

London Borough of Islington

Licensing Sub-Committee B – 27 March 2013

Minutes of the meeting of Licensing Sub-Committee B held at the Town Hall, Upper Street, N1 2UD on 27 March 2013 at 6.40 pm.

Present: Councillors: George Allan, Raphael Andrews (Items B1-B3), Joe Caluori (Items B4-B6) and Barry Edwards.

COUNCILLOR BARRY EDWARDS IN THE CHAIR

141. INTRODUCTIONS AND PROCEDURE (ITEM A1)

Councillor Barry Edwards welcomed everyone to the meeting and asked members and officers to introduce themselves. The Chair outlined the procedures for the meeting and informed the public that the procedures were on page 4 of the agenda papers.

142. APOLOGIES FOR ABSENCE (ITEM A2)

Apologies were received from Councillor Gary Doolan.

143. DECLARATION OF SUBSTITUTE MEMBERS (ITEM A3)

Councillors Raphael Andrews and Joe Caluori substituted for Councillor Gary Doolan.

144. DECLARATIONS OF INTEREST (ITEM A4)

None.

145. ORDER OF BUSINESS (ITEM A5)

The order of business would be as the agenda.

146. MINUTES (Item A6)

RESOLVED

That the minutes of the meeting held on the 21 January 2013 be confirmed as an accurate record of proceedings and the Chair be authorised to sign them.

147. RATTLESNAKE, 56 UPPER STREET, N1 0NY - APPLICATION FOR A NEW PREMISES LICENCE UNDER THE LICENSING ACT 2003 (Item B1)

The Sub-Committee noted that this item had been adjourned.

148. 10-16 THEBERTON STREET, N1 0QX - APPLICATION FOR A NEW PREMISES LICENCE UNDER THE LICENSING ACT 2003 (Item B2)

The Sub-Committee noted that this item had been adjourned.

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149. **01-YENI ADANA, 25-27 GREEN LANES, N16 9BS - APPLICATION FOR A PREMISES LICENCE REVIEW UNDER THE LICENSING ACT 2003 (Item B3)**

The Sub-Committee noted the tabled plan of the premises, the preliminary findings of a noise assessment received on the 27 March 2013 and letters in support of the licensee. These would be interleaved with the agenda papers.

The noise officer reported that following a noise complaint on the 26 June 2011, the noise team had written to the licensee in July and August but no response had been received. Following the review application, a visit was made by staff on the 6 February to discuss the reasons for the review. No information was received from the licensee until the acoustic report was received on the 27 March 2013, the day of the meeting.

Jun Simon, licensing agent, supported by the licensee, Burcak Aslan, informed the Sub-Committee that the licence holder had taken over the licence in September 2011 and had installed a silencer to the extract system soon after. Following the installation of a silencer there were no further complaints until the 7 and 8 January. The complaint was regarding loud chopping noise from the premises. Mr Simon reported that no licensable activities were taking place at the premises until the health and safety and noise conditions had been carried out to the satisfaction of officers.

In response to questions, the licensee informed the Sub-Committee that she believed the acoustic survey had been carried out when the licence had been transferred. The Sub-Committee noted that the premises had been operating outside the hours allowed for in its planning application and was informed by the agent that this was a separate regime. Following the review application the licensee stated that she had contacted a council officer. The noise team had no record of this. Food preparation now took place during the day and there had been no further complaints since the beginning of January. It was noted that the noise team had not been asked to assess the silencer since installation.

Philip Davis, the applicant for the review, informed the Sub-Committee that he had moved to premises above the restaurant in May 2012 so had not had any problem with noises from machinery, but in November loud food preparation noises came from the premises below, often past midnight. He had spoken to the staff in the restaurant but the noise carried on until after the review had been submitted. It was reported that over the past month the noise level had improved but staff should have been more helpful.

In summary, Mr Simon reported that there was currently no licensable activities at the premises until all conditions have been agreed. The applicant had more confidence in the future.

Members of the Sub-Committee left the room to deliberate before returning to announce their decision.

RESOLVED:

That the licence for 01-Yeni Adana, 25-27 Green Lanes, N16 be suspended for a period of two months.

