

## London Borough of Islington

### Licensing Sub-Committee A – 15 May 2014

Minutes of the meeting of Licensing Sub-Committee A held at the Town Hall, Upper Street, N1 2UD on 15 May 2014 at 6.30 pm.

**Present: Councillors:** Jilani Chowdhury, Phil Kelly and Gary Poole.

#### **COUNCILLOR GARY POOLE IN THE CHAIR**

**282 INTRODUCTIONS (ITEM A1)**

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

**283 APOLOGIES FOR ABSENCE (ITEM A2)**

None received.

**284 DECLARATION OF SUBSTITUTE MEMBERS (ITEM A3)**

None.

**285 DECLARATIONS OF INTEREST (ITEM A4)**

**286 ORDER OF BUSINESS (ITEM A5)**

The order of business was as the agenda.

**287 MINUTES OF THE MEETING HELD ON 25 MARCH 2014 (ITEM A6)**

**RESOLVED**

That the minutes of the meeting held on 25 March 2014 be confirmed as an accurate record of proceedings and the Chair be authorised to sign them.

**288 ESSEX FOOD AND WINE, 78 ESSEX ROAD, N1 8LT – APPLICATION FOR A PREMISES LICENCE VARIATION UNDER THE LICENSING ACT 2013 (Item B1)**

The licensing officer reported that the hours requested were outside the licensing hours detailed in the cumulative impact policy. The noise team and the police supported the licensing authority and asked the Sub-Committee to refuse the application. They asked that further conditions be added to the licence should be granted. The licensing authority stated that an increase in hours until 02:00 would increase the amount of alcohol on the streets and undermine the local authority's efforts to promote the licensing objectives.

The applicant amended the application for the sale of alcohol from 08:00 to 23:00 hours Monday to Thursday, from 08:00 to 02:00 on Fridays and Saturdays and 10:00 to 22:30 on Sunday. He reported on a number of additional conditions which included limiting the strength of alcohol and restrictions to sales of single cans after 23:00 hours. He asked the Sub-Committee to consider the home office guidance and reported that with the training and conditions in place there would be no addition to the cumulative impact in the area. He considered that the additional conditions verbally reported would not be appropriate before 23:00 hours.

In response to questions, the applicant stated that, with hindsight the additional conditions outlined should have been included in the original application.

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In summary, the licensing authority reported that whilst the amendments to the application were welcomed, she had not been convinced that the affect on the cumulative impact area had been fully addressed and considered that the application would increase the alcohol on the streets after 23:00 hours.

The applicant submitted that conditions could be put in place after the hours of 23:00 hours and the licensee would not serve customers who were causing trouble.

The Sub-Committee left the room to deliberate and returned to announce their decision.

### **RESOLVED:**

That the premises licence in respect of Essex Food and Wine, 78 Essex Road, N1 8LT 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 licensing policy 2. The premises fall under the Angel and Upper Street 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 amended application was for the sale of alcohol from 08:00 to 23:00 hours Monday to Thursday, from 08:00 to 02:00 on Fridays and Saturdays and 10:00 to 22:30 on Sunday. The applicant outlined additional conditions to those proposed in the agenda which they considered would ensure that the premises did not add to the cumulative impact to the area. These included restrictions to the strength of alcohol and restrictions to sales of single cans after 23:00 hours.

The Sub-Committee heard evidence from the police who confirmed that if the application was successful, a CCTV condition had been agreed with the applicant. However, the police were still seeking to oppose the application.

The Sub-Committee heard evidence from the licensing authority that, despite the conditions proposed by the applicant, there would still be additional alcohol sold in the area after 23:00 hours on Fridays and Saturdays, which would increase alcohol on the street and undermine the local authority's efforts to promote the licensing objectives.

The Sub-Committee was concerned that the granting of the variation to the licence, notwithstanding the conditions offered, would not promote the licensing objectives.

The Sub-Committee noted that the licensee had offered conditions to overcome the concerns regarding cumulative impact but concluded that the increased hours sought would allow for alcohol to be available on the streets in a cumulative impact area which already had several licensed premises with late operating hours. In the view of the Sub-Committee the licensee had failed to rebut the presumption that, were the application to be granted, it would not add to the cumulative impact area. The applicant had not shown any exceptional circumstances as to why the Sub-Committee should grant the application.

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### 289 **CUBANA CAFÉ LIMITED, 59-61 CHARTERHOUSE STREET, EC1M 6HJ – APPLICATION FOR A NEW PREMISES LICENCE UNDER THE LICENSING ACT 2013 (Item B2)**

The licensing officer reported that the noise team had withdrawn their objection as conditions had been agreed by the applicant. The local business objection had been withdrawn. The planning officer had advised that there would be no breach of planning use if the primary use was for a coffee/roasting house.

