.
10. An age till prompt system will be utilised at the premises in respect of age restricted products.
11. A refusals register (whether kept in written or electronic form) will be maintained at the premises and will be made available for inspection upon the request by an authorised officer of the police or the local authority.
12. No alcohol deliveries will be received by the store between the hours of 23:00 and 07:00 hours Monday to Saturday. No alcohol deliveries will be received by the store other than between 13:00 and 19:00 hours on Sundays or Bank Holidays.
13. No rubbish will be moved, removed or placed in bins outside the premises on Sundays or Bank Holidays nor between the hours of 23:00 and 07:00 hours on any other days of the week.
14. Prominent clear and legible notices shall be displayed at all exits requesting the public to respect the needs of local residents and to leave the premises and the area quietly.
15. A CCTV system covering areas inside and directly outside of the premises should be updated and maintained according to police recommendations with properly maintained log arrangements and recordings/tapes to be kept for a minimum of 31 days.
16. The CCTV system is to comply with the Data Protection Act 1998 and must be working and recording correctly when the venue is open to the public unless unforeseen malfunction.
17. Weekly checks of the CCTV system are to be completed and all details written into a log/diary.
18. A staff member from the venue who is conversant with the operation of the CCTV system must be on the premises at all times that the premises is open to the public. This staff member must immediately be able to show police or local authorities officer's contemporaneous and recent data or footage on request.
19. The premises are to use all reasonable efforts to provide police and local authority officers with recordings from the CCTV system on request (eg by supplying recordings on DVD, CD, tape etc and any software needed to play the footage if necessary).
20. When available a member of the premises management (whether the DPS or other owner/manager) must attend all police and licensing forums/meetings when invited.
21. The premises shall prominently display signage informing customers that the CCTV is in operation.
22. All beers, ales, lagers and ciders and anything similar that are sold/supplied in a can to be

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sold in packs of four(4) minimum at all times.

23. There will be no sales/supplies of beers, ales, lagers, or ciders or anything similar of 5.5% ABV or above.
24. Two members of staff will be present at the premises at all times open to the public and licensable activities are taking place.
25. The premises will not sell/supply miniature bottles of spirits of 50ml or less.
26. The premises will follow a strict Challenge 25 policy.

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 Bunhill and Clerkenwell cumulative impact area. Licensing policy 002 creates a rebuttable presumption that applications for new premises licences that are likely to add to the existing cumulative impact will normally be refused, unless an applicant can demonstrate why the operation of the premises involved will not add to the cumulative impact or otherwise impact adversely on the promotion of the licensing objectives.

The Sub-Committee noted that the police objected to the application on the grounds that there were 47 licensed premises, 17 of which were off licences, within 500 metres of the premises in question. The Police submitted that the granting of the application as requested would impact adversely during the peak crime period for the area of between 8pm and midnight.

The Sub-Committee heard evidence from Eryka Bancroft, an Environmental Health Officer. She stated that she had agreed certain conditions with the applicant and that as a result she withdrew her representation in opposition to the application.

Representations were received from the applicant's legal representative. It was submitted that the applicant was an experienced and responsible business and took risk and potential harm to customers and staff very seriously.

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 as applied for would add to the availability of alcohol in an area at peak crime periods 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 as applied for would undermine the licensing objectives.

The Sub-Committee however agreed to grant the licence for the periods 9am to 9pm Mondays to Sundays.

231 HOBSON PORK STORE, GROUND FLOOR AND BASEMENT, 46 EXMOUTH MARKET, EC1 – APPLICATION FOR A NEW PREMISES LICENCE UNDER THE LICENSING ACT 2003 (Item B4)

The Service Director, Public Protection, reported that the premises were in a cumulative impact

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area. The proposal was for a restaurant and sales of alcohol would only be in conjunction with the sales of food.

David Graham, representing the applicant, Tom Ward, spoke in support of the application. He reported that this would be a food led enterprise with the sale of alcohol with food. There would be no standing in the premises. There was a bar indicated on the plan of the premises but this was for the convenience of staff only. There was planning permission for restaurant use. He considered that the application was an exemption to the cumulative impact policy as it was a small premises, less than 50 covers and was also not an alcohol led operation. The hours suggested were within the framework hours proposed in the licensing policy. Mr Graham stated that there was no outdoor seating and only background music. Patrons were unlikely to be congregating outside the front door, however, the licensee was willing to install a bin outside if considered necessary. The premises lease required refuse to be placed in properly covered receptacles. As this was a restaurant there was unlikely to be problems with dispersal. An application would need to be submitted if it was proposed to vary the licence. The application was within the framework hours.

