

London Borough of Islington

Licensing Sub-Committee 'D' – 9 July 2013

Minutes of the meeting of Licensing Sub-Committee 'D' held at the Town Hall, Upper Street, N1 2UD on 9 July 2013 at 6.30 pm

Present: Councillors: Raphael Andrews (Item B1, B3 and B4), Troy Gallagher, Tracy Ismail and Gary Poole (Item B2).

COUNCILLOR TROY GALLAGHER IN THE CHAIR

166 INTRODUCTIONS (Item A1)

Councillor Troy Gallagher 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 4 of the agenda.

167 APOLOGIES FOR ABSENCE (Item A2)

Councillor Wilson and Councillor Andrews for Item B2.

168 DECLARATION OF SUBSTITUTE MEMBERS (Item A3)

Councillor T Ismail substituted for Councillor Wilson and Councillor Poole substituted for Councillor Andrews for Item B2.

169 DECLARATIONS OF INTEREST (Item A4)

Councillor Andrews declared an interest in Item B2 – Unilever, 30 Aylesbury Street, EC1, as he had discussed the application with local residents. Councillor Andrews was not present for this item.

170 ORDER OF BUSINESS (Item A5)

The order of business would be B2, B1, B3 and B4.

171 MINUTES (Item A6)

That the minutes of the meetings held on 23 and 30 April 2013 be confirmed as an accurate record of proceedings and the Chair be authorised to sign them.

172 SYDNEY FOOD LIMITED, 49 CLERKENWELL GREEN, EC1 - APPLICATION FOR A NEW PREMISES LICENCE UNDER THE LICENSING ACT 2003 (Item B1)

The licensing officer reported on the papers circulated separately which indicated that the applicant had reduced the hours applied for to Sunday to Thursday 23:00 hours, Friday and Saturday until midnight. Off supplies had been removed and all regulated entertainment had been withdrawn. The papers would be interleaved with the agenda papers.

The police officer had withdrawn their objection with the reduced hours and the noise officer had withdrawn the objections as conditions had been agreed and regulated entertainment had been withdrawn.

Local residents, Victor Allan and Dan Neidle spoke against the application. It was reported that the location of the restaurant fell in an area which was most closely associated with residential. The largest restaurant locally had 40 covers. This restaurant was proposing 98 covers. The restaurant was in a cumulative impact area and the applicant would need to rebut the presumption. They noted that there was no booking and at the sister restaurant in Westbourne Grove queues built up outside the restaurant which created disturbance in a residential area. They also had concerns regarding the increased traffic flow and considered that the additional impact would change the area for local residents.

Gary Grant, Counsel, supported by David Lewis, the designated premises supervisor and Trevor Lewis, a licensing consultant and witness, spoke in support of the application. Mr Grant reported

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that fears of residents were based on speculation and not evidence. He did not consider that the premises were likely to add to the cumulative impact. The planning authority had already considered the character of the area and approved the application. In the amended form, the police had withdrawn their objection and the licensing authority would be agreeable to the revised hours if the premises did not add to the cumulative impact. The applicant would be agreeable to a condition that alcohol be served with a table meal.

As residents had not been supplied with all of the papers circulated by the applicant there was a ten minute adjournment for residents to consider the additional information.

Following the adjournment the applicant gave details regarding the sister restaurant in Westbourne Grove. It was reported that this was in a residential area with later hours than proposed for this premises. Clientele were generally local, there was a no booking policy and customers generally arrived on foot. The area was similar to the area proposed for this application.

It was noted that, in response to questions from residents, the licensing consultant witness accepted he had paid a snapshot visit to the Clerkenwell area. Residents informed the Sub-Committee that the witness was not looking at the correct entrance to the premises. Westbourne Grove was much busier than Aylesbury Street, which was one way and had no bus route.

Mr Grant informed the Sub-Committee that that there was a waiting area inside the restaurant for customers so there would be no queuing outside the premises and customers would wait inside for taxis. Mr Grant reported that the representations were similar in nature and many were under the impression that a 5am licence was being requested. This was not a restaurant where customers would come to get drunk. He outlined the management experience for the premises and advised that a condition could be added in order that there was no entry after 10pm. He reported that there was no evidence that the premises would add to the cumulative impact. The premises were not alcohol led and had reasonable hours. The premises did not have the same impact as off sales premises or vertical drinking establishments. He considered that if this application was not an exception, no application would be. Off sales had caused concern and so had been withdrawn.

Residents present at the meeting informed the Sub-Committee that they were aware that the 5am time was not correct. Comparisons could not be made with the Notting Hill restaurant and were not relevant. 12% alcohol sales were still greater than zero. Mr Grant reported that there was no music and a couple walking home could be walking home from any location. There were big advantages to living in a city location and there had to be tolerance. He considered that this operation would be well within the tolerance levels. The applicant was content to reduce the hours which were now less than all responsible authorities recommended. The premises could be called in for review if residents were disturbed.