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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 heard evidence from the noise team that complaints had been received dating back to June 2011 relating to noise from the premises. The noise team confirmed that they tried to contact the business in relation to the various complaints but did not get a response. It was noted that the licence has a condition that an acoustic consultant should be appointed to prepare a scheme of sound insulation and noise control measures and that this condition had not been complied with until the date of the Sub-Committee. The Sub-Committee also noted that the premises only have planning consent to operate between the hours of 8am and 11pm.

The Sub-Committee then heard evidence from the licensee that the premises licence was transferred to her in September 2011 and that some of the complaints related to the previous licence holder. The licensee stated that a silencer had been fitted to the extraction system to minimise the noise from machinery on the premises. The licensee confirmed that measures had been taken to ensure that loud food preparation took place during the day to minimise disruption to neighbours at night. The licensee also confirmed that a planning application would be submitted. The licensee confirmed that all licensable activities had ceased whilst the recommendations of the acoustic report were put into place.

The applicant confirmed that the procedures now in operation at the premises did appear to have reduced the noise. The applicant confirmed that he had more confidence going forward that any future problems would be addressed.

In light of the breach of the planning hours and the breach of the condition relating to the acoustic survey, the Sub-Committee decided that a suspension of two months would promote the licensing objectives.

In reaching their decision, the Sub-Committee took into particular consideration Licensing Policy 010 regarding high standards of management and licensing policy 030 concerning reviews of licences.

150. **MONTANA WINE, 136 WHITECROSS STREET, EC1Y 8QJ - APPLICATION FOR A PREMISES LICENCE REVIEW UNDER THE LICENSING ACT 2003 (Item B4)**

The licensing officer reported that the premises were currently licensed for 24 hours and not as stated in paragraph 3.1 of the report. It was also noted that a warning letter was sent in September 2012 and not August as stated.

The trading standards officer summarised his report and highlighted the home office guidance which stated that revocation of licences could be considered even in the first instance. The Sub-Committee noted that, in September 2011 alcohol was sold by Deniz Karakas to an underage volunteer. Illicit Italian wine was found in the premises at this time, for which an invoice, later shown to be false, was provided. In May 2012 the breaches were considered at an officer panel meeting which was attended by Deniz Karakas and a warning letter sent. In June 2012 an underage sale was refused but in October 2012 a further underage sale was made by Ismet Karakas and 47 bottles of illicit alcohol was seized. A review was therefore

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applied for in January 2013. It was noted that training had been attended by the licensees in January 2013. The trading standards officer reported that, should a suspension of the licence be considered, proposed conditions as detailed at page 228 of the report be added to the licence.

The licensees Deniz and Ismet Karakas attended the meeting. Ismet accepted that mistakes had been made and apologised. The first underage sale had been made when Deniz was in the middle of an argument and after the second underage sale Ismet realised his mistake straight away and came out of the shop to speak with the purchaser, leaving the shop unattended for about ten minutes.

In response to questions it was noted that the licensees usually went to the cash and carry to buy their stock. His brother had bought the illicit alcohol from people calling at the shop when Ismet had a couple of days off and the father was in Turkey. He was eating at the time of the second test purchase and he thought that the trading standards officer and the girl were together. He did not look at her face. The Sub-Committee noted that there were only the two of them who worked in the shop. When questioned regarding an incident involving a white van detailed on page 242 of the papers, Ismet Karakas could not add any further information. The Sub-Committee noted that the shop was not open 24 hours and generally closed at 1pm as they did not need the trouble that these late hours attracted. He stated that he was usually there on his own after midnight.

In summary the trading standards officer had not considered that the licensees had provided evidence of high standards of management at the meeting. The police licensing officer reported that the licensees had been investigated before but still made an underage sale and had bought illicit goods. He considered that the licence should be revoked. The licensee reported that he had been a good neighbour for thirteen years and apologised for the mistakes made.

Members of the Sub-Committee left the room to deliberate before returning to announce their decision.

RESOLVED:

That the licence for Montana Wine, 136 Whitecross Street, EC1 be revoked.

