

Licensing Sub Committee A - 8 January 2015

Minutes of the meeting of the Licensing Sub Committee A held at Committee Room 4, Town Hall, Upper Street, N1 2UD on 8 January 2015 at 6.30 pm.

Present: **Councillors:** Raphael Andrews (Chair), Nick Wayne and Flora Williamson

Councillor Raphael Andrews in the Chair

- 41 **INTRODUCTIONS AND PROCEDURE (Item 1)**
Councillor Andrews welcomed everyone to the meeting and asked members and officers to introduce themselves.
- 42 **APOLOGIES FOR ABSENCE (Item 2)**
None received.
- 43 **DECLARATIONS OF SUBSTITUTE MEMBERS (Item 3)**
None.
- 44 **DECLARATIONS OF INTEREST (Item 4)**
None.
- 45 **ORDER OF BUSINESS (Item 5)**
The order of business was as the agenda.
- 46 **MINUTES OF PREVIOUS MEETING (Item 6)**
That the minutes of the meeting held on the 4 November 2014 be confirmed as a correct record of proceedings and the Chair be authorised to sign them.
- 47 **MEDITERRANEAN RESTAURANT, 131-133 CENTRAL STREET, EC1V 8AP (Item 1)**
The licensing officer reported that an update from the applicant had been forwarded to the objector but no response had been received.

Osgur Ay, licensing agent, supported by the applicant, Mr Kosiqi, spoke in support of the application. She reported that Mr Kosiqi had worked at another restaurant since 2002. In response to concerns from the resident she reported that the application was for a food and not alcohol led premises. There would be no vertical drinking. There was no outside seating but if there was in the future, seating would be removed by 8pm as conditioned. The capacity inside was for a maximum of 50 patrons.

In response to questions it was noted that there would be no more than 20 diners outside on seating, although there were no proposals for the use of the outside at the moment and details were not included in the plans submitted with the application. It was noted that residents who had objected to a previous application had been contacted by the applicant through the licensing officer. It was accepted by the applicant that smokers be limited to four people. The applicant reported that it was proposed to use a canopy for smokers. There would be adequate staff and all would be trained in licensing matters.

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In summary it was reported that the applicant had been renovating the premises over the past six months and wanted to fit in with the community.

RESOLVED:

- 1) That the application for a new premises licence in respect of Mediterranean Restaurant, 131-133 Central Street, EC1 be granted to permit the supply of alcohol for consumption on the premises from 11:00 to 22:30 on Monday to Saturday.
- 2) That the opening hours of the premises be from 11:00 hours to 23:00 hours.

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.

A written representation had been received by a resident. The Sub-Committee took the submission into consideration. It also noted that most of the issues of concern raised by the resident had been taken into consideration by the applicant. The applicant sent a written response to the resident. The Licensing Officer informed the Sub-Committee that no response had been received by the resident. The resident did not attend the hearing.

The Sub-Committee took into consideration Licensing Policy 2. The premises fall under the Bunhill and 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 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 special policy is however not absolute. The circumstances of each application will be considered on its merits and the Licensing Authority shall permit licences that are unlikely to add to the cumulative impact on the licensing objectives.

The Sub-Committee noted that this was to be a restaurant where alcohol would be ancillary to food. There was to be no vertical drinking allowed inside the premises and 50 was expected to be the maximum number of covers. The applicant agreed to a condition limiting the number of smokers outside the premises to four.

The hours requested fell within the guideline hours as detailed in licensing policy 8.

The Sub-Committee noted that no representations had been made by the Licensing Authority, the Police or the noise team.

The Sub-Committee accordingly granted the application.

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YOUR LOCAL, 261 HOLLOWAY ROAD, N7 8HG (Item 2)

The licensing officer reported that some information was omitted from the report. It was established that the applicant had received this additional information. It was also reported that a review was submitted on the 28 October and on the 30 October a transfer application was submitted by an applicant who had the same family name.

The meeting was adjourned for a period of ten minutes in order for members of the Sub-Committee to read the additional information. This would be interleaved with the agenda papers.

The police reported on some typographical errors in the report. Page 36, third paragraph under 'history' to read 27 September and not October, page 37, third paragraph under

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'previous officer panels and reviews' to read DPS and not DOS. PC Hoppe reported that the application had been brought on the grounds of crime and disorder and public safety. The premises were a favourite with football fans due to its location. The Sub-Committee was informed that there had been two public order incidents on the 27 Sept and the 1 October as detailed in the papers. Also, when the police visited in September there were found to be seven breaches of licensing conditions. Mr Kandeepan and Mr M Pushpanathan were invited to attend an officer panel to discuss these matters but did not respond to the letter and did not attend.

