

## London Borough of Islington

### Licensing Sub-Committee 'D' – 13 February 2013

Minutes of the meeting of Licensing Sub-Committee 'D' held at the Town Hall, Upper Street, N1 2UD on 13 February 2013 at 10:00 am

Present: Councillors: Joe Caluori, Tracy Ismail and Phil Kelly.

Also

Present Councillor George Allan (Item B1).

#### COUNCILLOR JOE CALUORI IN THE CHAIR

#### 129 **INTRODUCTIONS (Item A1)**

Councillor Joe Caluori welcomed everyone to the meeting and officers and members introduced themselves. The procedure for the conduct of the meeting was outlined and those present were informed that the procedure was detailed on page 5 of the agenda.

#### 130 **APOLOGIES FOR ABSENCE (Item A2)**

Councillors Troy Gallagher and David Wilson.

#### 131 **DECLARATION OF SUBSTITUTE MEMBERS (Item A3)**

Councillor Phil Kelly substituted for Councillor Troy Gallagher and Tracy Ismail substituted for Councillor David Wilson.

#### 132 **DECLARATIONS OF INTEREST (Item A4)**

There were no declarations of interest.

#### 133 **ORDER OF BUSINESS (Item A5)**

The order of business would be as the agenda.

#### 134 **MIKKELLER BREWDOG, 54 FARRINGDON ROAD, EC1 - APPLICATION FOR A NEW PREMISES LICENCE UNDER THE LICENSING ACT 2003 (Item B1)**

The licensing officer reported that the health and public safety conditions had been agreed. A witness statement from the Area Manager had been circulated and would be interleaved with the agenda.

Local ward councillor George Allan, informed the Sub-Committee that he had met with the Area Manager and accepted that this venue was intended to serve small quantities of beer, accompanied by food and he accepted that clients would not be binge drinking. However, he also considered that the conversion of the restaurant was contrary to the saturation policy and increased the numbers of customers and the risks that would accompany this. He did not consider there was adequate space outside the premises for smokers and was concerned about the close proximity of street management boxes that would give access to the railway tracks below. He considered that this was the wrong building for this type of business and in the wrong location.

Anthony Lyons, solicitor, supported by Neil Taylor, Area Manager, put forward his view that, as the application had been made prior to the agreement of the licensing policy, this application was not captured by the cumulative impact policy. He informed the Sub-Committee that they had opened 10 bars throughout the country, often in cumulative impact areas and had no issues with them. There was no reason to suppose that these premises would be any different. There would never be more than 10 smokers outside the premises and this would be monitored by management. They had a mature customer base and no live music was played. Measures were sold in mainly 1/3 and 1/2 pints and there were no happy hour promotions. Mr Lyons informed the Sub-Committee that he was agreeable to a condition that stated 'food would be available at all times'.

In response to questions, the Sub-Committee noted that the applicant had been advised by a

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planning consultant that there was no change in use and that the application for A4 use would not be necessary. The Sub-Committee were informed that temporary barriers could be erected to control smokers. They considered that the times applied for were not for a late drinking venue and if earlier hours were imposed it would not be so profitable. It was noted that there was no kitchen in the premises and cold food/snacks would be prepared behind the bar.

Members raised concerns regarding the A3 use and considered that this would apply to premises where food was a secondary consideration.

In summary, Cllr Allan reported that this was not the right location for this type of drinking establishment and if a licence was granted it should be given with reduced hours that would be more acceptable. The applicant reported that they had a number of these premises in the country that were running well and he did not believe that the granting of the application would prejudice the licensing objectives. This application was effectively a variation of an existing licence. Should there be a problem with the planning use for these premises, this matter would be properly dealt with by the planning department.

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

### **RESOLVED:**

That, having considered all the oral and written evidence submitted and having given consideration to the Licensing Act 2003, as amended, and its regulations, the national guidance and the Council's licensing policy, the premises licence in respect of Mikkeller Brewdog, 54 Farringdon Road, EC1 be refused.

### **REASONS FOR DECISION**

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

In reaching their decision, the Sub-Committee took into particular consideration Licensing Policy 008 which gives guidance to applicants on the hours that the Licensing Authority expects when preparing operating schedules. The Sub-Committee also took into consideration licensing policy 002, paragraphs 12-21 of the new licensing policy. The business premises concerned were in a cumulative impact area. The effect of the premises being in a cumulative impact area were that it created a rebuttable presumption that applications would normally be refused unless the applicant could demonstrate in the operating schedule that there would be no adverse cumulative impact on the licensing objectives. As per paragraph 4 under licensing policy 002, the circumstances of each application, must be considered on its merits.

In the statement dated February 2013 by Neil Taylor, Area Manager, he referred to the fact that the majority of his beers were sold in 1/3 or 1/2 pint measurements although he also said that some beers were sold in pint measurements. The licence that presently existed for the premises was for a restaurant and the evidence presented by the applicant was that the new business would only sell cold food that could be prepared behind the counter. There was no kitchen facility set out in the plans. It was clear that the primary emphasis of the new business was to serve alcohol, not food and accordingly the new activities would differ significantly from those authorised by the existing licence held by the premises.

