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London Borough of Islington

Licensing Sub Committee D - 31 January 2017

Minutes of the meeting of the Licensing Sub Committee D held at Committee Room 4, Town Hall, Upper Street, N1 2UD on 31 January 2017 at 6.30 pm.

Present: **Councillors:** Wayne (Chair) and Spall and Williamson

Councillor Nick Wayne in the Chair

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

Councillor Wayne welcomed everyone to the meeting and officers and members introduced themselves. The procedure for the conduct of the meeting was outlined.

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

Apologies for absence were received from Councillor Satnam Gill.

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

Councillor Flora Williamson for Councillor Satnam Gill.

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

None.

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

The order of business would be as the agenda.

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

RESOLVED:

That the minutes of the meeting held on 6 December 2016 be confirmed as a correct record and the Chair be authorised to sign them.

166 **BURGER LOBSTER, 38-42 ST JOHN STREET, EC1M 4AY - PREMISES LICENCE VARIATION (Item B1)**

The licensing officer advised that references to 'Sunday to Monday' at paragraph 1.2 of the report should read 'Monday to Sunday'. It was also clarified that the applicant was seeking to add one hour to the terminal hour of licensable activities and the closing time of the premises on the morning that Greenwich Mean Time changes to British Summer Time.

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The licensing authority stated that the premises was in the Clerkenwell cumulative impact area. The applicant was seeking to reinstate the licensable hours previously in operation before the licensable hours were reduced in November 2014 following the introduction of the late night levy. It was noted that the Police had suggested additional conditions relating to CCTV equipment, and the Noise Team had suggested amended conditions relating to noise.

The Police did not consider the current licence to be fit for purpose for a venue carrying out licensable activity until 04:00am. It was commented that the Police contacted the applicant in mid-December 2016 to enquire about plans for the premises, door supervisor arrangements, and further details of the operating schedule; however the Police had not been able to meet with the applicant. The Police reported that the applicant would accept additional conditions suggested in relation to the operation of CCTV equipment; however the Police maintained their objection to the application due to the insufficient information received on other aspects of the application.

Following a question, it was advised that the Police was aware that there may be a change of ownership to the premises.

The Licensing Authority stated that, although the premises previously had later licensable hours, in practice the premises had not previously operated to the full extent of its licence, and for this reason it was considered that a late licence had not been adequately tested at the premises. It was also commented that the applicant had not demonstrated sufficient knowledge of the licensing objectives and an understanding of the risks to the cumulative impact area. The Licensing Authority would expect additional information and conditions to be offered in relation to door supervision, dispersal arrangements, vertical drinking, PubWatch schemes and work with Parkguard. For this reason the Licensing Authority considered that the application should be refused.

The applicant's representative circulated a skeleton argument to the Sub-Committee which contained an appraisal of cumulative impact issues. It was confirmed that this had previously been received by the Police.

The applicant's representative advised of a possible change of ownership to the premises. If the ownership of the premises was to change then the operating hours and staffing arrangements would need to be confirmed, however in either case the premises would offer substantial food at all times, last entry would be two hours before the terminal hour, and at least one SIA qualified member of staff would be on the premises after 11:00pm. It was commented that the resident representations received did not raise issue with how the current business operated, and it was acknowledged that the premises' dispersal policy was in need of updating. It was suggested that this could be agreed with the Licensing Authority through conditions.

Following a question, the applicant advised that he had received an offer from a potential buyer of the premises, however the sale value had been agreed with reference to the previous licensable hours. For this reason the applicant was seeking to reinstate the previous licensable hours.

The Sub-Committee queried why a food-led venue would wish to open until 04:00am. In response the proposed new owner of the premises advised that he intended to operate a high-class venue and wanted to be flexible to his patrons' needs. Although it was acknowledged that few customers would want food in the early morning, it was suggested that shift workers may wish to eat at different times.

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Following a question, the proposed new owner advised that whilst substantial food would be available at all times, it was not intended for alcohol to only be available with food.