The police reported that on 30 October, an application was made to change the designated premises supervisor (dps). The current dps was aware that the review had been submitted at that time. When taking the previous reviews into account and the latest incidents, the police considered revocation was proportionate.

In response to questions, the police reported that he had not visited since the new dps had taken over as he would be expected to be invited to see what changes were to be made. He had heard nothing since the submission of the review from the new applicant. Previous reviews added conditions and had suspended the licence and it was considered that these options had been exhausted. A panel had been offered in October but this was ignored. As the current dps was a relative of the former dps, PC Hoppe could not see that there would be any changes at the premises.

Robert Jordan, representing the licensee, Sanjay Pushpatharan, stated that letters PEH/2 and PEH/3 in the agenda pack, had not been seen by the previous dps. There were errors in the dates detailed by the police in the review application and also there were discrepancies in the dates that letters were sent to the former dps. All conditions were being met on the 30 October, once the new dps had taken over, apart from a panic alarm which had taken longer to install. CCTV was recording for 31 days and all requests regarding the sale of alcohol on match days were being complied with. Even local customers were not being served alcohol on match days. The new dps had tried to engage with the police but they would not speak to him. The new dps had proved that he was able to run the premises correctly.

In response to questions, the police officer asked his witness, the licensing officer about the letters PEH/2 and PEH/3. The licensing officer stated that the letter PEH/2 was sent to all off licences by post at the start of the football season. Also, before big matches, officers delivered this letter by hand in each shop. This letter was delivered by hand by the licensing officer to the premises on the 26 September and the content was explained. It was not delivered to the dps but presented to a member of staff who stated that he would inform all other staff.

At the time of the police visit, staff informed PC Hoppe that Ms P Sivakumar was the new manager. No paperwork had been received to inform licensing of this. Any letters would have been sent to Mr M Pushpanathan. It would have been the responsibility of the licence holder to inform the licensing team of any changes. Police did take engagement seriously. They could not engage with Sanjay Pushpatharan before the 30 October as he was not the dps and therefore did not have responsibility for the premises at the time.

In response to questions, S Pushparathan stated that he had no involvement in the business prior to approximately the 25 October. He was planning to change the business to his name. He paid £18,000 for stock and was fully aware of the issues. On match days he did not allow customers to stand outside. All staff had been trained since he took over the premises. He previously worked for Waitrose and was trained regularly. He used to work in an off licence. He bought the stock in order to make money. Mr S Pushparathan stated he was no relation to Mr Kandeepan. The police stated that Mr Kandeepan was the premises licence holder and should therefore own the business. Mr S Pushparathan then stated that he was involved in the business in September in order that he could see how things worked

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out. On further questioning he stated that he was helping in the shop from July 2015. He had worked at Waitrose for about seven years.

In summary, the police officer stated that he was not convinced that the operation of the premises would be different. His concern was that the licensing objectives would not be promoted.

The licensing agent reported that with the appointment of a new dps there had been no issues with the premises. The management of the premises was very different than prior to the 30 October. There were errors in the review and letters had not been sent recorded delivery. The new dps would be unlikely to pay a great deal for the business due to the circumstances and would only pay for stock. There had been no evidence of underage or illicit sales and there was no evidence to link violence with the premises. He stated that he would have expected the police to ask for CCTV footage from inside the premises.

RESOLVED

That the premises licence for Your Local, 261 Holloway Road, N7, be revoked.

REASON 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 application was brought by the Police on the grounds relating to the promotion of the licensing objectives of preventing crime and disorder and the promotion of public safety.

The premises had experienced two previous review applications in the past, the first one being in May 2007. That review arose out of breach of conditions and the sale of alcohol to a person under the legally permitted age limit. At this hearing, the Sub-Committee added further conditions to the licence.

The second review application was in May 2011, and the evidence at that review was of underage sales as well as concerns of smuggled/illicit goods being offered for sale at the premises. That review resulted in the suspension of the licence for a period of 8 weeks.

