

**Licensing Sub Committee C - 18 November 2015**

Minutes of the meeting of the Licensing Sub Committee C held at Committee Room 4, Town Hall, Upper Street, N1 2UD on 18 November 2015 at 6.30 pm.

**Present:**           **Councillors:**           Gary Doolan, Michelline Ngongo and Gary Poole,

**Councillor Gary Poole in the Chair**

**84           INTRODUCTIONS AND PROCEDURE (Item A1)**

Councillor Poole welcomed everyone to the meeting and informed those present that the procedure was as detailed in the agenda papers.

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

None.

**86           DECLARATIONS OF SUBSTITUTE MEMBERS (Item A3)**

None.

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

None.

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

The order of business was as the agenda.

**89           MINUTES OF PREVIOUS MEETING (Item A6)**

That the minutes of the meeting held on the 25 August 2015 be confirmed as a correct record of proceedings and the Chair be authorised to sign them.

**90           ROMA NEWS, FOOD AND WINE, 331 CALEDONIAN ROAD, N1 1DW - NEW APPLICATION (Item B1)**

The Sub-Committee noted that Fisha Behani was present at the meeting. He would be running the business with his brother Daniel Behani, the applicant who was not present.

The licensing officer reported that additional conditions and other papers had been received from the applicant's representative which had been circulated. These had been emailed yesterday evening. These would be interleaved with the agenda papers. It was reported that the applicant had attended a training course and it had been reported that he had contributed and seemed attentive.

The police reported that this premises was situated beneath residential properties. There were already six off-licences within a 200m radius of the venue so the granting of the licence would add to the cumulative impact. The officer did not consider that the applicant was ready to manage this type of venue. No additional measures had been offered in the application to avoid problems. It was considered that the applicant had not shown that they were aware of their responsibilities. There had been 482 reported crimes in the 12 weeks prior to the police representation, which, although not necessarily alcohol related, were taking up police time and resources in an already busy area. He stated that the applicant

## Licensing Sub Committee C - 18 November 2015

had not evidenced that he was a responsible licence holder and he therefore objected to the grant of the licence.

The licensing authority stated that there was little information in the operating schedule. She accepted that hours had been amended and further conditions offered but was not satisfied that the grant of this licence would not add to the cumulative impact. In response to a question from the Sub-Committee she stated that the extra conditions and reduction of hours was helpful but it was necessary to have confidence in the applicant's ability to implement the conditions.

The public health officer reported that Caledonian ward was an area that had a higher level of alcohol harm compared to the rest of the Borough. There had been 76 alcohol specific hospital admissions in one year. The premises were in a super outlet area and was ranked 37<sup>th</sup> out of 118th in the borough for alcohol-related ambulance callouts. It was noted that there was not a particular problem with street drinkers in the area and there were no primary schools within 250 metres. It was considered that, if the licence was granted, it would significantly add to the cumulative impact of alcohol on the area.

The applicant's representative reported that the licensing policy stated that each application would be considered on its merits and if an application was refused it would indicate that there was an undermining of the licensing objectives. He had heard the concerns that the completed application did not show a full understanding of the licensing objectives but stated that the licensee had managed the premises from 2012 until October 2014 and there had been no reports of crime failures or test purchase failures. The police had no specific issues. The licence had been mistakenly surrendered instead of transferred. The crime figures from the police did not detail alcohol specific instances. Public safety was not a licensing concern. Street drinking was not a concern in this area. The additional conditions had been thought through over a period of time after liaison with the responsible authorities and proactive conditions were agreed. Hours had been reduced to fall in line with the policy. The premises had operated properly previously.

In response to a question relating to the lack of detail in the application regarding the public safety licensing objective, the applicant stated that they had a good relationship with neighbours and had passed an alcohol purchase test. When asked again, the applicant stated he did not understand but had not sold to drunk people or customers underage and was trying his best. He stated that he kept notes of refusals and the appearance of the customer in a refusals book. The applicant's representative stated that there was overlap with the responses in the schedule. The CCTV paragraph could also be used for public safety or public nuisance. The Sub-Committee noted that the applicant had stated in his application that no further measures could be offered for public safety and the prevention of public nuisance and the applicant's representative stated that they had engaged with responsible authorities since the application had been submitted. Applications should be treated on their merits and the applicants had not disregarded these licensing objectives as this was not a problem premises. They had now taken the cumulative impact policy on board and submitted a large number of conditions and reduced the hours.

