

Licensing Sub Committee A - 26 August 2014

Minutes of the meeting of the Licensing Sub Committee A held at Committee Room 4, Town Hall, Upper Street, N1 2UD on 26 August 2014 at 6.30 pm.

Present: **Councillors:** Gary Poole, Marian Spall and Angela Picknell

**Councillor Gary Poole
in the Chair**

10 ELECTION OF CHAIR

RESOLVED:-

That Councillor Gary Poole be elected as Chair for the meeting.

11 INTRODUCTIONS AND PROCEDURE (Item 1)

Councillor Poole welcomed everyone to the meeting and asked members and officers to introduce themselves.

12 APOLOGIES FOR ABSENCE (Item 2)

Apologies were received from Councillors Raphael Andrews, Nick Wayne and Flora Williamson.

13 DECLARATIONS OF SUBSTITUTE MEMBERS (Item 3)

Councillor Poole substituted for Councillor Andrews, Councillor Spall substituted for Councillor Wayne and Councillor Picknell substituted for Councillor Williamson.

14 DECLARATIONS OF INTEREST (Item 4)

None.

15 ORDER OF BUSINESS (Item 5)

The order of business would be as the agenda.

16 MENELIK, 277 CALEDONIAN ROAD, N1 1EF (Item 1)

The licensing officer advised that two documents from the licensee's representative had been circulated to members following agenda despatch. These would be interleaved with the agenda papers. It was clarified that the meeting detailed in paragraph 3.8 of the papers was held in 2009 and not 2008.

Rory Clarke, counsel for the police, spoke in support of the review. He raised concerns about the behaviour of customers as they were leaving the premises. He stated that management was incapable of managing the exit of customers in an orderly manner. The review related to the prevention of crime and disorder. There had been a number of incidents, one on the 27 October 2013 for which CCTV was available, which particularly triggered the review. This incident arose three weeks after an officer panel was held to discuss concerns. A proposed solution was to reduce the licensable hours by minor variation. A variation was submitted by the licensee as requested by the police but was later withdrawn. On the 31 May 2014, there were found to be no door supervisors present. He stated that these incidents showed contempt for compliance. Mr Arbi was given a PACE interview in February 2014. Further anti-social behaviour was witnessed in June 2014, customers were leaving drunk and exiting the venue with glasses, whilst plastics were

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conditioned, which indicated a failure of management at a time when the best behaviour was expected as there was a review outstanding. It was therefore considered appropriate to ask for revocation.

The noise officer referred to an incident in July 2013 where a man leaving the premises was followed out by other men and savagely beaten. The licensee had insisted it was nothing to do with his premises but the noise officer reported that this was not the case.

In response to questions the noise officer reported that, when measuring sound levels in January 2014, they were found to be much higher than the maximum permitted. The noise officer had been assured by Mr Arbi that the sound levels had been set to the right level but by going to the master switch the noise officer had found that they could be raised beyond the permitted levels. Conditions 11-16 on the licence all related to sound limitation and these were all found to be breached. It was stated that conditions added to the licence in 2008 were still not being complied with.

The licensing authority supported the review application and agreed with the revocation due to the history of non-compliance. The authority had tried every means to help and had made numerous visits to the premises and held licensing panels and reviews. Mr Arbi was advised to make a minor variation but this had been withdrawn.

In response to questions it was noted that there had been no follow up action by the police following an incident on the 24 June 2012.

The licensee's representative, Mr Aylott, reported that the licensee withdrew the variation on legal advice as no evidence regarding the incidents had been provided by the police. He reported that the breach of condition on the 31 May, where no doormen were present, had not undermined the licensing objectives. The last recorded crime detailed on the police website was in August 2013. The previous crime was 15 months before. Mr Aylott considered this to be low level anti-social behaviour. He reported that Mr Arbi had put in a variation on the 4 April, the police had been asked for evidence of incidents on the 17 April and on the 24 April the police called for a review. On the 11 July the police were asked for CRIS/CAD reports again but these had still not been forthcoming. Mr Aylott referred to the police statement dated 27 February 2014 and stated that this was a brief fight with very few people. He stated that the police wanted the hours reduced but following the 22 May, after Mr Arbi spoke to another police officer and not PC Hoppe, revocation was then sought. Mr Arbi had informed Mr Aylott that he had asked for Peter Connisbee as he had met him on site and he had asked him to ring him. He stated that Mr Arbi had sought help. The police had requested a reduction in hours to midnight but all but one of the crimes occurred after 02:30. There had been six alleged instances in 2013 which Mr Aylott would class as low level anti-social behaviour. The police recommendations would kill the business. Mr Arbi was willing to co-operate. He suggested that the review had been triggered because Mr Arbi had gone behind PC Hoppe's back by calling PC Connisbee and had withdrawn the variation. Mr Aylott asked the Sub-Committee to consider paragraphs 11.7 and 11.20 of the guidance. A decision must be appropriate and proportionate. At the most, the Sub-Committee should impose conditions as envisaged by the minor variation application. The Sub-Committee could remove the designated premises supervisor. Referring to the incident on the 31 May Mr Aylott considered that the authorities should prosecute, rather than use the review process.

In response to questions, it was noted that conditions were imposed following the first review. A licensing panel was held on the 1 October triggered by a fight outside the premises which had been witnessed by noise officers. Conditions were placed on the licence to ensure that the licensable objectives were upheld. Breaches of conditions if proven, would be a criminal offence. The Sub-Committee considered that if there were

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alleged breaches of condition it may not have confidence in the management of the premises.