The licensing authority reported that the applicant had amended the application which had addressed many concerns but the objection had not been withdrawn as the Sub-Committee would need to consider the management of the premises.

Councillor Allan reported that this application was in a cumulative impact zone and additional hours would lead to increased amounts of alcohol in the area. He considered that it may become an alcohol led premises. More premises would contribute to the early evening drinking problem. The local resident reported that a sister establishment in Waterloo was a loud boisterous place and drew large crowds of people outside the premises. She considered that the licensee would not be able to prevent people from sitting outside and the applicant would request later hours in the future.

Phillip Kolvin, barrister, stated that the café would bring into use long dormant premises. It would supply a small range of alcohol and the application was amended to midday until 20:30 hours. The application for regulated entertainment had been withdrawn and there were to be no off sales. The premises at Waterloo was open until 03:00 am and this was to be a completely different operation. He stated that he had agreed conditions with the noise team although there would be no regulated entertainment. This business was not the type of operation that would cause concern in a cumulative impact zone.

In response to questions it was noted that this premises had a high staffing ratio as it had an extensive kitchen for an artisan bakery. The space for making drinks was small. It was not intended to open a replica to the Waterloo operation as this application was for a coffee roasting house/café/bakery. The applicant stated that they would not wish the restriction of a condition to have alcohol with a plated meal as this would have a competitive disadvantage.

In summary, the local representatives expressed concerns about customers when they left the premises and considered that the business would change into a drinking establishment in the evening. The applicant stated that a coffee roasting café could not change into a bar. A previous application had been refused and following amendment to the previous scheme, the authorities were now happy with the new proposals. Regarding concerns about the ability of the designated premises supervisor to work in two premises a condition was offered by the applicant.

The Sub-Committee left the room to deliberate and returned to announce their decision.

### **RESOLVED**

a) That the new premises licence in respect of Cubana Café Limited, 59-61 Charterhouse Street, EC1M 6HJ to allow the sale of alcohol for consumption on the premises only: 12:00 to 20:30 on Monday to Sunday.

b) Conditions as tabled at the meeting shall be applied to the licence with the amendment of condition 13 to avoid duplication with condition 18 and the following amendment.

- That the designated premises supervisor shall work solely at the premises.

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### **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 the amendments proposed by the applicant, that there would be no off-sales, there would be no regulated entertainment on the premises, alcohol would not be sold after 20:30 each evening and the premises would be closed by 22:30 each evening. Alcohol would only be consumed by seated customers and would only be consumed inside the premises.

The Sub-Committee noted that as a result of the amended application before the Sub-Committee, the noise team and the business representative had now withdrawn their objections to the application. The licensing authority reported that the amended application had reduced their concerns regarding the cumulative impact but considered that the Sub-Committee would need to satisfy themselves that the management practices would uphold the licensing objectives in a cumulative impact area.

The Sub-Committee heard concerns from Cllr Allan and a local resident that the premises would be an early evening drinking establishment which would add to the cumulative impact in the area. The resident had concerns that the premises would emulate the sister establishment at Waterloo, which she stated, was a loud drinking premises which drew large crowds outside.

The Sub-Committee heard evidence from the applicant that the operation was for a coffee roasting house, bakery and café and alcohol would be ancillary to the provision of food. This would be a completely different operation from the premises in Waterloo as it was primarily a coffee led operation. The Sub-Committee noted that, although the music played would be background only, the noise levels would be set and agreed with the noise team.

The Sub-Committee took into consideration Licensing Policy 2. The premises were located in the Clerkenwell cumulative impact area. Licensing policy 2 creates a rebuttable presumption that, applications for new premises licences that are likely to add to the existing cumulative impact would normally be refused, unless an applicant could 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 was satisfied that the grant of the application with the amended hours and the conditions would not undermine the licensing objectives. The Sub-Committee noted licensing policy 8 and considered that the application fell within the exceptions to the policy as it was not alcohol led and would operate within the hours specified.

### **290 BONNIE GULL SEAFOOD CAFE, 146 HOLLOWAY ROAD, N7 8DD – APPLICATION FOR A NEW PREMISES LICENCE UNDER THE LICENSING ACT 2003 (ITEM B3)**

#### **RESOLVED:**

a) That the new premises licence in respect of Bonnie Gull Seafood Café, 55-57 Exmouth Market, EC1 be granted to permit the premises to sell alcohol from Monday to Saturday from 12:00 to 23:00 and Sunday 12:00 to 22:30.

b) Conditions as outlined in appendix 3 as detailed on page 119 of the agenda shall be applied to the licence.

### **REASONS FOR DECISION**

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 there had been one resident objection and this had now been withdrawn following negotiation between the applicant and the resident. The application was granted on the papers.