In summary, the police reported that the applicant had not demonstrated in the application that they had understood the licensing objectives. They had not offered robust conditions. Licensees should demonstrate what they should do for the responsible authorities.

The licensing authority stated that the applicant had asked the responsible authorities what conditions they should include, rather than take responsibility themselves. She was not convinced that all conditions would be implemented.

## Licensing Sub Committee C - 18 November 2015

Public health stated that if an ambulance was required in an area and the call was in respect of an alcohol related call out, this was a significant risk to public safety as far as the public health authority was concerned.

The applicant's representative stated that conditions would be implemented and there was no reason to think that the managers would not be responsible. The cumulative impact policy had been addressed through positive engagement, the premises had been operated and had not been identified as harmful. The premises had been managed appropriately.

**RESOLVED** that the application for a premises licence at Roma News, Food and Wine, 331 Caledonian Road, N1 1DW be refused.

### **REASONS FOR DECISION**

The Sub-Committee took into consideration the application papers, the written submissions from the responsible authorities and residents as well as the verbal submissions made at the hearing.

Additional conditions were submitted by the applicant the day before the hearing and these were taken into consideration.

The Sub-Committee noted that the applicant provided very little information in his application papers regarding the steps he intended taking to promote the licensing objectives. In particular the Sub-Committee noted the lack of information provided in relation to steps that would be taken to promote public safety and the prevention of public nuisance. Under the heading, The Prevention of Public Nuisance, the applicant stated that the applicant "had considered this objective and no measures could be offered in this regard".

The applicant and his representative were questioned by the Sub-Committee on this at the hearing and still insufficient detail was provided in response.

The premises are in a cumulative impact area. The Police provided evidence that there are high levels of crime in the area and there are numerous off licence premises in the vicinity.

The Sub-Committee was concerned with the ability of the applicant to properly manage the business in light of the submissions made and the apparent lack of awareness of the licensing objectives and steps required to promote them.

It was found that the applicant, both in the written application and at the hearing, failed to demonstrate why the operation of the premises involved would not add to the cumulative impact or otherwise impact adversely on the promotion of the licensing objectives.

Licensing Policy 10 applied. The Sub-Committee was of the opinion that the applicant failed to demonstrate a commitment to high standards of management. He failed to demonstrate comprehensive knowledge of best practice or understand legal requirements. He failed to demonstrate that he had had regard to the licensing policy when preparing his operating schedule.

The application was accordingly refused.

91

### **THE ALBION PH, 10 THORNHILL ROAD, N1 1HU - VARIATION OF PREMISES LICENCE (Item B2)**

The licensing officer reported that additional noise conditions and menu details had been circulated. These would be interleaved with the agenda papers.

## **Licensing Sub Committee C - 18 November 2015**

A local resident reported that she lived opposite the pub and management did not adhere to their licence. This was a busy pub and staff could not monitor outside area. She asked that, if the application was granted, security be employed to monitor the outside noise. The manager was responsible but there would be concerns if he left. She asked that the first floor be considered as a conference room rather than dining room.

The applicant stated that the application was to vary the plan of the premises and was not dealing with the outside area. The conditions had been agreed. There had been no responsible authority representations. This was a highly regarded premises which provided a good service which had been taken over by new management in 2014. The premises was 65% food led.

