

London Borough of Islington
DRAFT
Licensing Sub-Committee A – 7 October 2013

Minutes of the meeting of Licensing Sub-Committee A held at the Town Hall, Upper Street, N1 2UD on 7 October 2013 at 2.30 pm.

Present: **Councillors:** Raphael Andrews, Phil Kelly and Gary Poole.

COUNCILLOR GARY POOLE IN THE CHAIR

233 INTRODUCTIONS (ITEM A1)

Councillor Poole 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.

234 APOLOGIES FOR ABSENCE (ITEM A2)

None.

235 DECLARATION OF SUBSTITUTE MEMBERS (ITEM A3)

None.

236 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.

237 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.

238 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.

239 MCDONALDS, 23 HIGHGATE HILL, N19 – APPLICATION FOR A PREMISES LICENCE VARIATION UNDER THE LICENSING ACT 2003 (Item B1)

The licensing officer reported that there had been no further conditions offered. He also reported that the police had made a representation and that the Sub-Committee should consider all reasonable and proportionate representations made by the police as stated in the Secretary of State guidance.

The police reported that, after checking police indices, there had been 20 reported crimes on the premises, which included actual bodily harm, grievous bodily harm and theft. He considered that if the premises were kept open later it would attract more patrons. In other McDonalds premises that stayed open later there were found to be more incidents of crime so in his view, it would be reasonable to assume that, should this premises remain open later, there would be more incidents of crime.

The licensing authority reported that the premises was in Archway cumulative impact area which

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was in a sensitive residential area and it was considered that this premises would act as a magnet to attract people to the area and allow them to stay longer in the area, adding to the late night economy. The granting of the licence would effectively allow for a 24 hour licence in an area where noise disturbance and anti-social behaviour was already an issue.

Stephanie Knowles, representing Mcdonalds, supported by Jubed Bashir, the designated premises supervisor, spoke in support of the application. It was recognised that this was an area of cumulative impact but considered that longer hours would be unlikely to add to the cumulative impact. She informed the Sub-Committee that if the application was to be refused it would need to be shown how the grant would undermine the licensing objectives. It was not considered necessary to offer further conditions as the premises were currently open until 1pm with no real trouble. She reported that this was not an alcohol led application but only for late night refreshment and considered that what happened outside the premises was not a concern for the Sub-Committee. Longer hours would allow longer hours for dispersal. The police had not produced the reports of crime and the guidance stated that the premises would need to be linked to reports of crime. There was a bus-stop outside so it was not surprising that there was crime outside the premises. According to Mcdonalds own incident logs there were calls made by staff to the police due to unruly customers. These occurred between 7 and 8 in the morning and outside the scope of licence. She suggested a condition be applied to add door staff to deal with minor skirmishes but considered this to be a last resort and not completely necessary. She reported that it was unfair for the police to cite examples of bad practice in comparison with this Mcdonalds. There had been no noise complaints made by residents to the noise team and the premises was not noise generating. The premises had self-closing doors installed and full sound insulation. The premises should not be penalised because it was near a bus-stop. Mr Bashir had taken over a year ago and had a proven track record. Door staff had been offered as a condition.

In response to questions it was noted that Ms Knowles disputed the police figures. According to their own figures there were only 10 incidents inside so 10 incidents could have occurred outside the premises. Management took responsibility for litter patrols but not other things that occurred outside the shop. It was not a trouble generating business and by their own figures there was one incident a month. Staff would call if in doubt so incidents were not necessarily serious. All of the incidents occurred in the morning and not between 23:00 hours and 01:00 hours. Drinking was not allowed in Mcdonalds and the concerns related to outside the premises were only a concern if they could be linked to Mcdonalds. Ms Knowles did not consider that it would be necessary employing door staff for one incident a month. Mcdonalds was concerned about crime but this was not considered a hotspot area. Ms Knowles reported that customers generally purchased their food and then moved on and did not stay in the area for longer. This was a restaurant that passers by would use rather than being a destination restaurant.