Mr Aylott asked where the evidence was that the crime and disorder objective had been undermined due to the breach of conditions. The police and the responsible authorities would need to provide evidence of breaches.

The Chair of the Sub-Committee stated that the licensee had been to a Sub-Committee review on two occasions and had attended two officer panels. When questioned about what he could do to give the Sub-Committee confidence, Mr Arbi said he had dismissed the previous team of door supervisors and replaced them with a new team. Mr Arbi reported that he had new door supervisors. The Chair raised concerns that this had not happened prior to the last four months.

In summary, Rory Clarke reported that nothing had been presented at the meeting to address the problems. In the grid circulated by the licensee's representative, Mr Arbi stated that he knew nothing about the incidents. He did not consider that the incidents were low level crime. Although incidents were not reflected in police statistics, this did not indicate that they had not occurred. Door staff were a condition of the licence due to concerns about dispersal. If door supervisors were not present, this issue was not being addressed. He referred the Sub-Committee to paragraph 11.23 of the home office guidance.

The noise officer reported that she had witnessed crime and contraventions at the venue. She stated that Mr Arbi had blamed Marathon for the incidents and was always very defensive.

Mr Aylott reported that where Mr Arbi would have been inside the premises or away from the premises and may have not been made aware of incidents. The crime statistics did paint a picture but CAD reports had not been supplied. A new door team had been employed. This was only one of two Ethiopian restaurants in the area. The balance of proportionality was key. The Sub-Committee should consider the facts before them. He considered that hours did not need to be reduced as there had been no problems and there had been no prosecutions, even in relation to the incident on the 31 May 2014.

RESOLVED

That the premises licence for Menelik, 277 Caledonian Road, N1 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.

Under Licensing Policy 30 the licensing authority will apply the full range of powers available to it when a review of the premises licence becomes necessary.

The Sub-Committee took into consideration the fact that on the 8 October 2008 and the 8 April 2009 there had been reviews of the premises licence and additional conditions had been imposed. On the 11 September 2009, the licensee accepted a caution in relation to breaches of the licensing conditions. The licensee attended a licensing panel on 26 November 2010 and agreed to exercise more control over his customers. He attended officer licensing panel again on the 1 October 2013 after fighting had been witnessed outside the premises by council officers from the noise team. He had attended PACE interviews. On the 31 May 2014 the police issued a closure notice in relation to breaches of conditions relating to SIA door supervisors.

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Despite these warnings and guidance further incidents of assaults and fighting outside the premises by customers and breaches of conditions continued.

Home office guidance 11.18 states that “ where a responsible authority such as the police have already issued warnings requiring improvement- that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate”.

The licensee was advised by the police to submit a minor variation application to remove regulated entertainment, reduce the sale of alcohol and late night refreshment until midnight and add conditions consistent with a restaurant. He submitted an application but withdrew it after receiving legal advice. The police stated that the withdrawal of the application indicated his unwillingness to accept guidance from responsible authorities.

Home office guidance 11.10 states that a failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review.

Home office guidance 2.1 states that licensing authorities should look to the police as the main source of advice on crime and disorder. The Sub-Committee had no concerns about the integrity of the police evidence or evidence of other council officers although the evidence was challenged by the licensee’s representative.

The licensee admitted that there were incidents of ‘low level’ crime which included assaults immediately in the vicinity of the premises involving drunken customers from the bar. His legal representative argued that despite the breach of condition there was no impact on the licensing conditions because no harm had resulted. His consistent response was that he was not there, he was unaware of what was going on and it was nothing to do with him. The statistic produced of the police website for the licensee did not, in the opinion of the Sub-Committee, give the full picture as many of the incidents described by witnesses would not have been reported to the police by the victims.

The licensee admitted that there were breaches of condition on the 31 May 2014 when the police served a closure notice, in that no door supervisors were present when two were required and the door supervisor register was not up to date. His legal representative argued that despite the breach of condition there was no impact on the licensing objectives. However the Sub-Committee could not accept this argument. The conditions on the licence were imposed because they were considered necessary for the promotion of the licensing objectives and the licensee demonstrated a lack of commitment to legal requirements.

When questioned about what steps he could take, the licensee said that he had dismissed existing door staff and replaced them with new SIA door staff. However, the Sub-Committee did not consider that this addressed the basic problem of poor management of staff by the licensee. For example, he had allowed door staff to leave early on the 31 May 2014 so that no doormen were on duty.

Licensing policy 9 states that the licensing authority seeks to encourage the highest standards of management in licensed premises. Licensing policy 10 states, when assessing the licensee’s ability to demonstrate a commitment to high standards of management, the licensing authority will take into account whether the licensee has implemented advice given by the responsible authorities and is able to demonstrate a track record with compliance with legal requirements.

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Home office guidance 11.20 states that in deciding which power to invoke it is expected that the licensing authority should so far as possible, seek to establish the concerns that the representations identify. A lack of confidence in the licensee's ability to manage the premises was at the heart of the concerns.

The licensee seemed to be incapable of managing the premises effectively. He had ignored warnings and advice over a long period of time and there were problems with fighting and drunkenness and failure to comply with conditions.

The Sub-Committee noted that the business would not be viable if a condition imposing the reduction of hours and licensable activities envisaged in the minor variation application was imposed and, in any case, there was a history of failure to comply with conditions. The Sub-Committee decided that revocation of the licence was appropriate and proportionate to the promotion of licensing objectives of public safety and crime and disorder which were being undermined by the failure of management.

The meeting ended at 8.00 pm

CHAIR