

## London Borough of Islington

### Licensing Sub-Committee 'D' – 14 November 2013

Minutes of the meeting of Licensing Sub-Committee 'D' held at the Town Hall, Upper Street, N1 2UD on 14 November 2013 at 6.30 pm

Present: Councillors: Raphael Andrews, Troy Gallagher and David Wilson.

#### COUNCILLOR TROY GALLAGHER IN THE CHAIR

**187 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 pages 4 and 5 of the agenda.

**188 APOLOGIES FOR ABSENCE (Item A2)**

None.

**189 DECLARATION OF SUBSTITUTE MEMBERS (Item A3)**

None.

**190 DECLARATIONS OF INTEREST (Item A4)**

None.

**191 ORDER OF BUSINESS (Item A5)**

The order of business would be as the agenda.

**192 MINUTES (Item A6)**

That the minutes of the meetings held on 10 September 2013 be confirmed as an accurate record of proceedings and the Chair be authorised to sign them.

**193 THE EARL OF ESSEX, 25 DANBURY STREET, N1 8LE - APPLICATION FOR A PREMISES LICENCE REVIEW UNDER THE LICENSING ACT 2003 (Item B1)**

In response to questions from the noise officer the applicant confirmed that patrons would remain within the private frontage area. The noise officer also informed the Sub-Committee that lights should remain dimmed and not be immediately brought up to their brightest setting.

Tania Boler, a local resident and applicant for the review spoke in support of the review. She informed the Sub-Committee that she had lived in the area for four years and the neighbourhood had improved in that time. The Earl of Essex had also improved and had been taken over by a new management team in the summer of 2012. There were no limits on the rear garden and in the summer the noise in the garden had increased. There were two issues of concern. The noise in the rear garden and also the late leaving of customers from the premises. There were no capacity limits in the garden and patrons were outside until after 10pm. She was unable to use her own garden as the noise from the patrons was so loud. She reported that the premises had been closing at midnight since the review had been brought, however patrons stayed on the corner of the premises and the whole night could be disrupted. She considered that a closing time of 23:00 hours would be expected in a residential area. She had been intimidated by groups of customers outside which prevented her from talking to management. There were a large number of letters in support of the review.

Sarah LeFevre, solicitor supported by Anselm Chatwin and Bryn Fowler, the designated premises supervisor since June 2012 spoke against the review. In response to the points made by the noise officer it was reported that there was disagreement with the numbers of smokers that should be outside the front of the premises and it was agreed that lights should remain dimmed if that was considered good practice.

## Licensing Sub-Committee 'D' – 14 November 2013

Ms LeFavre reported that these were responsible licensees that had made a £180000 investment so would be at the premises for the long term. They had extensive experience and the pub was run successfully. It was a smart and welcoming pub and beer was not priced at irresponsible drinking levels. Management sought to engage residents from the very start. It was noted that management were on the premises 99% of the time. In July 2013, Time Out had reported the Earl of Essex in the top 5 of beer gardens which coincided with the hot weather. The Earl of Essex was faced with an unprecedented high level of business and after representations were made and speaking to licensing officers, voluntarily pulled back hours and cleared the garden area at 22:00 hours. Patrons would not be moved outside to the front as management had air conditioning installed and it was pleasant to be inside the premises. Planting had been undertaken to prevent the noise at the rear. She considered that 20 customers should be allowed to use the smoking area. Ms LeFavre asked the Sub-Committee to bear in mind that there were only four representations relevant to this premises which was not considered a large number in a densely residential area. She asked that the capacity of the garden not be restricted as 70 persons could comfortably sit in the garden. Capacity should only be limited at night. Hours could be restricted if considered necessary rather than capacity.

In response to questions it was noted that the premises did not use their licence up to 01:00 hours. The licensee generally stopped trading in order that they could have a softer dispersal. Times were varied throughout the week. The Sub-Committee noted that the licensee had a meeting with licensing officers at the end of July and concerns were responded to. Staff ensured that voluntary measures were put in place. The evidence in the review dated from the July period which indicated that the licensees were responsible and had looked at the issue immediately.