The Sub-Committee asked how the application would not adversely impact the cumulative impact area. In response, the proposed new owner advised that he would operate a high-class venue which would not attract antisocial behaviour. It was commented that the price of alcohol at the premises would mean that customers were unlikely to consume large quantities of alcohol.

In response to a question, the proposed new owner advised that he had worked in the sector since 2003 and had been a DPS since 2006. He had considerable management experience and operated a number of premises across London.

In summary, the Police advised that they had not heard enough to satisfy them that the grant of the application would not undermine the licensing objectives. The Licensing Authority had no further comments.

The Noise Team circulated a suggested dispersal plan. The applicant advised that they did not envisage any difficulty in complying with the suggested plan.

The applicant stated that the licensable hours applied for had not presented any issues when they were previously in operation at the premises and the premises had operated successfully for a number of years. The premises was to operate primarily as a high-class restaurant with substantial food available at all times. Last entry would be two hours before the terminal hour and the proposed owner was an experienced manager of licensed premises. It was reported that, should the sale of the premises proceed, staff would likely be transferred by TUPE and the DPS would likely remain the same. It was commented that the DPS had an extensive knowledge of the premises and local area.

RESOLVED:

The Sub-Committee decided to refuse the application for a variation of the premises licence in respect of Burger Lobster, 38-42 St Johns Street, EC1M 4AY

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 and Home Office Guidance 13.30. The premises falls within the Clerkenwell cumulative impact area. Licensing policy 2 creates a rebuttable presumption 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.

The Sub-Committee noted that the hours sought were well outside core hours for restaurants and cafes suggested by Licensing Policy 8.

The representative for the applicant emphasised that the variation was to restore licensing hours which were reduced on application in 2014. However, the Police and Responsible Authorities gave clear evidence that increasing the hours would be likely to have a negative cumulative impact on crime and disorder and public nuisance.

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The Sub-Committee also noted the response by the prospective owner that although food would be available it would be possible to simply order a drink without eating.

The Sub-Committee concluded that granting this variation would be likely to impact on the licensing objectives of public nuisance and crime and disorder.

The applicant had failed to demonstrate in the Operating Schedule that there would be no negative cumulative impact on the licensing objectives. Under licensing policy 9 paragraph 67 the operating schedule must include all information necessary to enable the Licensing Authority and Responsible Authorities to assess whether the steps outlined for the promotion of the licensing objectives are satisfactory. The applicant had failed to demonstrate an awareness of risks, for example by a Risk Assessment, a knowledge of the local area, or the reasons for the special policy.

The applicant placed reliance on the fact that the premises previously had extended hours. The Police made the point that the conditions on the licence were not fit for purpose. Although the premises previously had later licensable hours, in practice the premises had not previously operated to the full extent of its licence, and for this reason the Licensing Authority considered that a late licence had not been adequately tested at the premises. The extended hours had been used by what had been a French restaurant some years ago, however this appeared to be a different sort of business model. The new owner had yet to confirm his policies and staff. The conditions offered at the hearing had been vague and insufficient information had been given to satisfy the responsible authorities.

There appeared to be no exceptional circumstances why this application should be granted. The fact that the prospective owner had experience of operating similar premises elsewhere could not be regarded as exceptional (licensing policy 2, paragraph 7). However, there would be no legal reason why the applicant should not make a further application if able to give detailed proposals in the Operating Schedule.

The Sub-Committee concluded that it was proportionate and appropriate to the licensing objectives and in the public interest to refuse the application.

167

CANAS Y TAPAS, 72 UPPER STREET, N1 0NY - PREMISES LICENCE REVIEW (Item B2)

The licensing officer advised that the Police had applied for a review of the premises licence following a series of violent incidents at the premises. An additional submission had been received from the Police in relation to a GBH incident at the premises on 15 January 2017. It was also noted that the licensee had submitted proposed revised conditions, which are set out as an appendix to these minutes.

The Police reported that the premises had been poorly managed over the past 18 months, noting that the licensee had refused Police advice and neither the licensee nor the DPS had contacted the Police in relation to incidents at the premises. The Police summarised the violent incidents occurring at the premises and reported that since the review had been submitted there had been three further GBH incidents and one common assault at the premises. Given the history of disturbances at the premises and the lack of commitment from the licensee and DPS to address these adequately, the Police requested that the licence be revoked.

