

**Licensing Sub Committee C - 22 March 2016**

Minutes of the meeting of the Licensing Sub Committee C held at Committee Room 4, Town Hall, Upper Street, N1 2UD on 22 March 2016 at 6.30 pm.

**Present:**           **Councillors:**           Michelline Ngongo, Gary Poole and Flora Williams.

**Councillor Gary Poole in the Chair**

**105        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.

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

Councillor Doolan submitted apologies for absence.

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

None.

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

None.

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

The order of business would be as the agenda.

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

**RESOLVED**

That the minutes of the meeting held on the 26 January 2016 be confirmed as a correct record of proceedings and the Chair be authorised to sign them.

**111        CUBANA, 61 CHARTERHOUSE STREET, EC1M 6HJ - PREMISES LICENCE VARIATION (Item B1)**

The licensing officer reported that he had received verbal notification that the resident in attendance was to speak on behalf of the interested party. However, written confirmation had not yet been received. The resident stated that an email had been sent to the licensing team that day. The applicant's representative agreed that the resident be allowed to speak on behalf of the interested party.

The local resident stated that she had visited the premises and considered that it looked appealing to young people. There was outdoor heating and a happy hour Monday to Friday. She stated that there had been vertical drinking in the premises and this variation would be used as a lever to further increase hours to 02:30am. She considered that this was a dangerous precedent and that an application could be made for premises to open as a specialist café and then have a variation agreed for a licence which had little to do with the original application.

The applicant's representative stated that this was a Cuban café with a coffee roaster which served homemade Cuban recipes and fruit juice. Eight full-time kitchen staff were employed and the applicant had invested 1 million in the premises. This was a food led

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establishment where 80% of sales were food. Existing conditions of the licence required that, there would be no vertical drinking, no drinking outside the premises, alcohol would be only served with food and there would be no off sales. These conditions were observed. No regulatory issues or complaints had been received during the operation of the premises. This was an application within policy. The original application had been determined within licensing policies 6 and 8. The application was within licensing policy framework hours and planning permission had also been granted for these hours. No objections had been received from the responsible authorities and the premises had been visited by the police and licensing officers who had been complimentary about the business. There had been no objections from neighbours or those living on an obvious route to and from the premises. The client had invited the interested party to the premises to look at the operation but had received no response. The premises had complied with their licence, was a credit to Islington, was within policy guidelines and the application should be approved.

In response to questions, the applicant's representative stated that this application was not a precursor to an application for a night club. The current hours, which did not allow alcohol to be sold after 8.30pm, meant that people did not come into the premises to eat in the evening. The police had not objected and they would have done so if there was a crime risk. The premises had given no regulatory concern and it was expected that the conditions would provide assurance. The applicant's representative stated that because of the early hour for the sale of alcohol he was finding that the premises had lost business in the evening. He had tried to open on Saturdays but this had not been successful. With the current hours customers may leave and go to another premises that was drink led. The applicant was not anticipating a change in the food/drink split and was looking towards a move to a greater food led environment. The applicant stressed that the business did not mirror the structure at the Waterloo premises. Any further increase in hours would need to be applied for and would be directly contrary to policy. The food side of the business at the Waterloo premises was developing. The applicant's representative reported that alcohol would be ancillary to food and would be a unique food driven sustainable restaurant model.

In summary, the local resident considered that when she visited the premises it did not look like a food led premises and people were standing outside with drinks in their hands. The applicant's representative rejected this and stated that if officers saw this happening they were welcome to prosecute.

### **RESOLVED**

That the application for a premises licence variation in respect of Cubana, 61 Charterhouse Street, EC1M 6HJ be granted with the conditions of the current licence as follows:-

- i) To vary the times for sale of alcohol, for consumption on the premises, to 12:00 and 23:00, Sunday to Thursday and 12:00 until midnight on Fridays and Saturdays.
- ii) To allow the provision of late night refreshment between 23:00 and midnight, Friday and Saturday.
- iii) To vary the opening hours to 07:00 and 23:00 Sunday to Thursday and 07:00 to midnight on Friday and Saturday.

### **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 2. The premises fall under the Clerkenwell cumulative impact area. Licensing policy 2 creates a rebuttable presumption

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that applications for variations to 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.

There was one local resident objector who was represented at the meeting. There had been no representations made by the responsible authorities.

The Sub-Committee noted that the hours sought were within the hours specified in licensing policy 8. The Sub-Committee considered licensing policy 6 and noted that planning consent had been granted for the hours sought.

The Sub-Committee heard evidence that alcohol sales were ancillary to food and the existing licence with short licensing hours made the operation of a successful food led operation difficult. The applicant stated that a food led operation was the future of the business and that an increase in hours would not change the nature of the operation.

The Sub-Committee concluded that the increase in hours sought would not add to the existing cumulative impact in the area.

### 112 **MAMMA MIA, 12 HORNSEY ROAD, N7 7BP - NEW PREMISES LICENCE (Item B2)**

The licensing officer reported that there had been one resident objection to the application.

The applicant stated he ran a business with his brother and when he had left a friend had convinced him to apply for an alcohol licence for the restaurant. He had never needed to call the police during the time he had been operating the premises.

In response to questions he understood that he needed to abide by the conditions of the licence. The applicant gave an example of when he had refused to sell alcohol to a customer when they held a temporary event notice for the Barcelona game. He stated he would only buy alcohol from reputed sellers.

#### **RESOLVED**

- 1) That the application for a new premises licence in respect of Mamma Mia, 12 Hornsey Road, N7 7BP be granted to permit the on sales of alcohol at the premises on Monday to Sunday from 12:00 to 22:00 hours.
- 2) Conditions in appendix 3 on page 63 of the agenda shall be applied to the licence.