In summary, Dan Neidle considered that he had not heard evidence that the premises would not have a cumulative impact. The police witness had visited the wrong place and viewed bus lanes that did not exist at the entrance to the premises. Mr Grant considered that this was the application that fell within the exception rule of the cumulative impact policy.

RESOLVED:

That the new premises licence in respect of Sydney food Limited, 49 Clerkenwell Green, EC1 be refused.

Councillor T Ismail wished it to be recorded that she voted against this decision.

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.

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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 are likely to add to the existing cumulative impact and will accordingly normally be refused unless an applicant can demonstrate why the operation of the premises involved would not impact adversely on the cumulative impact or otherwise impact adversely on the promotion of the licensing objectives.

The Sub-Committee noted the representations of the applicant that planning permission had been granted for a restaurant. However, this did not of itself determine the matter for the licensing Sub-Committee. The police and the noise team had withdrawn their representations but this did not remove the need for the Sub-Committee to take into account the representations of the residents in the light of the licensing objectives. A presentation had been made by the applicant describing the efficient operation of a sister restaurant in Westbourne Grove but this was an area with significantly different characteristics from the proposed location. The Sub-Committee observed that the licensing consultant was not familiar with the area and that it appeared that he was uncertain about the exact location of the premises in relation to Clerkenwell Green. This was an area of narrow streets with a relatively large restaurant with 98 covers proposed. There was a potential for public nuisance through people walking, talking and driving through the area even without recorded music being played at the premises. In the context of the cumulative impact policy, the question of efficient management of these premises was not relevant as it was likely that the proposed activity would add to the existing problems of cumulative impact outside the restaurant. Therefore, the applicant had failed to demonstrate that the grant of the premises licence would not give rise to a negative cumulative impact on the licensing objective of prevention of public nuisance and had not rebutted the presumption contained within licensing policy 002.

173 UNILEVER, 30 AYLESBURY STREET, EC1R 0ET – APPLICATION FOR A NEW PREMISES LICENCE UNDER THE LICENSING ACT 2003 (Item B2)

The applicant reported that the application for recorded music had been withdrawn and the hours applied for were reduced to 22:00 hours from 23:00 hours.

The licensing authority highlighted to the Sub-Committee that the premises were in a cumulative impact zone and asked the Sub-Committee to consider the representation detailed at page 204 of the agenda.

Local residents, Michael Bardell and Dan Neidle spoke against the application. The Sub-Committee noted that the premises were in an area of particular historic interest and in the heart of the conservation area. The cumulative impact policy created a presumption against granting a licence. The building was designed as an office and not an entertainment venue. They had concerns that the number of guests allowed were undefined and that the venue would bring traffic to the area.

Jack Spiegler, solicitor, supported by Colum Fullerton the designated premises supervisor, spoke in support of the application. He reported that Unilever had taken the lease of the building and Sodexo provided in-house catering for Unilever. As this included the supply of alcohol, Sodexo were seeking this application to ensure the licensing position was regularised. Guests would be invited only and not from the street. Of the 15 residential objections, 12 were identical and he considered that the scope of the application had been misunderstood. Unilever did not have access to terraces, noise conditions had been agreed, drinking was restricted outside and the number of people outside was to be limited to five persons. He reported that it was an office with modest hours and would not add a cumulative impact to the area. There had been no objections from the police. It was expected that approximately 50 or 60 people would be using the premises and may have a glass of wine at the workshops. He considered that this application would be an exception to the policy. The premises had capable management, the concerns regarding smoking had been met by condition and there would be a limited number of people leaving and this would not be late at night.

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In response to questions from the Sub-Committee it was noted that there was an agreed contract between Unilever and Sodexo. There were no cash bars. The applicant reported that a condition could be imposed to restrict external private bookings. The 8am start time for the supply of alcohol was for the occasion when a champagne breakfast was offered. The licence was for the supply of alcohol. The application for recorded music had been withdrawn so there would be no concerns regarding noise vibration. There were unlikely to be smokers outside the premises and the restriction to the numbers could be policed from reception. The applicant would not have agreed the smoking condition if they were not confident that this condition could be complied with. Members were concerned that clients who had left the premises but remained in the smoking area could lead to a breach of this condition. A temporary event notice would need to be applied for should music need to be provided at special events. Mr Fullerton could not say how many evenings would be used for events as this was a new venture. Some events would be organised by Unilever but Sodexo might also organise some. The hours had been reduced to address concerns of residents. The Sub-Committee noted that if Unilever were to supply alcohol there would be no requirement for the licence.

In summary, Mr Spiegler reported that the application for the licence was to regularise the situation and a licence would give more control for the responsible authorities. He considered that if this application was not an exception to the cumulative impact he would not know a case that was.

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

RESOLVED:

That the new premises licence in respect of Unilever, 30 Aylesbury Street, EC1R 0ET be refused.

Councillor T Ismail wished it to be recorded that she voted against this decision.