In response to questions about concerns relating to noise at the front of the premises, it was noted that customers were asked to come in at 10pm and this was enforced. Although the dining room was for 24 covers, the kitchen was already at full capacity and a higher number in the dining room would reduce the number of covers downstairs. This was not a party room but a private dining area. There had been two licensing visits in July and there had been no concerns raised regarding the outside area. There was a new taxi policy and an effort had been made to have more visible staff outside for dispersal. The applicant stated that the outside area was not related to the application for the dining room. There was noise but this was not considered a nuisance and was monitored by staff. A meeting had been held with residents and four residents withdrew their representations following this meeting. It was noted that the third noise condition circulated separately was similar to the second condition on page 83 and would be deleted. The configuration of the upstairs dining room would not allow small table dining.

In summary the resident raised concerns that her complaints had not been passed onto management. The applicant said that these would not be missed in the future.

The applicant reported that risks were limited and there would not be 24 customers every night of the week. The room was to offer an enhanced dining experience and the applicant would work closely with residents.

### **RESOLVED**

- a) That the application for a premises licence variation in respect of The Albion PH, 10 Thornhill Road, N1 1HW be granted to vary the design and layout of the premises in accordance with the submitted plan, ref G15-5302/01A.
- b) Conditions as outlined in appendix 5 as detailed on page 83 of the agenda and the following noise conditions shall be applied to the licence.
  - Noise or vibration must not emanate from the premises so as to cause a nuisance to nearby properties.
  - Following written notification from the Licensing authority that a substantiated noise complaint has been received, the premises shall not be used for any regulated entertainment until the Council's pollution team is satisfied that measures have been taken to prevent further noise nuisance to residents and the licensee has been notified in writing that the measures are accepted by the Council's Pollution team.

### **REASONS FOR DECISION**

This was an application for varying the design and layout of the premises by adding a second floor eating area with facilities for 24 patrons to have a sit down meal.

No representations were received from the Responsible Authorities.

One resident made verbal representations at the hearing. The main concern of residents was the possibility of additional noise nuisance that could be suffered by neighbouring properties as a result of the proposal.

The applicant agreed to additional conditions to mitigate any additional noise factors and the Sub-Committee was satisfied that the imposition of the additional conditions on the licence was an appropriate and proportionate response to the concerns of the residents.

The application was accordingly granted with the additional conditions.

**92**     **MEREB, 411 HOLLOWAY ROAD, N7 6HJ - NEW APPLICATION (Item B3)**

The licensing officer informed the Sub-Committee that conditions put forward by Trading Standards had been accepted. It was understood that the licence for 415/417 Holloway Road would be surrendered if this application was granted.

The police objected to this application. This was in a cumulative impact area on a very busy main route. There were already 29 licensed premises in an area with a high crime rate and they considered that another off licence would cause the area to suffer further. They did not think that this would benefit the area.

The licensing authority stated that the applicant had been silent regarding the cumulative impact in his application.

The public health officer stated that this area had one of the highest specific alcohol concerns. There had been 53 alcohol related ambulance callouts within a 250m radius of this premises. The increased number of alcohol outlets resulted in an increase in alcohol related harm.

The applicant stated that when he received an eviction notice from his landlord for 415 Holloway Road he would transfer to this premises. He tried to work with local residents and the Tufnell Park association and had not had problems. He had an off licence for 18 years and wanted a licence for this premises for his security.

In response to questions he stated he was trying to sort out his licence without aggravation. He had a refusals book. He had not engaged with the police.

In summary the police stated that this licence should not be granted.

The applicant stated that he would not open until he received the eviction notice for the other premises.

**RESOLVED** that the application for a new premises licence in respect of Mereb, 411 Holloway Road, N7 6HJ be refused.

**REASONS FOR DECISION**

This was an application for a new off supplies premises licence.

The Sub-Committee considered the written application and written representations from the responsible authorities and the verbal representations made at the hearing.

The Sub-committee further took into consideration that there had been very little engagement between the applicant and the responsible authorities prior to submitting the application and the period thereafter.

The Sub-Committee considered that the premises in question were in a cumulative impact area and that there were ten off licences in the area and one across the road. They also took the concerns of Public Health into consideration and the fact that street drinking is a problem in that area.

The applicant submitted that he was the licensee for another premises nearby and that he was concerned that he was about to be evicted from those premises. This application had been brought as a form of security for him in the event that he was evicted from the other premises.