Ms Boler reported that when she had rung the premises the telephone had just rung and had not been answered. She reported that there were many more neighbours who would have written in to support the review but there had been confusion over the deadline date. She considered that the noise disturbance had reduced as the months had got colder. In response the licensee reported that when the premises was busy it may not be possible to answer the phone immediately but if a message was left they would ring back. Emails would also be responded to. A personal telephone number had been left with residents but no callers had come through on that phone.

In response to further questions from the Sub-Committee, Ms LeFevre considered that 70 people was not a maximum capacity. She considered that the garden could hold 130 patrons. Measures had been taken to ensure that noise did not reverberate at the rear of the premises which included thick planting. This was both attractive and noise reducing. The noise produced by an additional 30 people was only 3dba. Regarding concerns about patrons moving to the premises from another after 11pm, Ms LeFevre offered a no new entry condition.

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

### **RESOLVED:**

a) That the premises licence in respect of The Earl of Essex, 25 Danbury Street, N1 8LE be modified to restrict the hours for the sale of alcohol and recorded music to 11:00 to midnight.

b) That the following conditions be added to the licence:-

The rear garden shall be subjected to the following controls:-

- No new drinks and food to be taken outside after 21:00 hours.
- The garden shall be closed and cleared by 22:00.
- Numbers of customers permitted in the rear garden at any one time shall be limited to a maximum of **70** persons.

The front outside area shall be subject to the following controls:

- No drinks shall be permitted after 22:00
- The number of smokers outside shall be limited to **10** persons.
- All customers outside on the frontage shall be restricted to the private frontage of the premises.
- The management policy and procedures are to be added to the licence with the amendment regarding the soft dispersal policy, that the lights remain dimmed.

### **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 this was an application brought by a resident for the review of a premises licence under S 51 of the Licensing Act 2003. The grounds of the review were related to the licensing objective prevention of public nuisance.

The Licensing Sub-Committee took into consideration the representations made by the applicant and the allegation that, as the success of the business had increased over the past year, the associated noise disturbance also increased and had become a problem for some neighbours in the area. The submission by the applicant was that the business had unusually late opening hours with no restriction on capacity compared with other pubs in the area and that the patrons leaving the premises late at night, at approx. 12:30 am, caused disturbance to neighbours and their ability to sleep. The Sub-Committee also took into consideration the fact that the beer garden at the rear of the premises did not have a capacity limit and that it could be open until 10:30 pm. The Sub-Committee also noted the submissions made by the legal representative of the licensee and the fact that the licensee was amenable to having a limit placed on the number of patrons in the rear garden and to a reduction in trading hours so as to accommodate concerns of neighbours. The Sub-Committee also took into consideration the representations made by the noise team and specifically their concerns about the number of people utilising the rear garden.

The Sub-Committee decided to impose further conditions on the licence which in its view would strike the correct balance in the interests of the licensee, the licensing objectives and the concerns of the neighbouring residents.

### **194 TAP ROOM, 163 UPPER STREET, N1 1RE – APPLICATION FOR A PREMISES LICENCE VARIATION UNDER THE LICENSING ACT 2003 (Item B2)**

The licensing officer reported that the application had been amended to extend the terminal hour for the sale of alcohol to midnight on Thursdays to Saturdays only.

The police authority confirmed that the applicant had not yet agreed to their proposed conditions.

The licensing authority reported that the planning consent stipulated that use must cease at midnight. There had been two specific complaints made to the team during the summer prior to the submission of the application and there were concerns regarding the management arrangements.