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### 291 A & B FOOD AND WINE, 146 HOLLOWAY ROAD, N7 8DD – APPLICATION FOR A NEW PREMISES LICENCE UNDER THE LICENSING ACT 2003 (ITEM B4)

The Sub-Committee noted that this item had been adjourned.

### 292 MARUTHY'S 69 HOLLOWAY ROAD – APPLICATION FOR A PREMISES LICENCE REVIEW UNDER THE LICENSING ACT 2003 (ITEM B5)

Councillor Gary Poole declared he was the ward councillor for this ward and advised that he had not considered any other representations on the application.

The licensing officer reported that no other information had been received regarding the application. The trading standards officer reported that advice had been given regarding underage sales. At the PACE interview in January 2014 an interpreter had been offered to the applicant but had not been accepted. There was no written training record and the licensee reported that training had been given verbally. He reported that there was a comprehensive refusals record but considered that, the applicant, after already having a four week suspension of the licence for four weeks, should consider compliance a much higher priority.

The police officer asked that, should the licence not be revoked, two conditions be added to the licence regarding CCTV and the selling of high strength alcohol. The Sub-Committee noted that the licensee had not had notice of the condition regarding the selling of high strength alcohol as this was not detailed in the police representation.

Tim Munro, supporting the licensee Mr Keethananthapillai, spoke against the review. An interpreter was also present. Mr Munro advised that it was generally accepted that the illicit alcohol previously found at the premises had been old stock from the previous owners of the business. He stated that two employees that had committed offences and not the licensee. He was not a persistent offender and he therefore submitted that revocation was not a proportionate response.

In response to questions, Mr Munro stated that the licensee had not seen letters from Trading Standards. He considered that it was often difficult for licensees from a different culture to engage with council officers. The licensee had taken on board advice given in 2011 and it was acknowledged by trading standards that this was one of the better refusal books he had seen. He stated that there would now be CCTV, there would be a record of challenges and staff would be trained and would sign the document to indicate that they had received the training. The Sub-Committee expressed concern that training had not been recorded previously and that, although underage sales had been made by employees they were ultimately the responsibility of the licensee. Mr Munro asked that the Sub-Committee consider the home office guidance regarding persistent offending.

In summary, the trading standards officer stated that help was always available and if the licensee considered it was difficult to engage with council officers this was a matter that should be overcome when managing licensed premises. He had not heard anything at the meeting that had overcome his doubts about the management of the premises. He had concerns about how long any arrangements made by the licensee would last in the future.

Mr Munro stated that the licensee was in a difficult position managing a small business but had done reasonably well although below the standard required. He was working towards a higher standard. He considered that three mistakes in a period of four years was not catastrophic.

#### **RESOLVED:**

That the premises licence in respect of Maruthy's, 69 Holloway Road, N7 8JZ be revoked.

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### **REASONS FOR DECISION**

The Sub-Committee heard evidence from the trading standards officer that there had been an underage sale in August 2010. A review had been called in August 2011 following a seizure of illicit alcohol from the licensed premises and breaches of conditions witnessed by the licensing team. The Sub-Committee on that occasion suspended the licence for four weeks and added conditions to the licence. Since then, two further underage sales had taken place in December 2011 and November 2013 respectively. The refusals book had been inspected and was found to be comprehensive, however, there was no written record of training given to staff. The trading standards officer recommended that the licence be revoked. The police supported the application.

The Sub-Committee heard evidence on behalf of the licensee. He acknowledged that in relation to the earlier review the Sub-Committee was told that the licensee had recently taken over the business and had not fully understood the responsibilities that being a licensee entailed. It was accepted that the illicit alcohol had not been bought by the licensee but had been included with the business when it was sold. A verbal warning was given to the seller in respect of the underage sale in December 2011 as there was evidence that the appropriate precautions had been taken by the licensee. No further action was considered necessary by trading standards. In respect of the underage sale in November 2013 no action was taken against the seller by the local authority and the licensee was not informed by the seller that it had taken place. It was submitted that the police and trading standards could have taken alternative action against the licensee having described him as a persistent offender but had chosen to review the licence with a recommendation to revoke which would affect his livelihood.

The Sub-Committee considered the home office guidance relating to persistently selling alcohol to children, specifically to the section relating to good practice in conjunction with the home office guidance relating to reviews. The Sub-Committee was of the view that the licensee had failed to have in place sufficient management supervision.

The Sub-Committee considered that two underage sales in three years, whilst Mr Keethananthapillai was the licensee, was sufficient in itself to revoke the licence and that it was an appropriate and proportionate response. The Sub-Committee noted that conditions on the licence had been breached and had no confidence that to modify the licence with additional conditions or a suspension would uphold the licensing objectives.

The meeting closed at 8.40 pm

CHAIR