In addition thereto, the Sub-Committee was of the opinion that the applicant failed to demonstrate that he understood his obligations as a licensee in promoting the licensing objectives.

It was found that he failed to demonstrate why the operation of the premises involved would not add to the cumulative impact or otherwise impact adversely on the promotion of the licensing objectives. Licensing Policy 4 also applied.

The application was accordingly refused.

93

**SEVEN DAYS FOOD AND WINE, 93A STROUD GREEN ROAD, N4 3PX - REVIEW APPLICATION (Item B4)**

The police stated that they fully supported the review submitted by the licensing authority. The sales that had taken place on the 3 and the 4 July, after hours was not just one of those things. This was not behaviour that should be shown by a licensee. At no time had the licensee demonstrated that he wanted to work with the authorities.

The licensing authority stated that a summary of their review could be located at pages 188-121 of the agenda. When events such as the Wireless Festival were held the licensing authority asked their licensees to impose stricter measures. This should not be an opportunity for an applicant to apply for a temporary event notice and when refused, to sell alcohol after hours. Their CCTV had not been working when requested, the refusals book was blank, the certificates out of date and there were no details of training records.

In response to questions it was considered that upon examination by officers the refusals book looked as if it had been completed at the same time rather than on a daily basis.

The trading standards officer reported that no contact had been made since his representation had been made. At the time of the application for the licence, in Spring 2014, he had been quite supportive of the applicants but it appears that his trust was misplaced. He sent an email to the business in September 2014 stating that continued breaches would not be acceptable, following a failed underage test purchase and after noting high strength alcohol on the shelves,. The licensees did not heed the warning. He considered that repeated breaches were intentional and the licensee had a disregard for truth under caution and was either incompetent or unwilling to manage the business properly.

The licensee stated that it was a shame that they had reached this point. Licensing officers had been helpful throughout and had informed them how they needed to comply with the license conditions. They did not have much experience and did not realise how hard it would be as they were open 19 hours each day. The underage sale had been witnessed by trading standards and alcohol was sold by his mother. They did not employ other people in the business and the problems had been made by their parents. They shared responsibilities. They did not sell after hours, it was the parents and they did not realise that

## Licensing Sub Committee C - 18 November 2015

Oranjeboon was a beer. This was a misunderstanding. The fridges had locks but they now closed at 11pm so there would be no problem with the open shelves. The CCTV was fixed on the same day that licensing officers had visited. He apologised on his parents behalf and wished they could be in the shop 19 hours a day. The first aid kit was available but he asked officers to wait ten minutes as he was busy. He showed it to police the next day. He was trying his best. His brother had refused a sale. The camera was being repaired. They were unable to put shutters around alcohol so now closed at 11pm. Once they knew beer was over strength they no longer sold it. The CCTV had now been seen but there was no mention of this in the report.

In response to questions it was noted that they had applied for a TEN one month before which was refused but it could not go the Sub-Committee. They had to make another application and that could not be heard at Sub-Committee. The shop across the road was allowed to sell. He wanted a hearing. If the cameras were working this would confirm that they did not sell products after hours. His father was working that evening. After this problem they chose to close at 11pm.

In summary, the licensing authority stated that there was an issue with the two brothers running the premises and how well it would be run in the future. She was not sure that improvements went far enough. She recommended that the licence should be revoked, or if not revoked a long suspension.

The police stated that the CCTV should be maintained and regularly serviced. There was a concern regarding the staff on duty. The parents did not speak English and this was concerning.

The trading standards officer had stated that illicit products had not been found. Two test purchases had been passed since September 2014. Tacim had attended training which had stressed the importance of complying with conditions. The failure regarding the high strength beer condition, shutting on time and the CCTV condition were conditions that should always be complied with.

The licensees stated that they had answered honestly and taken solid steps to improve. The CCTV engineer was booked and was fixed. We can train people in the shop. His wife was in the shop this evening. We started training her a week ago. They were doing the best we could. It was a problematic place and they had avoided most problems. They would not want to jeopardise the business. There was no solid evidence that they had sold after hours. They carried out refusals and training.