Members raised concerns that customers would stay in the area longer and this was as serious as drinking longer. Customers could not get on buses until they had finished consuming. It was noted that tubes did not run later than 12:30 on Fridays and Saturdays. It was also noted that Mcdonalds had robust policies in relation to drugs and alcohol.

In summary, the police reported that the premises would be a draw for people staying out later who may not know the area. He was surprised that door staff had not already been offered as a condition bearing in mind the number of incidents. Longer hours would mean more people would be kept in the area longer giving a greater opportunity for people to commit crime or to become a victim of crime.

The licensing authority highlighted the policies which the Sub-Committee could consider during deliberation, policies 1, 7 and 8 which outlined the framework hours that were key for fast food premises in recognition of the night-time economy.

The applicant reported that Mcdonalds did not have anything to do outside the premises. There

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must be evidence linking McDonalds to crime. The police records were not at hand so the Sub-Committee did not know that 20 crimes were linked to McDonalds. It was noted that licensing policy 3, in relation to cumulative impact in the Junction area, was concerned with saturation in terms of alcohol sales and not food sales. It was their view that door staff would not assist as any trouble had not been between 23:00 hours and 01:00 but early in the morning. Ms Knowles reported that she would be prepared to reduce hours to 3 am but submitted that the premises had already been operating past the last tube with no problem. Additional conditions could include signage, the turning off of background music and SIA door staff.

RESOLVED:

a) That the premises licence variation in respect of McDonalds, 23 Highgate Hill, N19 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 Archway cumulative impact area. Licensing policy 002 creates a rebuttable presumption that applications for new or variations to premises licences that are likely to add to the existing cumulative impact will normally be refused, unless an applicant can demonstrate in the operating schedule 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 there were significant problems with antisocial behaviour in this area, it was also noted that after about 1am there was no underground transport and the only means of dispersal was by night bus. There was a bus stop immediately outside McDonalds.

The applicant had not offered any conditions in the operating schedule and argued that it was unnecessary to do so as there would not be any problems. She reported that incidents of crime and disorder outside of McDonalds eg at the bus stop was not the responsibility of the premises. At the Licensing meeting she offered to reduce the hours from 5am to 3am and to provide SIA door staff as required.

The applicant's representative argued that the cumulative impact policy should not apply as McDonalds did not sell alcohol. However, the Sub-Committee did not accept this argument as it noted that there were significant problems with noise, crime and anti-social behaviour within this area as a result of the saturation of licensed premises. It was considered that extending the hours throughout the night would add to the cumulative problems as this premises would act as a magnet for people to stay in the area.

The Sub-Committee heard evidence from the police that there had been 20 reported crimes in the last ten months including theft, grievous bodily harm and actual bodily harm and comparisons with 24 hour operating McDonalds in the borough showed that a significant increase in reported crime accompanied an extension of hours. The appellant's representative had argued that this was speculative and that she had not received the CAD reports to show that the 20 reported crimes were linked to McDonalds. The Sub-Committee accepted that the CAD reports would have given more detail but the applicant's representative had herself admitted that there were ten incidents resulting from phone calls by staff over the past ten months and this was a matter for concern. The extension had not yet been granted and although the police evidence of similar operations was not evidence at this particular premises it indicated a possible trend. The Sub-Committee referred to paragraph 9.12 of the amended guidance issued in June 2013 and noted that the licensing authority should accept all reasonable and proportionate representations made by the police and that the police are the main source of advice relating to the crime and disorder licensing objective.

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The Sub-Committee was satisfied that the grant of the application would undermine the licensing objectives of crime and disorder and public nuisance. 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 given the concerns expressed by the police and the licensing authority.

240 BROTHERS OFF LICENCE, 60 FONTHILL ROAD, N4 – APPLICATION FOR A PREMISES LICENCE REVIEW UNDER THE LICENSING ACT 2003 (Item B2)

The licensing officer reported that the health and safety works were still outstanding. Mr Hopkins, representing the applicant, reported that works had been completed but not yet signed off.