In response to questions it was noted that there was no area to have outside seating. It was not proposed to have CCTV on the premises, however, it was agreed that, should the police consider it to be necessary at a later stage, this could be reviewed.

RESOLVED:

- a) That the new premises licence in respect of Hobson Pork Store, Ground Floor and Basement, 46 Exmouth Market, EC1 be granted to permit
 - i) the premises to sell alcohol on supplies from 11:00 until 23:00 Sundays to Thursdays and on Fridays and Saturdays from 11:00 until midnight.
 - ii) the provision of late night refreshment on Fridays and Saturdays from 23:00 until 00:00.
- b) That the conditions as detailed on pages 233 - 235 of the agenda shall be applied to the licence.

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 Bunhill and Clerkenwell cumulative impact area. Licensing policy 002 creates a rebuttable presumption that applications for new premises licences that are likely to add to the existing cumulative impact will normally be refused, unless an applicant can demonstrate why the operation of the premises involved will not add to the cumulative impact or otherwise impact adversely on the promotion of the licensing objectives.

The Sub-Committee noted that the applicant was in agreement with Condition 15 (Appendix 4), which states that the sale of alcohol at the restaurant will only be as an accompaniment to food and could only be ordered with food. The Sub-Committee also noted that the restaurant would only have 50 covers.

The Sub-Committee also took into account the comprehensive operating schedule supplied by the applicant

The Sub-Committee concluded that the granting of the new licence would not undermine the licensing objectives and would not have a negative cumulative impact.

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The application was granted.

232 ARSENAL FOOD AND WINE, 92 GILLESPIE ROAD, N5 1LN – APPLICATION FOR A PREMISES LICENCE REVIEW UNDER THE LICENSING ACT 2003 (Item B1)

The trading standards officer summarised the main reasons for the review. He highlighted licensing policies 25, 26 and 10 for consideration. The Sub-Committee noted that there had been three underage sales and also that a quantity of illicit alcohol had been found at the premises. He highlighted paragraph 11.28 of the home office guidance which stated that the review procedure could be used to deter such activities. He informed the Sub-Committee that, since the review had been submitted, the licensee had taken some positive steps, had engaged with the trading standards team, had introduced a refusals book and had training records in place. Officers were concerned that three underage sales had taken place and Mr Kilinc had received advice at an officer panel and had also had received written advice regarding illicit alcohol. However, they were encouraged by the recent efforts of the licensee and reported that the Sub-Committee may consider a suspension and the addition of conditions to the licence more appropriate.

In response to questions, it was noted that Mr Kilinc was called to an officers panel after the first underage sale in 2010 where he would have received advice about underage and illicit sales. A review would normally have been submitted following the seizure of illicit alcohol in December 2012, however, due to competing work priorities that had not happened.

Maria Guida, solicitor, supported by the licensee, Mr Kilinc, spoke against the review. Mr Kilinc was supported by an interpreter. She informed the Sub-Committee that Mr Kilinc was a hardworking and respected member of the local community who had not knowingly sold underage or illicit alcohol. He had received numerous letters of support from customers. His brother had refused a sale in 2010 and had been violently assaulted. Mr Kilinc was now keeping a refusal log and had made six refusals in two and a half weeks. Following the officer panel in 2010 there had been a test purchase in March 2010 which resulted in no sale. With the most recent underage sales it was admitted that Mr Kilinc was standing next to the member of staff who sold in February 2013 and had been distracted at the time so had not prevented the sale. The member had later been dismissed for this and other failings. At the last underage sale made in July, the customer was called back and the money was refunded. The illicit alcohol had been bought at a cash and carry and had appeared to fluoresce. It was understood that the cash and carry was now under investigation by the HMRC.

In response to questions, it was noted that there had been free training for licensees in the Caledonian and Bunhill area but this had not been rolled out in Highbury West ward. Mr Kilinc was asked to outline the licensing objectives. He reported that he should not serve young people and needed to ask for identification. Ms Guida informed the Sub-Committee that Mr Kilinc embraced the principles of the licensing objectives.

In response to questions from Cllr Debono to the trading standards officers it was reported that suspension of the licence was now considered a possibility due to engagement and improvements made by the licensee. Cllr Debono reported that the licensee was clearly respected in the community. It was noted that all material was available in Turkish if requested by the licensee. The Sub-Committee considered that there was a level of responsibility required by the licensee.