The location of the business was a further consideration. It was located on a particularly busy road, opening directly onto the street. It would accordingly be extremely difficult for the managers and staff of the business to monitor and manage the people leaving their premises and/or smoking on the pavement. This could result in an unnecessary obstruction to an already busy area and pose a health hazard to members of the public in that area. The Sub-Committee was not satisfied or convinced of the applicant's proposals in relation to the monitoring of smoking and the members of the public being adequately catered for on the street outside the premises after they had purchased alcohol.

The application was for the sale of alcohol for consumption on and off the premises. The applicant was asked whether it would consider earlier closing hours by the Committee and Mr Taylor's response was to the effect that if earlier trading hours were imposed it would have an adverse financial effect on the business. The applicant's representative submitted that in effect the new licence would be a minor variation of the existing one for the premises as both involved the selling of food. The Sub-Committee was of the opinion that this was not the case. The pre-existing licence was for a restaurant where patrons were seated at tables, being served food prepared in a kitchen whereas the licence being sought in this application was primarily for the sale of alcohol for consumption both on and off the premises and the provision of food was very much a secondary consideration. The food envisaged was cold/snack type food prepared behind a counter to be consumed by patrons whilst they were standing or sitting drinking alcohol.

The Sub-Committee weighing up all the evidence referred to above, concluded that the applicant did not rebut the presumption that the operation of the premises would not add to the cumulative impact and impact adversely on the licensing objectives. The application was accordingly refused.

**135 EXPRESS FOOD STORE, 2-3 CLIFTON TERRACE, N4 3JP – APPLICATION FOR A NEW PREMISES LICENCE UNDER THE LICENSING ACT 2003 (Item B2)**

The licensing officer indicated the Sub-Committee the correct premises location on a map and it was noted that this application was not for Nisa Local.

The trading standards officer tabled additional conditions which would be interleaved with the agenda papers.

The licensing service manager brought the attention of members to her representation at page 77 of the agenda. It was noted that this area had been declared a cumulative impact zone in the new licensing policy and the location of the premises close to the Andover estate was highlighted.

The NHS officer reported on the issues relating to public safety and crime and disorder in the Finsbury Park ward. She reported that 11% of all ambulance related callouts in Islington were in the Finsbury Park area and that the ward had the highest rate of alcohol-related hospital admissions.

The licensing agent, Ms O Ay, supported by the licensee, Riza Berktaş, spoke in support of the application. The Sub-Committee noted that a licence had been granted in the summer to permit the sale of alcohol Monday to Sundays from 08:00 until 23:00. The licensee had been in trade for ten years. There had been no problems with the premises since the grant of the licence and additional hours were requested to provide a service to customers. It was understood that an application for a 24 hour licence would be a concern and Ms Oy amended the application with the proposal of a 2 am trading hour.

In summing up, the licensing officer reported that alcohol crime levels peaked after midnight and officers would be looking at a significant reduction in the proposed hours. There was a significant concern from responsible authorities regarding a late night venue in the Finsbury Park transport hotspot area. Ms Ay reminded the Sub-Committee that Mr Berktaş was a responsible manager and he wished to cater for customers who wished to buy alcohol after 11pm.

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

**RESOLVED:**

a) That, having considered all the oral and written evidence submitted and having given consideration to the Licensing Act 2003, as amended, and its regulations, the national guidance and the Council's licensing policy, the premises licence in respect of Express Food Store, 2-3 Clifton Terrace, N4 3JP be granted to permit the premises to sell alcohol off supplies only,

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Mondays to Sundays from 08:00 to 23:00 hours.

b) That conditions as outlined in appendix 3 as detailed on page 86 of the agenda and the conditions proposed by the trading standards officer as tabled at the meeting shall be applied to the licence.

### **REASONS FOR DECISION**

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

In reaching their decision, the Sub-Committee took into consideration Licensing Policy 002 and specifically paragraphs 39-43 regarding the Finsbury Park area. The Sub-Committee was not satisfied that the applicant rebutted the presumption that the application as requested would not add to the cumulative impact of the area and impact adversely on the licensing objectives. The Sub-Committee had further regard to licensing policy 008 and concluded that by limiting the hours of business in relation to the selling of alcohol on and off supplies to 8am to 11pm Monday to Sunday the licensed activities should not adversely impact on the licensing objectives. The Sub-Committee accordingly granted the licence for the trading hours of 8.00 to 23.00 with the conditions as set out in Appendix 3 on page 86 of the application papers in addition to those tabled at the hearing and interleaved with the agenda papers.