The trading standards officer highlighted the reasons for the review. He asked the Sub-Committee to consider licensing policies 26 and 10 when making their decision. The Sub-Committee noted that there had been a previous suspension of the licence following a review in November 2011. In July 2013 there was a seizure of cigarettes. He reported that paragraph 11.27 of the home office guidance reported that revocation of a licence could be considered even in the first instance. This was not the first incident. Coloured photographs were circulated indicating the tobacco found in a concealed drawer.

In response to questions the officer reported that Mr Koca did attend the review hearing in November 2011, advice was given and further conditions were added to the licence. He would have been aware that the tobacco was illegal as it was not English. In other premises, illegal tobacco had been found hidden in a bag under the counter. Mr Koca blamed the sale on a member of staff. He stated he had the drawer to keep his cheque book in. This may have been a legitimate reason but in this instance it was not being used appropriately.

The police and the licensing authority had nothing further to add to their submissions in the papers.

Mr Hopkins, representing the licensee, Mr Koca, reported that this was a family business and admitted there was a sale of two illicit cigarettes for £1.80. Mr Koca kept confidential papers and his cheque book in the drawer. They were his employee's cigarettes who was intending to sell them behind his back. He had sacked the employee. He had complied with all conditions except for written training records. This was the only condition he had not done. He was agreeable to give an undertaking that he would be the only person to buy alcohol or tobacco. English was not Mr Koca's first language but he was capable of challenging customers. His mistake was to trust staff. The health and safety works had been carried out. There were no reports from the police. There was no evidence regarding street drinkers. This was one mistake and should be treated as such. He now records his attendance at the shop.

In response to questions, it was noted that a concealed drawer may have indicated a determination to hide the tobacco. Mr Hopkins reported that the employee was not dismissed until 3 or four days after Mr Koca had spoken to the trading standards team. It was reported that this was because Mr Koca had to find a new member of staff. He did not take officer advice to close the shop until a new member of staff was found. It was reported that the drawer was not really concealed as it is able to be seen. Mr Koca was unable to inform the Sub-Committee of the licensing objectives although he stated that he had known initially when he had received his licence. A week before the incident Mr Koca had taken the cheque book from the drawer to give to the accountant and was unaware that there was tobacco in the drawer. It was noted that at the previous review a drawer had not been mentioned.

In summary, the trading standards officer reported that the employee had been dismissed as late as the 29 July, which was later than had been described by the licensee. He also reported that money from the sale of the cigarettes went into the till.

The police officer reported that this was a small shop in a problem area. He would have expected the licence holder to know what was going on in his own shop as an example of good management.

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Mr Hopkins reported that the employee would have put the money in the till to look like a genuine arrangement. He suspected that the money would have been removed from the till at a later stage. He asked that the Sub-Committee be as lenient as possible.

RESOLVED:

That the premises licence in respect of Brothers Off Licence, 60 Fonthill Road, N4 be revoked.

REASONS FOR DECISION

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

The Sub-Committee noted that the review was brought following smuggled tobacco found at the premises by the responsible authorities. The Home Office guidance as amended in June 2013 at paragraph 11.27 identified criminal activity which the Secretary of State considered should be treated particularly seriously. In addition paragraph 11.30 states that in determining a review, the authority should consider revocation of the licence if this was considered appropriate.

It was also noted that the premises licence had previously been suspended on review following the sale of illicit tobacco and counterfeit alcohol. On that occasion, advice had been given on how to check for illicit goods and the importance of ensuring that none were stocked. It did not appear that the licensee had learnt from that previous experience.

Trading standards officers passed around photographs of a concealed drawer where the tobacco was found and samples of the 17 packs of loose tobacco and cigarettes. It was quite clear that there was a foreign script on the packs which would have been obvious to anybody.