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 noted that the review was brought following smuggled alcohol found at the premises by the responsible authorities and underage sales. The Home Office guidance at paragraphs 11.26, 11.27 and 11.28 identified criminal activity which the Secretary of State considered should be treated particularly seriously. This included sale of smuggled and counterfeit alcohol and the illegal purchase of alcohol by minors. It was envisaged that licensing authorities would use the review procedures to deter such activities and crime. Where licensing authorities determined that the crime prevention objective was being undermined, it was expected that revocation of the licence should be seriously considered. The Sub-Committee considered that the crime prevention objective was undermined through the premises being used for the sale of smuggled alcohol and underage sales.

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The Sub-Committee noted that a quantity of alcohol, namely 47 70cl bottles of Glens vodka had been seized from the premises on 25 October 2012 by trading standards officers. It was noted that the licensee had previously attended an officer panel meeting on 15 May 2012 to discuss underage sales and some Italian wine, for which an invoice (subsequently found to be false) was provided.

The Sub-Committee also noted representations from the police in relation to an emergency call in November 2011 when evidence of cannabis use was found at the premises and from the ward councillor, that people had been seen buying alcohol from the premises and engaging in vertical drinking outside the premises. The Sub-Committee further noted that licensing officers had witnessed, in August 2012, an incident involving a white van parked outside the premises in the early hours playing very loud music. It was noted that the males in the white van kept going from the van to the premises.

The Sub-Committee heard evidence from the licensees that the premises are a family run business which had been operating for 12 years. The licensees accepted that they had made mistakes and apologised. The licensees explained that one of the underage sales had taken place while the licensee was distracted by eating his breakfast, and the other took place while the licensee was distracted by an argument with a family member. The licensees accepted that alcohol had been bought from people calling to the shop. The licensees denied that their premises were a focal point for nuisance or vertical drinking and stated that they had in the past asked people to move from the front of the premises. The licensees confirmed that they only have one member of staff working in the early hours of the morning. The Sub-Committee noted that the licensee could not offer any explanation in relation to the incident in August 2012, involving the white van.

The Sub-Committee decided that revocation of the licence was necessary and proportionate to promote the licensing objectives in light of the poor standards of management, the seriousness of the matter and the breaches of the licensing conditions. Although it was noted that the licensee has attended training and followed recommendations such as operating a refusals book, the Sub-Committee was not satisfied that standards of management had improved to the high standards expected. The Sub-Committee noted that the licensee did not question his brother about the vodka after it had been purchased from a caller at the shop, nor was it removed from the shelves. The Sub-Committee noted that the condition on the licence that there be two persons employed on the premises from midnight to 6am was being breached. The Sub-Committee noted that there was an underage sale after the licensees had attended an officer panel meeting. The Sub-Committee noted that the licensees had no proper stock control policy or effective management structure. The Sub-Committee was not satisfied that the licensees' business model allowed for the sale of alcohol in line with the requirements of the Licensing Act.

The Sub-Committee took into particular consideration licensing policies 010 regarding high standards of management, licensing policy 025 regarding the illegal sale to underage children, licensing policy 026 regarding illicit goods and licensing policy 030 regarding review of licences.

151. **HING YIP ORIENTAL SUPERMARKET, GROUND FLOOR, 88-90 HOLLOWAY ROAD, N7 8LJ, - APPLICATION FOR A NEW PREMISES LICENCE UNDER THE LICENSING ACT 2003 (Item B5)**

The licensing officer reported that conditions put forward by a local resident had been accepted by the applicant and the resident had withdrawn their objections on this basis. Papers missing

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from the report were tabled at the meeting and would be interleaved with the agenda. The noise and health and safety conditions had also been agreed by the applicant.

The Service Director, Public Protection, informed the Sub-Committee that the premises was in a cumulative impact area and licences should only be granted if there was no impact on the area. Licensing officers visited the premises in February and there was alcohol on display. In response to questions it was noted that this premises was in a prime area near the Arsenal football stadium where there were already high levels of crime and public nuisance. The Sub-Committee had to be sure that an additional licence would not add to the problems already in the area.

