

**Licensing Sub Committee B - 20 October 2015**

Minutes of the meeting of the Licensing Sub Committee B held at Committee Room 4, Town Hall, Upper Street, N1 2UD on 20 October 2015 at 6.30 pm.

**Present:**           **Councillors:**           Robert Khan (Chair), Satnam Gill and Michelline Ngongo

**Councillor Robert Khan in the Chair**

- 66**           **INTRODUCTIONS AND PROCEDURE (Item A1)**  
Councillor Khan welcomed everyone to the meeting, asked members and officers to introduce themselves and outlined the procedures for the meeting.
- 67**           **APOLOGIES FOR ABSENCE (Item A2)**  
Apologies were received from Councillor Spall and Councillor Diner.
- 68**           **DECLARATIONS OF SUBSTITUTE MEMBERS (Item A3)**  
Councillor Ngongo substituted for Councillor Spall and Councillor Gill substituted for Councillor Diner.
- 69**           **DECLARATIONS OF INTEREST (Item A4)**  
Councillor Khan declared a personal interest in Item B4 – 424 St John Street as he is the ward councillor.
- 70**           **ORDER OF BUSINESS (Item A5)**  
The items would be considered in the order set out in the agenda.
- 71**           **THE GREEN HOUSE, 49 GREEN LANES, N16 9BU - APPLICATION FOR A NEW PREMISES LICENCE (Item B1)**  
The licensing officer tabled proposed conditions from the noise team which would be interleaved with the agenda papers.

The noise officer reported that a number of complaints had been received during an event on the 10 October. On the application form for a temporary event, regulated entertainment had not been ticked. The officer stated that if the noise team had known that regulated entertainment was taking place they would have objected to the event based on the lack of sound insulation on the premises and the number of past complaints. He asked that the licence be refused, but if it were granted, the tabled condition be used to replace condition 2 on page 101 of the report.

One local resident stated that there was no sound insulation on the premises. The party wall was a garden fence and the roof was plastic. Bedrooms were 6 metres away from the premises. At an event in early 2015 a metal band played until 10.30 at night creating disturbance. A further local resident reported that he did not see how children could be protected from harm from the noise nuisance from the premises. The premises could not contain the sound given the structure. Residents could hear the noise arising from the sale of food in the evening. If films were shown there would be incredible noise escape. It was reported that the premises was acoustically transparent and the business was concerned

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about making money at children's expense. A local resident reported that the noise from coffee machines and dishwashers could already be heard. The premises were unfit for purpose and residents had no confidence in the applicants. The applicants had already received noise complaints and had shown a disregard for the community. The applicants had not stated how they would address problems. There was already a saturation of licensed premises in the area. Residents understood the desire to maximise revenue streams but stated that the premises was not suitable.

In response to questions it was noted that Leconfield Road was a quiet residential area with young families. On one occasion, the music was so loud that a resident had to leave her house. The only access to the main building was through the Greenhouse which had no soundproofing. Patrons would be congregating in the loading bay area.

The applicant reported that they had held a consultation day for residents. Hours would be until 11pm on weekdays. They would be holding supper clubs and controlled events rather than a bar. They would hold family friendly, community events. It was accepted that an event on the 14 February caused problems. They had given a third party permission to hold an event but did not police it themselves and had not held anything of that nature since. Alcohol would be served with food rather than as a bar. They did not want live music but intended to hold film screening and supper clubs for ticketed events. They were happy to find a compromise. The applicant was paying rent for the café space and if licensed he would have the power to stop problems. The café was not currently working as it was and a wider business needed to be found. It was noted that they only heard about complaints when they had submitted an application in March 2015 and they were shocked. They withdrew this application and had held temporary events since.

A resident spoke in support of the application stating the area was in need of regeneration and this type of venture would bring diversity. He did not believe that live music was the intention. A consultation day had been held and it was hoped to reach a compromise with the residents. The well-being room was through the Greenhouse and should be appropriate. He suggested that, if there was a problem with the Greenhouse it could be demolished.

In response to questions it was noted that events would subsidise the core business. The café was a nice place for members to be. Film screenings would take place in the well-being room which was a brick structure with skylights. It was accepted that there had been teething problems in the early days. They had not been aware of complaints received in early 2015 but once aware they had stopped holding any type of event. On the 10 October 2015 they held a market but did not tick the box stating there would be regulated entertainment. The applicant had experience of catering but not of running a bar. He named two of the four licensing objectives when asked. They agreed with the tabled noise condition.

In summary the noise officer reported that if the licence was granted then live music would also be allowed under the Live Music Act. On the 10 October the activity took place in the afternoon and the noise team were unavailable to witness this event.

The residents reported that the premises was unfit for purpose and compromise could not always be reached. Basic noise was heard every day. The market created a noise nuisance. They asked for refusal and asked that the Sub-Committee listened to a video clip sent earlier in the day.