The licensee claimed that this was entirely the fault of an employee who he had employed for two weeks and left in charge of the shop while he was away. The employee had apparently brought the cigarettes in for his own use and it was noted that the licensee had told trading standards officers that he smoked anything including cannabis. He also explained he used the concealed drawer for keeping his cheque book and personal papers but had removed them a short while beforehand and was unaware of the illicit stock in the drawer. The Sub-Committee found this explanation difficult to accept. However, it considered licensing policy 10 and the need to assess the licensee's ability to demonstrate a commitment to high standards of management. It was poor management to take on and trust an employee with this background with the sole running of the shop after such a short period and it was noted that the licensee had shown reluctance to dismiss the employee immediately.

The applicant's representative stated that the licensee had undergone recent training by NARTS. This was felt by the Sub-Committee to be belated and in response to the review. When questioned, the licensee was unable to describe the licensing objectives.

The Sub-Committee considered a revocation was the only appropriate option in order to promote the licensing objective of crime and disorder.

241 COSTCUTTER, 35-43 HORNSEY ROAD, N7 7DD – APPLICATION FOR A PREMISES LICENCE REVIEW UNDER THE LICENSING ACT 2003 (Item B3)

The licensing officer reported that the review was related to the licensing objectives of protection of children from harm and also crime and disorder.

The trading standards officer reported that the previous reviews were in November 2010 and

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September 2011 and not as stated in the report. He summarised the main reasons for the review. He highlighted licensing policies 25, 26 and 10 for consideration. In addition to the two reviews, an underage sale had been made in December 2012 and seizure of illicit alcohol had been made in July 2013. He reported that paragraphs 11.27 and 11.28 of the home office guidance reported that revocation of a licence could be considered even in the first instance. Invoices had not been provided for the seized goods. He had been informed that a previous employee Mr Thakar had bought the illicit alcohol without authorisation. A review had not taken place after the underage sale so the trading standards officer revisited the premises to ensure that conditions were now being complied with. It was then that the illicit alcohol was noted and also that conditions were still being breached.

In response to questions, it was noted that Mr Shah had been given thorough advice when he had applied for the licence. He had met the trading standards officer in 222 Upper Street, N1 and had gone through the conditions in depth. It was noted that at the last review hearing it was evident that Mr Shah had not been actively involved in the business. He had been the licence holder at the time of each incident

The police officer reported that the premise was within 50 metres of the Emirates stadium. He visited the premises on the 24 May and requested that staff be vigilant when selling and warning customers that this was a controlled drinking zone. On the 25 May, on the day of the first concert, he visited again. There was a long queue around the shop and customers were exiting with single cans and bottles, some of which were open. On entering the shop he witnessed sales taking place without staff mentioning that customers could not drink outside in the street despite being requested to do so. He drew the attention of the Sub-Committee to an email from a police officer from Westminster who had witnessed the same on the 27 August during a match day.

Mr Hopkins, representing Mr Shah the designated premises supervisor and Mr Zafar, the manager, attended the meeting. He reported that Mr Shah ran the burger van outside the premises and there were four personal licence holders at the premises. He had a statement from Mr Thakar which confirmed that he had bought the illicit alcohol and was trying to get the registration number of the van. There were five staff employed at the premises, although they were mainly part-time. There were notices on display and it was accepted that these needed to be more prominent. Mr Shah stated that they were telling customers that they could not drink alcohol in the shop but maintained that customers did not understand. They stated that they were not selling bottles but other shops were. Mr Hopkins stated that his clients were appalled that illicit alcohol had been found in their shop and Mr Thakar was sacked immediately. The licensee stated that all of the blame went to their shop because they were in the prime spot. They stated that the alcohol was bought from other places and drunk outside their premises.

The police officer reported that customers leaving the shop did not look as if they had been told that they were unable to drink alcohol outside. He stated that it was unusual for a police officer from another area to email in after a match but had done so as the premises had caused him so much concern.