The applicant reported that residents concerns had been taken on board and hours reduced. Late

## Licensing Sub-Committee 'D' – 14 November 2013

night refreshment was no longer required. TENs had been used previously. A complaint had been made regarding the rear garden but on the date mentioned the rear garden was not in use. The applicant was not trying to attract large numbers of customers. The premises were alcohol led but did not hold irresponsible drink promotions and sold fine cask ales. A TEN was obtained for a beer festival. It was considered that the premises added a positive impact to the area. They reported that they had good training measures in place, they offered a dedicated taxi service, they would manage the number of smokers, they had been trialling a closure of the rear garden at 22:00 hours, there was a small area outside for smokers and no additional lighting was provided to ensure patrons were not encouraged to remain outside, 70% of customers were local residents. The applicant was the Chair of the local pubwatch. He managed four premises, employing 50 people and hours were kept within bus and train times. This was not a party bar but sold quality beers. Complaints had been about the rear garden which they considered could be resolved by closing the garden earlier. He was not aware of complaints about noise escape from the building.

In response to concerns regarding the current issues it was reported that the licensee managed Slim Jims in Camden until 3am so was aware of how to run a business well. He reported that he could close the rear garden earlier as it was not their main source of income.

In response to questions, the noise officer reported that when she visited the bar it had been stripped back and was bare and trendy. The disadvantage to this was that sound reverberated around, music was high, ears were affected and when patrons stepped outside for a quiet conversation they raised their voices as they could not hear. She would be pleased to see the rear garden closed and acoustic panels used in the premises to deaden the sound.

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

### **RESOLVED:**

a) That the premises licence variation in respect of the Tap Room, 163 Upper Street, N1 1RE be refused.

### **REASONS FOR DECISION**

This was an application for a variation of a premises licence under the licensing Act 2003. The amended variation sought was to extend the terminal hour for the sale of alcohol on and off supplies from 23:00 hours until 00:00 Thursday to Saturday.

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 that the premises was situated in a cumulative impact area and that licensing policy 002 was applicable. 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 or variations that are likely to add to the existing cumulative impact will normally be refused, unless an applicant can demonstrate why the operation of the premises involved will not add to the cumulative impact or otherwise impact adversely on the promotion of the licensing objectives.

The Sub-Committee heard evidence of the applicant, the licensing authority and the police authority. The police and the licensing authority objected to the variation of the licence on the grounds that it would impact adversely on the licensing objectives particularly noise and nuisance from customers departing from the premises and the increase in the availability of alcohol in the alcohol related crime and disorder area as well as the other objections that had been received from other members of the public. It was noted that residents in the area had already experienced late night anti-social behaviour and that two specific incidents had been reported to the licensing authority during the summer prior to the submission of this application.

## Licensing Sub-Committee 'D' – 14 November 2013

The Sub-Committee was not satisfied that the additional hour of trading on Thurs to Saturdays would not add to the cumulative impact or otherwise impact adversely of the promotion of the licensing objectives.

The Sub-Committee concluded that the increased hours would add to the availability of alcohol in an area where there is already a large number of licensed premises with associated anti-social and criminal behaviour and therefore have a cumulative impact on the licensing objectives. In accordance with licensing policy 002, the Sub-Committee was satisfied that the grant of the application would undermine the licensing objectives. 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.

### **195 THINK, EAT, DRINK, 47-51 CALEDONIAN ROAD, N1 9BU - APPLICATION FOR A NEW PREMISES LICENCE UNDER THE LICENSING ACT 2003 (ITEM B3)**

The licensing authority reported that their representation was on pages 127 and 128 of the report. She reported that, should the Sub-Committee be minded to grant the application, there were suggested conditions in her representation.

Steve Burnett, solicitor, supported by the applicant Jamie Granger-Smith and John Todd, business partner, spoke in support of the application. He reported on the 16 letters of support. He informed the Sub-Committee that the police and the noise team had no objections and they were the experts on crime and disorder and public nuisance. Mr Burnett considered that the new restaurant would prevent crime and disorder and public nuisance. The premises were currently closed, it was very dark, there was a hostel opposite and it was believed that this was the reason why the police had not objected to the application. He considered that the premises would not add to the cumulative impact and they requested hours until midnight to allow for a good chance of success. He outlined the licensing policies that were addressed in the operating schedule and it was noted that the licensee was a member of pubwatch. He outlined the work experience of the applicant and reported that the concept was for a restaurant with seasonal food at not too high prices.