### **136 CITY HOUSEHOLD, 153-157 GOSWELL ROAD, EC1 – APPLICATION FOR A PREMISES LICENCE REVIEW UNDER THE LICENSING ACT 2003 (ITEM B3)**

The licensing officer reported that no correspondence had been received from Mr Ornek since the application for the review had been made.

The trading standards officer informed the Sub-Committee that it had been confirmed that Mr Ornek did not manage City Household and the licence appeared to have been obtained fraudulently. The licensee had been asked to surrender the licence as the trading officer was aware that he had not been operating the business but this had not been done. In view of this evidence the trading standards officer requested that the licence be revoked.

The Sub-Committee noted that Mr Ornek was not in attendance at the meeting.

### **RESOLVED:**

That, having considered all the evidence and having considered the Licensing Act 2003, as amended, its regulations, the national guidance and the Council's Licensing Policy, the premises licence in respect of City Household Stationary, 153-157 Goswell Road, EC1V 7HD be revoked.

### **REASONS FOR DECISION**

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

The Sub-Committee noted that the submissions made by the trading standards and the police. Mr Ornek, the licensee, did not attend the Sub-Committee. No evidence was presented to contradict that provided by trading standards.

The evidence that was presented was to the effect that the original licence was obtained fraudulently. The Sub-Committee accordingly revoked the licence.

### **137 CITY SUPERMARKET, 190-194 GOSWELL ROAD, EC1 – APPLICATION FOR A PREMISES LICENCE REVIEW UNDER THE LICENSING ACT 2003 (ITEM B4)**

The trading standards officer reported that the designated premises supervisor had, in recent months, been engaging with trading standards officers and had made considerable improvements to the running of the business and had been speaking to the licensing officer regarding the running of the business. The after hours sales had been made by the father of the designated premises

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supervisor. Trading standards officers were now no longer seeking revocation of the licence but a short suspension.

Mr Clark, solicitor, representing the designated premises supervisor, Salman Capti jnr and his brother Umut Capti spoke in support of the business. He reported that the sons had taken over the management of the business and had the father had stopped working in the premises after 6pm. New CCTV had been installed, signs had been erected and there had been improved training. The after hours sales had all been made by the father, Salman Capti snr. It was not clear who had sold the alcohol to the underage volunteer although it was agreed that this had not been Salman Capti snr.

In response to questions it was noted that there had been no incidents since October although there had been no volunteer test purchases during that time. The premises had been visited by the licensing officer after hours allowed for the sale of alcohol and it had been noted that the shutters were closed over the alcohol. The trading standards officer had also seen CCTV footage from the 7 December which showed a refusal of an alcohol sale.

In summary, the trading standards officer considered that an additional condition restricting Salman Capti snr in the sale of alcohol would help the sons in the running of the business. Mr Clark reported to the Sub-Committee that the sons had taken measures to improve the business.

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

### **RESOLVED:**

That, having considered all the evidence and having considered the Licensing Act 2003, as amended, its regulations, the national guidance and the Council's Licensing Policy, the conditions of the premises licence in respect of City Supermarket, 190-194 Goswell Road, EC1 be amended as follows:-

- a) Mr Salman Capti Snr be not permitted to sell any alcohol on the premises at any time.
- b) Annex 2, condition 1 be replaced with  
CCTV shall be installed, operated and maintained in agreement with the Police. The system will enable frontal identification of every person entering the premises. The system shall record in real time and operate whilst the premises are open for licensable activities. The recording shall be kept available for a minimum of 31 days. Recordings shall be made available to an Authorised Officer or a Police officer (subject to the Data Protection Act 1998) within 24 hours of any request.
- c) Annex 2, conditions 8, 9 and 16 be removed.

### **REASONS FOR DECISION**

The Sub-Committee considered the submissions put forward by the responsible authorities the applicant and the applicant's legal representative.

In reaching their decision, the Sub-Committee took into particular consideration the Council's trading standard representative's submissions that the designated premises supervisor and his brothers who work in the business have, over the past few months made concerted efforts to comply with the licensing conditions and have worked closely with the trading standards representative in achieving a standard of operation that satisfied the trading standards departments requirements. At the hearing the trading standards representative did not ask for the revocation of the licence. The evidence presented by trading standards as well as that presented by the solicitor acting for the licensee emphasised that any transgression of the licensing conditions in the past have mainly been due to the interference of the running of the business by the licensee's father Mr Capti Snr. The licensee and the trading standards officer informed the

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Sub-Committee that if Mr Capti Snr's role in the business was limited to the effect that he was no longer permitted to sell alcohol that such a limitation would safeguard any possible breaches of the conditions in the future.

The Sub-Committee accordingly decided not to revoke the licence and instead, added a condition to the licence that Mr Capti Snr was not permitted to sell alcohol at the premises at any time. The Sub-Committee further took the opportunity to amend the existing conditions as per paragraph 2.4 (a) and (b) on page 122 of the agenda.

The meeting ended at 12:20 pm.

**CHAIR**