In response to questions, Mr Zafar reported that he was unaware of the previous review history of the premises. Mr Shah had been present at all reviews. Mr Thakar sold to an underage volunteer and had bought illicit alcohol. He had now been dismissed. Mr Zafar informed the Sub-Committee that staff told every customer that they could not drink alcohol in the street. They had notices stating this in the shop. He informed the Sub-Committee that the restrictions applied to glass bottles only. They purchased all alcohol from a cash and carry and had not noticed the illicit alcohol on the shelves as they were busy.

In summary, the trading standards officer reported that he had not heard anything at the meeting that convinced him that licensing conditions were still not being breached and considered that revocation was the appropriate decision.

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The police officer agreed and drew the Sub-Committees attention to the email on page 85 of the agenda. He reported that the DPPO had been agreed between the police and the local authority and was used as a tool to prevent crime and disorder.

Mr Hopkins asked the Sub-Committee to bear all comments in mind when making their decision.

RESOLVED:

That the premises licence for Costcutter, 35-43 Hornsey Road, N7 be revoked.

REASONS FOR DECISION

The Sub-Committee considered the written and oral submission put forward by the responsible authorities and the licensee.

The Sub-Committee noted that the review was brought following an underage sale and smuggled alcohol being found at the premises by the responsible authorities. The Home Office guidance as amended in June 2013 at paragraph 11.27 identified criminal activity which the Secretary of State considered should be treated particularly seriously. In addition paragraph 11.30 states that in determining a review, the authority should consider revocation of the licence if this was considered appropriate. The guidance at 2.26 states that the government believes that it is completely unacceptable to sell alcohol to children.

It was noted that there had been two previous reviews in November 2010 and September 2011 and that on the first occasion the licence had been suspended with an extra condition after repeated sales to underage volunteers. On the second occasion which involved seizures of illicit alcohol, conditions relating to illicit alcohol were added as Mr Shah was taking over the running of the business from Mr Khan and the licence had been transferred into his name. The Sub-Committee was disappointed that it had been necessary to bring a further review after specific advice had been given by trading standards to Mr Shah on how to avoid underage sales and stocking illicit alcohol.

The sale of two bottles of foster lager to an underage volunteer in December 2012 had been made by an employee, Mr Thakar, who had not been co-operative when questioned by trading standards. It was also said that Mr Thakar had also purchased the illicit alcohol which was found by trading standards in July 2013. Despite advice given by trading standards to Mr Shah at the earlier review, neither Mr Shah nor the manager, Mr Zafar, could offer an explanation as to how the 12 bottles of illicit whisky in the shop had not been noticed by them. The Sub-Committee were not satisfied that these incidents were solely the responsibility of Mr Thakar. There were breaches of conditions noted by the licensing officer. The licensee had failed to demonstrate a commitment to the standards of management required in managing staff. The Sub-Committee took into account licensing policy 10.

The police and the licensing authority had described two incidents of fans coming out of a store on 25 May 2013 and on the 27 August 2013, at the Emirates stadium within 50metres of the premises. They were carrying open cans of alcohol, which had been purchased from the shop and were drinking them. The area around the shop is a controlled drinking zone and police were having to tell them that could not do so. The police had previously visited the shop and explained the importance of ensuring that all customers were aware that this was a controlled drinking zone. The licensee challenged the evidence of the police saying that the fans had purchased their alcohol from nearby shops. However the written evidence of the police confirmed that on the 25 May 2013, when a concert was taking place at the stadium, there was a long queue snaking it's way around the entire shop and that no advice had been given to purchasers that they could not drink outside.

The Sub-Committee referred to paragraph 9.12 of the amended guidance issued in June 2013 and noted that the licensing authority should accept all reasonable and proportionate representations made by the police and that the police are the main source of advice relating to the crime and

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disorder licensing objective.

The Sub-Committee also noted and confirmed with the police representative present that an officer from the City of Westminster had unusually considered the matter so serious that he had made a representation.

The licensing objectives of protection of children from harm and crime and disorder were undermined and it was appropriate to revoke the licence. No lesser penalty would promote the licensing objectives.

The meeting ended at 5.15 pm.

CHAIR