Mr Davis, the legal representative supporting the applicant, Mr Wong, reported that this was a family business, an oriental supermarket. He reported that the display stand was very small and it was not intended to increase alcohol sales incidental to the purpose of running the shop. He drew the attention of the Sub-Committee to paragraph 6 of the licensing policy and considered that the premises be considered exceptional as it was small and would not be operating outside the hours detailed in licensing policy 008.

In response to questions it was accepted that alcohol should not have been on display on the premises. The applicant could not respond to questions regarding the planning status of the building. The applicant would prefer not to restrict alcohol stock to specialist Chinese or Oriental brands but was agreeable to a Challenge 25 condition. No hot food was intended to be sold to customers. Food preparation and cooking that had been carried out on the premises was for staff meals only.

In summary the applicant proposed that, should the Sub-Committee be minded to grant, the sale of alcohol be made ancillary to the sale of oriental food.

Members of the Sub-Committee left the room to deliberate before returning to announce their decision.

RESOLVED:

That the licence for Hing Yip Oriental Supermarket, Ground Floor, 88 Holloway Road, N7 8LJ 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 noted that representations were made by a local resident and the responsible authorities for health and safety, noise and licensing. The Sub-Committee noted that the applicant had accepted the conditions put forward by the local resident, health and safety, noise and trading standards.

However, the Sub-Committee also noted the premises were located in the Holloway and Finsbury Park cumulative impact area and that there was therefore a rebuttable presumption that new applications which were likely to add to the existing cumulative impact would normally be refused.

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The Sub-Committee heard evidence from the licensee as to why he believed the premises would not add to the existing cumulative impact. The licensee stated that he believed cumulative impact was not a concern in this case for the following reasons; that the proportion of the shop display dedicated to alcohol was very small and that the sale of alcohol was ancillary to the sale of specialist oriental food, that the premises were very small with a capacity of only around 50 people and that the licence sought was within the guideline hours given in the licensing policy.

The Sub-Committee considered the applicant's submissions and decided that the granting of a licence would add to the cumulative impact in the area. The Sub-Committee considered that whilst the applicant currently only wished to sell a small amount of alcohol ancillary to food, if a licence be granted the sale of alcohol would not be limited in this way and could increase in the future especially if the licence were to be transferred.

The Sub-Committee were particularly concerned about the proximity of the premises to the Arsenal football stadium and that on match days it could be difficult for the applicant to enforce any condition which made the sale of alcohol ancillary to the sale of oriental food. The Sub-Committee noted that whilst the applicant was only seeking hours in line with the guidelines set out in the policy, on match days alcohol fuelled disorder could occur at any time.

The Sub-Committee decided that in light of the above considerations and even taking into account the size of the premises, the application was not exceptional and would add to the cumulative impact.

In reaching their decision, the Sub-Committee took into particular consideration Licensing Policies 002 and 007 and 008 in relation to licensing hours.

152. **ORLEANS, 259-261 SEVEN SISTERS ROAD, N4 2DD - APPLICATION FOR A TEMPORARY EVENT NOTICE (TEN) UNDER THE LICENSING ACT 2003 (Item B6)**

The licensing officer tabled a report from the acoustic consultant which would be interleaved with the agenda papers.

The noise officer reported that a TEN had been sought for a period of four evenings over the Easter period. This had been objected to by the noise team on the grounds of previous complaints received between 2012 and 2013. It was noted that there was currently a review in process regarding the premises. The acoustic survey had been the first communication received from the licensee regarding the noise complaints. It went some way to addressing the concerns and it was understood that the majority of works had been undertaken by the licensee but this had not yet been checked by the noise team. The noise officer reported that it was very unlikely that the noise levels could be checked by officers prior to an event taking place over the Easter weekend.

Mr Raphael, the applicant, supported by the acoustic consultant, Shaun Murkett, reported that he had never had complaints until 2010. Several attempts may have been made to contact him but he lived in a multi-use building and it was quite difficult obtaining mail from the mail box. In 2010 he had found a seal that was broken which had caused noise breakout. This had been replaced and in 2011 and 2012 there had been no complaints. After complaints in February 2013 he realised that it was not just a problem with another faulty seal and employed an acoustic consultant. A programme of works had been completed following the acoustic survey and all that was required was the council to sign off the works. The Easter weekend events had been widely advertised and money had been taken. He considered that, if the TEN was

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not granted, it would be more difficult to control the number of people who were attending an event which they expected to last until 6.30 am and when public transport would be available.