This review was brought by the Police following two incidents outside the premises and the discovery by the police that the licensee was in breach of seven of the licence conditions. The two incidents took place on the 27 September 2014 and the 1 October when staff sold alcohol in glass containers to football fans and allowed them to drink and stand directly outside the premises. This was despite letters being sent to premises reminding them not to sell alcohol in glass containers and for staff to advise customers of the street drinking ban.

The police reported that, on the 27 September, fans were witnessed opening their bottles and cans and drinking outside the premises, using the vegetable stand outside the premises as a bar. When violence broke out nearby, they took part and then afterwards returned to the vegetable stand at the shop and carried on drinking. These facts were supported by Terrie Lane who made written and oral submissions to the sub-committee.

The Sub-Committee noted that again on 1 October, 2014, the very same member of staff at the business who Terrie Lane had handed the letter concerning the prohibition on selling alcohol in glass containers and not to allow customers to drink outside the premises, again allowed football fans to stand immediately outside the premises, drinking and using display shelves as a bar.

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Terrie Lane had personally reminded the business operators that they were not to allow drinking in the street and that the business was to erect signage in the shop to that effect. None of this was done.

These incidents triggered a licensing visit by police who noted seven breaches of the premises licence. Following this, the then designated premises supervisor, Mr M Pushpanathan, was invited to attend an officer panel but this letter was ignored.

The Sub-Committee took into consideration the respondents submissions that since the new licensee had taken over in October, all the conditions of the licence had been met and the licensing objectives had been promoted. Alcohol was no longer served in glass containers. There had been no incidents since the 30 October.

The Sub-Committee noted that the respondent and his representative did not dispute any of the submissions made by the police and Terrie Lane.

Therefore, the breaches of seven licence conditions, the refusal on two successive occasions to comply with requirements stipulated by the Licensing Authority and the facilitating of outside drinking alcohol in glass containers and the commission of violent acts outside the shop, were not in dispute.

The respondent's argument was that the licence should not be revoked due to the fact that a new designated premises supervisor (dps) had recently been appointed and that the breaches of conditions and facilitating of anti-social behaviour should be seen as something from the past and not related to the present licensee and dps.

In relation to the change of dps, the Sub-Committee was informed by the respondent, that he was the cousin of the former dps and that the former dps owned the business. When questioned by the Sub-Committee he told them that he purchased the business from his cousin only after the application for review was received and that the purchase price for the business was £18,000 which he paid for the stock that was in the premises at the time of the alleged sale.

No other amount was paid for the business. Nothing was paid for the goodwill of the business, which one could safely assume would be fairly significant. The Sub-Committee noted that the amount paid for the stock, would be recovered by the new licensee/business owner once he sold the said stock. The reality therefore was that the licensee actually paid nothing for the business. No documents were produced by the new licensee to support the alleged sale of the business.

It was strongly suspected that no actual sale therefore took place. What in effect had taken place, was that the former licensee and dps, who were closely related to the present dps, agreed between themselves that, due to the pending application for review they would change the names of the licensee and DPS. The point of this being that there was now new management in place and new owners of the business, in order for the business to distance itself from the breaches.

The Sub-Committee accordingly had serious doubts as to whether a sale of the business did actually take place. The new licensee gave contradictory submissions to the Sub-Committee. He initially stated that he had only been involved at the business premises, 2 days before the application for the transfer of licence. Later on during the proceedings he stated that he had been "working" at the business since July 2014.

The Sub-Committee did not find the licensee credible. It accordingly had serious doubts as to the actual reason behind the application, who would be involved in the management of

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the premises and his/their ability to manage the business properly and in accordance with the conditions.

The Sub-Committee took into consideration the facts that there had been a history of breaches of conditions in relation to these premises despite the fact that there had been various changes of dps.

The application for the most recent change of dps had taken place immediately after the receipt by the business of the review application. There was no submission on the part of the respondent that this had been planned some time ago. The purchase price referred to was clearly for reasons stated above, not a "purchase price". The parties concerned are related and the present licensee was, despite initial submissions to the contrary, involved in working at the premises at the time when the most recent breaches and incidents occurred.

As stated above, the Sub-Committee did not find the present licensee credible and was not satisfied that the change in management would make any difference.

The Sub-Committee found that that the poor management was a direct reflection of poor company practice or policy and that the removal of the dps since the last incidents was an inadequate response to the problems presented at the premises.

The Sub-Committee accordingly found in all the above mentioned circumstances, that revocation of the licence was the appropriate and proportionate response to promoting the licensing objectives.

The meeting ended at 8.40 pm

CHAIR