Following a question, the Police advised that all violent incidents had occurred around midnight or later, and the premises seemed to operate without incident during the day and evening.

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In response to a question, it was advised that the venue was associated with a disproportionate number of violent incidents for a venue of its size.

The Licensing Authority shared the concerns of the Police, commenting that the seriousness and frequency of violent incidents at the premises was not acceptable. The Licensing Authority considered that the conditions proposed by the applicant were not extensive enough and suggested that they would not be confident that the premises was being managed responsibly so long as the licensee and DPS were involved in the running of the premises.

The Health Authority considered that the premises had not been managed responsibly and noted that there was a high level of violence and drunkenness associated with the premises. There had been a significant number of ambulance call outs to the vicinity of the venue, with 84 call outs within 250 metres of the premises in the previous 12 months. The Health Authority supported the Police's application for a review and suggested that, if the Sub-Committee was minded to retain the licence, then additional conditions restricting the use of glasses and glass bottles at the venue and restricting entry to those aged 21 and over would be appropriate.

Trading Standards reported concerns about underage patrons in the premises, suggesting that restricting entry to those aged 21 and over would be appropriate. It was suggested that an additional condition requiring the adoption of 'Challenge 25' and relevant training would be appropriate.

The Noise Team advised that the out of hours service had received intermittent calls related to the premises. The application for review was supported.

The licensee's representative advised that Canas Y Tapas had ceased trading and heads of terms for the sale of the premises had been agreed on 26th January 2017. It was reported that the premises had been sold at a significant loss to the owner, who was unable to attend the meeting due to illness. It was advised that the premises was to be sold to Coral Trading Ltd, the owners of the neighbouring La Forchetta Ristorante. It was commented that the proposed owners were experienced restaurateurs and well known in the local area. It was advised that it was intended to operate the premises as a family-friendly Greek restaurant, and this was reflected in the proposed additional conditions submitted by the applicant. Given that Canas Y Tapas had ceased trading, the licensee's representative contended that revoking the license would serve no purpose. The licensee's representative also contended that it would not be appropriate for a family restaurant to have conditions to restrict entry to those aged 21 and over and restrict the use of glass.

The Committee queried, if the premises was to be operated as a restaurant, why there was not a condition to ensure that alcohol was only served with a substantial meal, served at a table by a waiter. In response, it was advised that the licensee and the proposed new owners would be agreeable to such a condition.

In response to a question, the licensee's representative confirmed that the licensee did not challenge the evidence presented by the Police and fully accepted responsibility for the inadequate management of the premises.

The responsible authorities summarised their positions. The Police commented that they had no objection in principle to a family-friendly restaurant operating at the premises, subject to appropriate conditions. The Licensing Authority commented that it had not yet received evidence of sale of the premises. Trading Standards suggested that revocation of the licence and submission of a new licence application would allow all matters to be fully

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considered. The Noise Team suggested that any restaurant would need to have appropriate restaurant conditions.

The licensee's representative summarised his client's position and contended that retaining the licence with the addition of appropriate restaurant conditions would be proportionate.

RESOLVED:

That the licence be modified to incorporate the conditions submitted by the licensee; and the following additional conditions:

1. Mr Andrew Zacharia and Mr Parvez Bhatti to be removed from the involvement in management and day to day activities on the premises.
2. No licensable activities to take place at the premises before the licensing authority has confirmed in writing that it has received satisfactory evidence of a sale of the premises to Coral Trading Limited.
3. Alcohol shall only be served in conjunction with a substantial meal, served at a table by a waiter.
4. No vertical drinking.
5. No unaccompanied children under the age of 16 at any time.

REASONS FOR DECISION

The Sub-Committee gave serious consideration to a revocation or suspension of the licence, given the appalling incidents of violent disorder involving underage patrons at the premises late at night, and the failure of the existing DPS and owner to engage with the Responsible Authorities on matters of advice, specific incidents, or to comply with conditions.