In response to questions from the Sub-Committee, the noise officer reported that there had been a catalogue of complaints from residents leading up to 2013. Mr Raphael had needed to engage an acoustic consultant and the council had attempted to engage with him to mitigate problems. An acoustic consultant had been employed at this late stage as a result of the review application. There had been noise complaints following a previous TEN on the 10 March 2013. The acoustic consultant, Shaun Murkett, informed the Sub-Committee that Mr Raphael had carried out the works required in a very short space of time. The music levels had been reduced to 95 dB and it was hoped that following the completion of the works they would be able to be increased to 102 dB without causing noise nuisance to neighbours. There had been no complaints regarding noise nuisance in the last two weeks.

In summary, Mr Raphael reported that he was unaware of previous complaints and he had taken action to resolve this latest problem once he was aware that the noise nuisance was not due to a broken seal.

Members of the Sub-Committee left the room to deliberate before returning to announce their decision.

RESOLVED:

That the temporary event notice for Orleans, 259-261 Seven Sisters Road, N4 2DD be prohibited and the licensing team be directed to serve a counter notice.

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 considered the objection put forward by Environmental Health and the submissions from the applicant and were not minded to allow the temporary event notice to proceed.

The Sub-Committee heard evidence from the noise team that the applicant was seeking four nights of events over the Easter weekend; three nights until 6.30 am and 1 night until 05.30 am. The Sub-Committee noted that there have been previous complaints of noise nuisance with the most recent complaints being in February and March 2013. The noise team confirmed that the acoustic report dated 22 March 2013 was the first action that the applicant has taken to control the noise nuisance from the premises. The noise team confirmed that they would object to any TEN until such time as the works set out in the acoustic report had been completed in full and approved by the noise team officers.

The Sub-Committee heard evidence from the applicant that he has had a licence at the premises since 2005 and that up until 2010 there had been no complaints. The applicant confirmed that when he received complaints in 2010 he personally conducted an examination of the premises and, upon finding a broken seal, he carried out repairs and then received no further complaints. The applicant confirmed that he had not received many of the letters referred to by the noise team because the premises formed part of a multi-use building with a common post box. The applicant stated that when he received complaints again in February 2013 he

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realised that something must be wrong and spoke to the noise team who recommended that he employ a sound consultant. The applicant stated that he had now employed a consultant and had already carried out many of the recommendations made including the fitting of a sound limiter and sound insulation measures such as filling voids in walls. The applicant stated that he had already advertised the events over the Easter weekend and had sold some tickets.

The Sub-Committee heard further evidence from the noise team that there had been a catalogue of events leading up to the further complaints in February 2013, including the service of an abatement notice. The noise team also confirmed that there had been noise complaints in relation to a TEN that took place on 10 March.

The Sub-Committee decided that in view of the previous history of complaints and late instruction of the acoustic expert it would be reasonable and proportionate to direct the licensing team to serve a counter notice in relation to the TEN application. In particular, the Sub-Committee noted that the noise team could not be satisfied that the works completed would be sufficient to prevent noise escape until they had been able to inspect the premises. The noise team also confirmed that they needed to be present at the time that the limiting device was calibrated. This could not take place before the Easter weekend so the Sub-Committee decided that it would not be appropriate to allow the TENs to take place. The Sub-Committee also noted that there was no relationship of confidence between the applicant and the noise team; the Sub-Committee noted the applicant's failure to contact the noise team following complaints and the late submission of the acoustic report only following a separate application for a review of the licence by the noise team.

In light of all of the above the Sub-Committee considered that the licensing objectives would only be promoted by a refusal of the TEN and the service of a counter notice.

In reaching this decision, the Sub-Committee took into particular consideration licensing policies 027 and 028 regarding temporary event notices.

The meeting ended at 10.10 pm

CHAIR