In response to questions it was noted that they wished to be open for breakfast as they were near to transport facilities and they considered there was a lack of quality in the area. The supply of alcohol off sales was limited to wine and would only be from a bottle that was already opened or with a take away. Alcohol would not be sold to customers walking in from the street but would be from a pre-ordered take away meal.

In summary, the licensing authority reported that the use of the outside area should be restricted to 22:00 hours. The applicant considered that the proposed conditions would uphold the licensing objectives.

### **RESOLVED:**

a) That the new premises licence in respect of Think, Eat and Drink, 47-51 Caledonian Road, N1 9BU be granted to:-

- i) supply alcohol for consumption on and off the premises 10:00 to 23:00 Monday to Sunday.
- ii) To allow the provision of late night refreshment, Monday to Sunday from 23:00 until 00:00.
- iii) For the opening hours of the premises to be 07:00 to 00:00 Monday to Sunday.

b) Conditions as tabled at the meeting and interleaved with the agenda papers shall be applied to the licence subject to an amendment to the condition regarding deliveries to read:-

- Deliveries will not take place between 18:00 hours and 08:00 hours Monday to Saturday and not before 10:00 hours on Sundays.

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

The Sub-Committee noted there were no objections from the police and there were no planning issues. The sale of alcohol off the premises would be limited to diners and would consist only of wine. There were 16 letters of support for the application and conditions had been agreed with the noise team. The Sub-Committee noted five objections had been received and the submissions made by the licensing authority, specifically the suggestion made that if the licensing Sub-Committee were minded to grant the application that the sale of alcohol and late night refreshment should cease at 11pm Sundays to Thursdays and that a condition should be inserted into the licence that tables and chairs should be rendered unusable by 10pm.

The Sub-Committee heard evidence from the applicant's representative on the nature of the business and the products that would be available for sale at the premises.

The Sub-Committee was of the opinion that the granting of the new licence with the attached conditions would not undermine the licensing objectives.

The Sub-Committee concluded that the reduced hours would not adversely contribute to the availability of alcohol in an area and thus negatively impact on the licensing objectives.

**196 SAINSBURYS, 266 PENTONVILLE ROAD, N1 9LE - APPLICATION FOR A NEW PREMISES LICENCE UNDER THE LICENSING ACT 2003 (ITEM B4)**

The licensing officer reported that revised conditions had been circulated to members. These would be interleaved with the agenda papers.

The noise officer reported that noise conditions had been agreed but the representation could not be withdrawn as this premises was in a cumulative impact area. She reported that the calls made regarding anti-social behaviour in this area were double the Islington average. There were particular problems regarding pre-loading and street drinking in the area. Patrons of clubs did not drink in the clubs but bought cheaply in off-licences beforehand. There was an example of customers stashing booze to drink when they left clubs.

The police authority also raised an objection on the grounds of cumulative impact.

The applicant raised an objection that the noise team and the police were supplying new evidence. In response the police officer reported that he was expanding on the point of crime and disorder. There has been 16 assaults on police in the area and these generally related to street drinking.

The licensing authority reported that discussions had been held with the applicant and robust conditions were proposed for the premises however she asked the Sub-Committee to consider whether the granting of the licence would add to the cumulative impact in the area.

Robert Botkai, supported by Joanne Surguy and Rebecca Newbie from Sainsbury's spoke in support of the application. He reported that he was disappointed that he had not heard additional evidence from the noise team or the police prior to the meeting.

## Licensing Sub-Committee 'D' – 14 November 2013

He reported that the police had no issues regarding Sainsbury's and there was a robust set of conditions that had been circulated.