The Sub-Committee listened to all the evidence and submissions and read all the material. It took into account the impending sale of the premises to an experienced operator (Coral Trading Limited) and the fact that the premises was no longer operating.

The Sub-Committee concluded that the public interest could be protected and the licensing objectives could be promoted by modifying the conditions on the licence to ensure that current management had no involvement in the premises at all and that the premises operated as a restaurant during core hours only. It also needed assurance that the sale to Coral Trading Limited would actually complete.

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 formed the view that due to the developments outlined by the applicant's representative and his acknowledgement of the existing problem, modifying the conditions of the licence was proportionate and appropriate to the licensing objectives and in the public interest.

The meeting ended at 7.45 pm

CHAIR

Appendix - Proposed conditions submitted by the licensee; Canas y Tapas, 72 Upper Street, Islington, N1 0NY

In the matter of the review hearing for; Canas y Tapas, 72 Upper Street, Islington, N1 0NY.

After reviewing the evidence and documentation in relation to the review application and taking into consideration the suggested changes to the existing premises licence, we confirm that in the spirit of working together with the Responsible Authorities our client will agree to the following;

1. Mr Andrew Zacharia will be removed as the DPS and replaced accordingly.
2. The premises licence holder will instruct a new door supervision team which is registered with the approved contractor scheme and will be SIA registered.
3. Amend the opening and licensable activities hours as follows:
 - a. Provision of regulated entertainment (live music); Sunday to Thursday 09.00-23.00 hours; Friday and Saturday 09.00-Midnight.
 - b. Provision of regulated entertainment (recorded music); Sunday to Thursday 08.00-23.00 hours; Friday and Saturday 08.00-Midnight.
 - c. Provision of regulated entertainment (performance of Dance); Sunday to Thursday 09.00-23.00 hours; Friday and Saturday 09.00-Midnight.
 - d. Provision of Late Night Refreshment; Friday and Saturday 23.00-Midnight.
 - e. Sale of alcohol (for consumption on the premise); Sunday to Thursday 08.00-23.00 hours; Friday and Saturday 08.00-Midnight.
 - f. Opening hours; Sunday to Thursday 08.00-23.00 hours; Friday and Saturday 08.00-Midnight.

*the terminal hours shown above are in accordance with the hours for restaurant, cafes and bars as per Islington Council's Statement of Licensing Policy and as requested by the Police and Responsible Authorities in the review application.

4. Remove the condition reference CCTV and shown at point 17 on the premises licence (annex 2 – conditions consistent with the operating schedule) and replace with; "CCTV shall be installed, operated and maintained in agreement with the Police. Maintained means that the system will be regularly serviced (at least once a year) and checked every two weeks to ensure that it is storing images correctly and a log kept and signed by a supervisor to this effect. The system will provide an identifiable full head and shoulder image of everyone entering the premises and will operate in any light conditions within the premises. The system will cover the front exterior of the premise (entrance and exit) and shall record in real time, date and time stamped and will operate whilst the premises is open for licensable activities. The recordings will be kept for a minimum of 31 days and copies will be made available to an authorised officer or police officer (subject to the Data Protection 1998) within 24 hours of any request free of charge. There will always be a member of staff on duty who can operate the system, to allow officers to view recordings and if required by a police officer, provide a copy of images immediately free of charge to assist in the immediate investigation of offences. If the system malfunctions and will not be operating for longer than 1 day of business then the Police must be informed.
5. The premises licence holder agrees to add the following conditions to the premises licence:
 - a. Staff will be trained with regard to their responsibilities in the retail sale of alcohol and regular refresher training will also be undertaken. Training records can be made available for inspection upon reasonable request by the Police or other relevant officers of a responsible authority.

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- b. A refusals log will be operated and maintained and will be produced to a relevant officer of the Police or other relevant officers of a responsible authority upon request.
- c. An incident log will be operated and maintained and will be produced to a relevant officer of the Police or other relevant officers of a responsible authority upon request.
- d. A Challenge 25 policy will be operated at the premise, acceptable forms of identification are a passport, photocard driving licence and PASS accredited identification card.

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