**RESOLVED** that the premises licence in respect of Seven Days Food and Wine, 93A Stroud Green Road, N4 3PX be revoked.

### **REASONS FOR DECISION**

This was an application for review of the licence brought by the Licensing Authority.

The Sub-Committee considered the written application, the written submissions by Trading Standards and the verbal representations made by all parties at the hearing.

The Sub-Committee noted that the licence was granted in 2014. It noted further that since that July 2015, after being made aware that he was not permitted to sell alcohol outside the permitted hours of his premises licence, alcohol was sold in contravention of the licence conditions to two licensing officers on 3<sup>rd</sup> July 2015. This occurred again on 4<sup>th</sup> July 2015.

## Licensing Sub Committee C - 18 November 2015

When the CCTV footage of the sales was requested the licensing authority was told by the licensee that it was not working and as a consequence they had no proof of the contravention.

CCTV footage was not maintained in accordance with the licence. A full inspection of the premises on 10<sup>th</sup> July 2015 revealed various contraventions of the licence conditions. High strength beer, lager or cider was on display in contravention of the conditions, fridges that were supposed to be locked, weren't, the public risk assessment could not be produced, emergency lighting and smoke detector certificates could not be produced, the first aid kit was unavailable, the refusals book was blank and this was despite that fact that the officers had witnessed a refused sale the day before, no Challenge 25 poster was displayed.

When questioned about these breaches by the Sub-Committee, the licensee blamed his parents who he said he had left in charge of the premises on a regular basis. The licensee had admitted that he had not trained his parents about age restricted products. He stated that he had found the running and management of the business very hard and stated that it was much harder and more involved than he had anticipated when he originally applied for the licence.

The scale of the transgressions, the response of the licensee to the licensing officers at the time and the response of the licensee to questions set out to him by the Sub-Committee on the management or lack thereof of the premises caused the Sub-Committee to conclude that the applicant did not have the requisite skills or appreciation of the skills required to be a licensee of premises such as this. The Sub-Committee was of the opinion that a suspension or the addition of further conditions would not be of assistance in this particular matter.

The Sub Committee considered all options available to them when reaching their decision.

The Sub-Committee was of the opinion that the cause or causes of the concerns that the representations identified was poor and inexperienced management.

In addition thereto, the Sub-Committee concluded that the deficiency in management skills and the acknowledged fact that the licensee found the process difficult and more onerous than initially envisaged, were of grave concern. The Sub-Committee had no confidence in a suspension solving the problem.

This was a family business and the parties in question want to remain involved. It would not help to change the DPS and this was not suggested either.

The Sub-Committee accordingly decided that the licence should be revoked. It concluded that in light of the facts set out above, that this decision was both an appropriate and proportionate response to address the causes of concern that instigated the review.

94

### **424 ST JOHN STREET, EC1 - NEW PREMISES LICENCE (Item B5)**

The licensing officer reported that an email had been received from the applicant submitting a reduction in hours.

The licensing authority stated that this was a new application for a premises licence by the same family who operated the premises at 426 St John Street, whose licence was revoked by Sub-Committee a year ago. It was concerning that the conditions proposed had been lifted from conditions from the licence at 426 St John Street. It stated in the schedule that training would be attended in 2015. This had not been done and it was now November 2015. She understood the applicant was willing to reduce the hours applied for. The hours were an issue. She had concerns about the staffing and the training in the premises.

## Licensing Sub Committee C - 18 November 2015

In response to questions from the Sub-Committee, the licensing authority was concerned that not much thought had gone into the application and she considered that the proposal was not robust enough to take seriously.

The applicant's representative stated that an application had been made in March 2015 and following objections from the responsible authorities, had been withdrawn. In the intervening months the applicant had worked proactively with the authorities and following substantial alterations had submitted a new application. There had been no representations received from the noise team, police or trading standards for the new application. He stated that the applicant had been proactive in solving issues that the responsible authorities had and was willing to restrict the hours still further and to stop sales of alcohol at 9pm. Sales of tobacco had not been a concern, alcohol would be stored in a corner and withdrawn from the public at 9pm by use of a shutter system. The main concerns raised in the licensing policy for the Bunhill/Clerkenwell area were the late night economy and it was proposed to only sell until 9pm. He therefore did not think these premises would affect the cumulative impact.