In summary, the trading standards officer reported that suspension could be considered as a deterrent. Councillor Debono informed the Sub-Committee that the licensee had admitted his mistakes and with staff training in place there would be no repeat incidents. He was clear about asking for identification. In her opinion the licensee should not be punished further. She was a regular user of the shop and considered that as the Council needed to protect small businesses. Testimonials had been received from customers who had never witnessed the licensee selling to underage customers. Ms Guida reported that Mr Kilinc had been an unfortunate victim of the

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wholesalers. She considered that, as the last underage volunteer had been recalled before leaving the shop, that only 2 ½ underage sales had been made. Mr Kilinc now uses Challenge 30 to ensure that all underage sales are refused.

RESOLVED:

That the licence be suspended for a period of three months and conditions as detailed below, shall be applied to the licence.

1. No alcoholic goods will ever be purchased or taken from persons calling to the shop.
2. No spirits shall be purchased in a resealed box.
3. The licensee will immediately report to Trading Standards any instance of a caller to the shop attempting to sell alcohol.
4. Invoices (or copies) for all alcoholic goods on the premises will be kept at the shop and made available to officers from the council, police or HMRC on request.
5. A stock control system will be introduced so that the licensee can quickly identify where and when alcoholic goods have been purchased.
6. An ultra violet light will be available at the premises for the purpose of checking the UK Duty Stamp on spirits as soon as practical after they have been purchased.
7. If any spirits bought by the business have UK Duty Stamps that do not fluoresce under ultra-violet light, or are otherwise suspicious, the licensee shall identify the supplier to Islington Trading Standards and HMRC as soon as possible.
8. The licensee shall adopt 'Challenge 25' the Retail of Alcohol Standards Group's advice for off-licences and promote it through the display of posters.
9. The licensee shall put arrangements in place to ensure that before serving alcohol to persons they believe to be less than 25, staff ask to see accredited proof of age: that is, proof of age cards carrying the PASS logo (and no others), as Passport, or UK Driving Licence bearing the photograph and date of birth of the bearer.
10. The licensee shall require staff to note any refusals to sell to young people in a refusals log. The refusals log shall be checked and signed monthly by the designated premises supervisor. The refusals log shall be made available for inspection upon request by the licensing team, police or trading standards.
11. The licensee shall put arrangements in place for regular staff training that will make reference to the company's 'Policy on Age Restricted Sales'. Training on the prevention of underage sales take place prior to a member of staff serving customers and refresher training will be given at the conclusion of an employee's probationary period. Thereafter, regular refresher training shall take place with a maximum interval of three months. A copy of the Policy in use will be supplied to the Council Licensing team. The licensee shall ensure that employees sign to confirm that they have understood the training.
12. The licensee shall keep records of training and instruction given to staff, detailing the areas covered and make them available for inspection upon request by the Licensing team, Police or Trading Standards.
13. The licensee shall put into place arrangements that ensure that all correspondence on licensing matters received from the Council Licensing or Trading Standards teams or other

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authorities is fully understood and communicated to staff as appropriate.

REASONS FOR DECISION

The Sub-Committee noted that the review was brought following underage sales and illicit possession of alcohol 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 should be seriously considered.

The Sub-Committee noted that there were underage sales on 23rd January 2010, 24th November 2012 and again on 19 July 2013. There was also a seizure of illicit alcohol on the 7 December 2012. The Sub-Committee also heard that there had been written advice given to the licensee in relation to the sale of illicit alcohol in March 2011 and December 2011. The Sub-Committee was informed by trading standards officer that conditions had been agreed between trading standards and the licensee. A copy of those conditions was handed to the Sub-Committee. Trading standards informed the Sub Committee that in light of fact that there had been engagement between the licensee and trading standards and conditions agreed that they would only be seeking suspension as opposed to revocation.

The Sub-Committee also heard representations from the licensee's representative and Cllr Theresa Debono who spoke in favour of the licensee and asked the Sub-Committee not to revoke the licence. It was submitted that the licensee was a popular trader in the area who had assisted members of the public in the past and that he was sorry for the transgressions that had taken place and that he would in future work with the authority in ensuring that the illicit trading did not take place in the future. The Sub-Committee decided not to revoke the licence. It agreed to impose the additional conditions proposed by trading standards and to suspend the licence for three months. The Sub-Committee were of the view that the suspension was a proportionate response to the review. The licence had not come up for review previously.

The Sub-Committee noted that the premises were in an area that suffered from anti-social behaviour and concluded that to promote the licensing objectives the suspension was necessary to act as a deterrent to prevent sales of alcohol to children.

The meeting ended at 9.10 pm.

CHAIR