He highlighted for members licensing policy 8, which created a rebuttable presumption that applications for new premises that were likely to add to the cumulative would normally be refused unless an applicant could demonstrate why the operation of the premises involved would not add to the cumulative impact. He reported that the policy was not absolute and members could depart from the policy.

The Chair of the Sub-Committee informed the applicant that councillors were aware of the policy and the legal adviser informed the applicant that, in the time available, he would be better served highlighting the merits of the application rather than taking members through their own policy.

The applicant reported that, with the number of conditions on the licence relating to street drinking he would not be adding to the problem of street drinking. These included conditions regarding no sales of high strength alcohol and no sale of single cans. He informed the Sub-Committee that in Leicester, Sainsbury's had worked with the police when they had asked them not to sell high strength beers and street drinking had consequently dispersed. Sainsbury's had high management standards and would not wish to add to the cumulative impact. This would be the first premises to work to these conditions and if all premises worked to these conditions there would not be a street drinking problem. If this licence was granted with the conditions he considered it would give officers the opportunity to talk to other premises regarding the strength of beers they sold. Sainsbury's had amended the hours requested in response to pre-loading from 08:00 to 23:00 to 09:00 to 21:00 hours. This premises was not a large Sainsbury's, however, alcohol was an integral part of store. There had only been one incidence of a street drinker being served in their stores. This application was not unprecedented as a licence had been granted for a similar operation in City Road for the hours 09:00 to 21:00 hours. He considered that if these conditions were applied to all premises this would make huge strides on the cumulative impact policy.

In response to questions from the Sub-Committee it was reported that Sainsbury's could help other stores to comply with these conditions. Sainsbury's would be happy to be included in a street drinking project in another part of Islington.

In summary the police reported that with the increasing number of licences there was more choice available, more shops meant that there was more alcohol. This was a real problem in this area and meant that even Starbucks were looking to introduce security guards in their premises. He reported that Sainsbury's had mentioned other boroughs/cities but he had not seen Sainsbury's represented at the Angel pubwatch.

The licensing authority reported that it was for the Sub-Committee to consider whether or not the granting of this application would promote the licensing objectives.

The applicant reported that the amount of alcohol sold would not increase but would be about the standard of choice available and how standards should be raised. He reported that he had mentioned Leicester as they had done work to help reduce street drinking. He informed the Sub-Committee that the licence could be granted as this premises was not alcohol led and was a small store. Sainsbury's had tried very hard to meet the demands of the policy and it had been demonstrated that the policy was working as there were 24 conditions on the licence to meet the requirements. The applicant urged the Sub-Committee to grant the licence. If no licences were granted it gave a false security to those already trading. He was satisfied that the cumulative impact could be reduced with the conditions. The Licensing Act gave the power of review if necessary and the police had suggested conditions regarding security.

### **RESOLVED:**

That the premises licence for Sainsbury's, 266 Pentonville Road, N1 9LE 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 the fact that the application was for a new premises licence for the supply and consumption of alcohol off the premises from 09:00 am to 21:00 hours Monday to Sunday. The address of the premises is in the Kings Cross cumulative impact area. The Sub-Committee took into consideration licensing policy which creates a rebuttable presumption that application for new premises that are likely to add to the cumulative will normally be refused unless an applicant can demonstrate why the operation of the premises involved will not add to the cumulative impact or otherwise impact adversely on the promotion of the licensing objectives. The Sub-Committee noted the objection from pubwatch and the police as well as those from the Licensing Authority. It also took into consideration the representations made by the applicant representative and in particular the submissions as to why the applicant felt if it was granted it would not impact negatively on the licensing objectives.

The Sub-Committee noted that the area has a high incidence of anti-social behaviour and violent crime. The Sub-Committee heard that this was often fuelled by alcohol and the Sub-Committee was of the opinion that a further licence for the sale of off premises alcohol in the area would add to the existing cumulative impact and would impact negatively on the licensing objectives of public nuisance and crime and disorder.

The meeting ended at 9.20 pm

**CHAIR**