The applicant had significant and genuine engagement with the responsible authorities. The first application had been withdrawn and since then, the applicant had worked closely with the police and trading standards and conditions had been written in liaison with these authorities. In relation to the history of non-compliance, this premises had completely different management and the conditions reflected any concerns regarding family links as it named family relations who would not be involved in the business. These concerns prevented any potential problems in the business and were to the credit of the applicant.

In response to questions from the Sub-Committee, it was stated that the conditions were included in the application to pre-empt any concerns and to confirm that these family members would not be connected with the business. The applicant had not wanted to ignore the public safety aspect and so was aware that a first aider was always present at the Old Red Lion during operating hours and had covered this by condition. As the premises proposed to stop serving alcohol at 9pm there would not be an issue with late night drinking and customers leaving pubs, bars and restaurants and purchasing further alcohol. The father would be the main designated premises supervisor. The applicant had not worked at 426 St John Street. He had purchased 424 St John Street two years ago and had no problems with it.

In summary, the licensing officer stated that in previous email correspondence the applicant had offered a reduction of hours of 11am to 9pm.

The licensing authority had stated that this was a cumulative impact area and concerns regarding new off licences was an issue for the whole of the borough.

The applicant's representative stated that the applicant had made a real attempt to engage with the responsible authorities and was more than happy to reduce the hours. There were issues in the area which could be dealt with by condition. The views of responsible authorities had changed since the previous application, there were no other objections, the applicant was running a separate business from his family and had offered reduced hours of 11am to 9pm. The applicant had been running the business for two years with no problem and had commitment to a high standard of management. He would undergo training by the end of 2015 and ensure all staff were trained. There were no concerns regarding Challenge 25 and alcohol would be stored behind shutters. He considered that the application could be granted.

**RESOLVED** that the application for a new premises licence in respect of 424 St John Street EC1V 4NJ be refused.

## Licensing Sub Committee C - 18 November 2015

### **REASONS FOR DECISION**

The Sub-Committee took into consideration the written application and submissions together with the verbal submissions made at the hearing.

The Sub-Committee further considered that the premises were situated within a cumulative impact area and that the application concerned was for off premises sales and that Licence Policy 4 would also apply.

The applicant was one of the sons of the family and the proposed DPS was the applicant's father. The Sub-Committee heard that there were two other brothers in the family who were, unusually, specifically referred to in the operating schedule as not to have anything to do with the operation. The applicant had reduced the hours requested from those stated in his original application.

The reason for this specific conclusion was due to the fact that the other two (excluded) brothers owned another off licence at 426 St Johns Street. Those premises had a very poor track record of compliance and the premises licence had been revoked twice for the illicit sale of alcohol and sales of alcohol to under age volunteers.

The Sub-Committee was of the opinion that the applicant failed to demonstrate both in his application and in amplification thereof at the hearing that he fully appreciated the responsibilities involved in running the business in such a way that they did not adversely affect the promotion of the licensing objectives.

No bespoke mitigation measures were proposed.

The Sub-Committee took into account the fact that there were already a large number of licensed premises in the area. They were of the opinion that an additional off licence in the area would undermine the work of the Licensing Authority in overcoming street drinking and preloading. Nothing submitted by the applicant in his papers or at the hearing ameliorated those concerns.

The Sub-Committee accordingly concluded that the applicant failed to demonstrate why the operation of the premises involved would not add to the cumulative impact or otherwise impact adversely on the promotion of the licensing objectives.

The Sub-Committee considered the possibility of imposing additional conditions but concluded that in the light of what is stated above that that would not assist.

Taking the evidence presented as a whole, the Sub-Committee concluded that a refusal of the application was appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.

The meeting ended at 9.30 pm

**CHAIR**