#### **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.

There was one local resident objection. There had been no representations made by the responsible authorities. The Sub-Committee noted that the applicant had co-operated with the police and environmental health and agreed a number of conditions which would ensure that the licensing objectives would be upheld.

The Sub-Committee noted that the hours sought were within the hours specified in licensing policy 8.

The Sub-Committee heard evidence that the applicant had been granted a couple of TENS recently and there had been no issues arising as a result.

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**ESSEX ALTERNATIVE SUPERMARKET, 360 ESSEX ROAD, N1 3PD - REVIEW OF PREMISES LICENCE (Item B3)**

The applicant, trading standards reported that the recommendations were set out in the agenda. He raised concerns that the licensee had failed to dismiss a member of staff who had committed a criminal offence. There had been several breaches of licence conditions and he had failed to update the address on both the premises and personal licences. Super strength beer was on the premises at a cheap price of £1.50 and the reason for this had not been adequately explained. The price on the invoice provided for these beers ranged from £1.65 to £1.80. The cheap price made it attractive for those people with alcohol problems. The lack of invoices also suggested that the alcohol may not have been purchased from a legitimate source. He stated that if the Sub-Committee believed the applicant the licence be suspended and additional conditions imposed. If the Sub-Committee did not believe the applicant he considered that the most appropriate decision was revocation.

In response to questions, it was noted that no alcohol was sold during a couple of test purchases and there were no reasons to believe that there were any issues regarding alcohol after 2011.

The licensee, represented by a translator, stated that he had taken full responsibility for the tobacco in the premises. He stated that he would transfer the licence and have a break from the business. He would not want to lose the licence. Regarding the high strength beers, he reported that he had wanted to do a stock clearance and that was why the beers had been cheap.

In response to questions, he stated that the tobacco had been sold without his knowledge by a member of staff. There was quite a significant amount of tobacco that had been hidden in a chocolate box on the shelf and he did not notice. He now made two CCTV checks each day. He paid the fee for the change of licence address but this had not been done. He stated that the member of staff had apologised and said he would cover the costs so he did not sack him. Staff had been trained over the past three years but a note had not been made of the training given. The Sub-Committee considered that if the member of staff had been trained then he would have known of the offence, if he had not been trained it would bring the management into question. The staff member had bought the tobacco for personal use and then had given up smoking and had brought it into the shop to sell.

The applicant stated he had trained his staff and he was keeping an eye on the staff through the CCTV. The tobacco sales had been made without his knowledge but this would not happen again.

The trading standards officer reported that there was no indication of a clearance sale marked on the beers.

**RESOLVED** that the premises licence for Essex Alternative Supermarket, 360 Essex Road, N1 3PD 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.

The Sub-Committee heard evidence from trading standards that the premises initially came to their attention in February 2011 when 139 bottles of non-UK duty paid Italian wine was seized from the premises by HMRC officers. Following this, the licensee attended an officer panel meeting and admitted that the wine was purchased from a person calling at the shop.

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A letter was sent to the licensee following this meeting, reinforcing the advice given and warning him that a review application would be made if smuggled goods were found at the licensed premises in the future. Guidance was also sent on how to identify illicit tobacco and alcohol. At the end of September 2015 some independent off licences were written to, with offers to attend a training session in this regard. The licensee did not attend any training sessions offered. The Sub-Committee heard evidence that despite these initiatives, in November 2015, illicit tobacco and high strength beer, for sale at a cheaper price than would be expected was found on the premises and several breaches of the licence conditions were identified. A total of 23 packs of foreign cigarettes and 48 pouches of foreign tobacco were found on the premises.

The Sub-Committee noted that the licensee was interviewed under caution as part of a criminal investigation. In his interview the licensee had stated that he was unaware that the tobacco was being sold at the premises as it was hidden under the counter. The Sub-Committee heard that a member of staff had brought the tobacco to the premises to sell after he had given up smoking. The licensee stated that super strength beers were being sold cheaply as a stock clearance offer. The licensee accepted full responsibility for the management failure and indicated that if the licence was suspended it was his intention to apply for a transfer of the licence. The Sub-Committee noted that the employee in question continued to be employed in the premises.

The Sub-Committee noted that since the seizure of illicit alcohol in 2011, there had been no problems associated with the licensed premises until the seizure of illicit tobacco in November 2015. Regardless, the Sub-Committee was of the view that the licensee had failed to demonstrate his ability to properly manage the premises and promote the licensing objectives.

The Sub-Committee was not satisfied that the addition of further conditions or a reduction in hours would promote the licensing objectives. The Sub-Committee was not satisfied that the removal of the designated premises supervisor or a suspension of the licence pending the transfer of the business would promote the licensing objectives.

The Sub-Committee noted that the tobacco seized on this occasion was sizeable and there had been a serious management failure. In the view of the Sub-Committee, the licensee had not provided a satisfactory explanation for the presence of the illicit tobacco. The licensee had laid the blame with an employee, but the Sub-Committee questioned why, if this was the case, the employee had not been dismissed. Furthermore, the licensee had breached licence conditions and had failed to uphold the licensing objective of prevention of crime and disorder.

The Sub-Committee took into account Licensing policies 9 and 10 regarding standards of management, licensing policy 28 regarding the sale of illicit goods and policy 30 in relation to reviews. The Sub-Committee also took into account the Home Office guidance particularly paragraphs 11.18 to 11.23, 11.27 and 11.28.

In the circumstances the Sub-Committee concluded that the decision to revoke the licence was an appropriate and proportionate response to the promotion of the licensing objectives.

The meeting ended at 8.05 pm

**CHAIR**