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 are likely to add to the existing cumulative impact and will accordingly normally be refused unless an applicant can demonstrate in the operating schedule why the operation of the premises involved would not impact adversely on the cumulative impact or otherwise impact adversely on the promotion of the licensing objectives.

The Sub-Committee noted that what was being proposed was effectively a commercial venture. This was a new operation in a new building and the applicant was not clear exactly how it was going to be used. The proposal would leave the potential for the applicant to maximise usage on a regular basis. The applicant had failed to demonstrate how it would not impact adversely on the cumulative effect of premises in the area in particular, in relation to public nuisance. It was noted that there was no dispersal policy proposed should large numbers of people attend and also took into account that, although a condition had been suggested to limit the number of smokers outside to five, it was not satisfied that this could be effectively enforced. There was already pressure on the area resulting from the cumulative effect of other licensed premises as attested by the residents. It could not therefore be regarded as an exceptional case within the licensing policy.

The applicant had therefore failed to demonstrate that the operation of the premises would not impact adversely on the cumulative impact or otherwise impact adversely on the promotion of the licensing objective of the prevention of public nuisance.

174 **MCDONALDS RESTAURANT, 251 UPPER STREET, N1 1RU - APPLICATION FOR A PREMISES LICENCE VARIATION UNDER THE LICENSING ACT 2003 (Item B3)**

The licensing officer reported that the premises already had a licence until 2am and this application was to extend hours until 5am. The granting would effectively give a 24 hour licence for late night refreshment.

The police officer reported that there were three recent assaults in the premises, one on a member of staff, one by a member of staff and one grievous bodily harm incident where the suspect had been charged. The third incident started with a fight in the premises and moved out into the street. This was indicative of the area and the reason why they had objected to the application. Police resources were already stretched and incidents such as these added a strain of limited resources.

The noise officer reported that the noise conditions had been agreed.

The licensing authority reported that this premises was in a cumulative area and was in a particularly saturated part of the area. There was already littering and anti-social behaviour in the alleyway next to the premises and it was recommended that this application be refused.

Ward councillor Gary Poole, voiced concern regarding the application in a cumulative impact zone where there was already serious crime. There were a number of residents who had concerns regarding rowdiness, littering and loitering in the area of Swan Yard and the application did not appear to have been made by a responsible licensee.

David Graham, solicitor, supported by Amir Atefi and Naveen Muthineni, the Area and Branch managers informed the Sub-Committee that this was not a premises where alcohol was sold or allowed and the drunken behaviour was not attributable to McDonalds. The franchisee was only aware of one of the police incidents which was an isolated incident. The premises provided toilets on the premises for the public and provided a refuge for loiterers. McDonalds had regular litter rounds which were shown to the Sub-Committee. The premises had no music between the hours of 2 am and 5am and were not causing additional littering or anti-social behaviour but provided somewhere for customers to enjoy food indoors.

Members of the Sub-Committee were concerned that management had been unaware of the incidents despite CCTV being on the premises and they also believed that all incidents had started outside. Members were concerned that whilst the restaurant did not create anti-social behaviour by selling alcohol, a premises that was open late would encourage anti-social behaviour. The Sub-Committee noted that a nearby 24 hour premises had its licence revoked. A recent application from Subway had been refused.

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

RESOLVED:

That the premises variation in respect of McDonalds, 251 Upper Street, N1 1RU 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 Angel and Upper Street cumulative impact area. Licensing policy 002 creates a rebuttable presumption that applications for new premises licences are likely to add to the existing cumulative impact of a significant number of licensed premises concentrated in the area and would accordingly normally be refused unless an applicant could demonstrate why the operation of the premises involved would not impact adversely on the cumulative impact or otherwise impact adversely on the promotion of the licensing objectives.

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The Sub-Committee gave weight to the submissions made by the applicant's representative and specifically in relation to patrols in the area. The Sub-Committee considered that the supply of food and drink did not inherently cause crime and disorder but that the presence of these premises operating 24 hours encouraged people to remain in an area which was already congested. The Sub-Committee accepted the evidence of the police, that there had been three recent serious incidents which were closely connected with the premises. One, involved an alleged assault on a member of staff, one, involved an alleged assault by a member of staff and one, incident which had started in the premises and had spilled out into the street.

Therefore the Sub-Committee considered that there was evidence from which it could conclude that if it granted the variation, there would be an adverse impact on the promotion of the licensing objective of preventing crime and disorder and therefore the applicant had not discharged the onus of rebutting the presumption contained within licensing policy 002.

The application was accordingly refused.

175 COFFEE TO GO, 20 CALEDONIAN ROAD, N1 1BB - APPLICATION FOR A NEW PREMISES LICENCE VARIATION UNDER THE LICENSING ACT 2003 (ITEM B4)

RESOLVED:

That this item be deferred in order for the planning situation to be considered.

The meeting ended at 10:10 pm.

CHAIR