The applicant stated that all conditions would be accepted. He would liaise with residents who would have direct communication to him for complaints. The well-being room would be used for activities to minimise disruption.

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During deliberation the Sub-Committee listened to a noise clip sent in by residents.

### **RESOLVED**

That the application for a new premises licence for The Greenhouse, 49 Green Lanes, N16 9BU 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 noted from the evidence of the residents that there was inadequate sound insulation for the premises which was in close proximity to residential premises. Families with children were living in the area and there had already been problems with noise resulting in loss of sleep for children and loss of amenity for all residents. Loud music emanated from the premises and also the noise of day to day activities such as conversations, and noise from a coffee machine and dishwasher. A market had been held on the premises in October 2015 and had been the subject of complaints. On that occasion, the director of the company had omitted to tick a box stating that regulated entertainment would be taking place when an accordion player and singer were performing. The noise team stated that they would have objected to the TEN if this box had been ticked. The noise team had already been involved and had given advice in March 2015 that they had received multiple calls from residents in connection with low key events in the Greenhouse area and any gatherings under the glass roof outside of normal office hours had to be discouraged.

The steps proposed by the applicant in the operating schedule were not appropriate to control the level of noise emanating from the premises.

Home office guidance 8.34 and 8.35 requires applicants to obtain sufficient information to enable them to demonstrate when setting out steps they propose to take to promote the licensing objectives the layout of the local area, proximity to residential premises and any risks posed to the local area by the applicant's licensable activities. The applicant had failed to set out in his application how he would manage this risk of public nuisance and had failed to provide adequate dispersal proposals.

Licensing policy 1 states that the licensing authority, in considering applications for new licences, will take into account the location of the premises and character of the area, the views of responsible authorities and other people and the physical suitability of the building proposed for licensable activities.

The Sub-Committee considered licensing policy 10 which states, when assessing the applicant's ability to demonstrate a commitment to high standards of management the licensing authority will take into account whether the applicant can demonstrate knowledge of the licensing objectives. The history of noise nuisance from the premises and complaints showed that the applicant appeared unaware of the potential for noise nuisance of licensable activities. The Sub-Committee was dissatisfied with his grasp of licensing objectives when questioned. The noise team had presented a new condition at the hearing for an acoustic survey to be done and recommendations to be implemented. However, the noise team still recommended refusal. The Sub-Committee noted that the condition involved a survey and then considerable works to be implemented before any licensable activities could take place.

The Sub-Committee concluded that it was appropriate and proportionate to the licensing objectives of public nuisance and protection of children from harm and in the public interest to refuse the application.

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**OLD FRIEND, 277 CALEDONIAN ROAD, N1 1ET - APPLICATION FOR A NEW PREMISES LICENCE (Item B2)**

The licensing officer reported that training documents, security procedures and age verification policy had been circulated. These would be interleaved with the agenda papers. Two further conditions had been agreed with the police regarding drinking up time and the employment of a door supervisor after 9pm. It was noted that the police and public health representation had been withdrawn after conditions had been agreed and also one resident representation had been withdrawn.

The licensing authority welcomed the reduction in drinking hours and the employment of a door supervisor but reported that the premises was in a cumulative impact area and the presumption would need to be rebutted that the premises licence would not undermine the licensing objectives. It was noted that the applicant had submitted training documents but had received a caution for selling alcohol previously without a licence. There was no mention of the applicant's previous training, joining pubwatch or of the maximum number of covers. The conditions offered in the schedule were ambiguous with one stating that alcohol would only be sold to persons seated having a table meal while it was unclear if this was the case in the karaoke rooms. Conditions 3-5 contradicted conditions 6-8. Conditions needed to be clear and enforceable. He requested that a door supervisor be employed by an external company so they would not be subjected to management pressure. It was noted that Menelik was the previous licence holder.

A local resident objecting to the application, stated that it had taken years for the previous licence to be revoked. The noise from the premises had been horrendous. It had a glass front and no soundproofing. She wanted regeneration in Caledonian Road but there were a large number of licences in the area. She also considered there would be noise disorder from the premises. A licence to 2 or 3 am was not acceptable as it was a residential area.

The licensing officer stated that the licence was until 11pm during the week and midnight at the weekends. The resident stated that the neon sign outside was far too bright.

The applicant's agent referred the Sub-Committee to the training policies that had been circulated which should address concerns. He would be referring to the Thwaites case. Hours were reduced, the premises was a restaurant with discreet karaoke and was not a bar or nightclub. The application now fell within the core hours. The representation by the police had been withdrawn. The applicant would enhance the dining experience. The Home Office guidance stated that the police would be the main source of advice on matters relating to the crime and disorder objective. The police were no longer objecting to the application and were satisfied that the application did not undermine the cumulative impact policy. The noise officers were not objecting and staff would be checking that all windows and doors were shut. They had worked through the licensing policy, they were within framework hours, they had created bespoke policies regarding training and dispersal, they could have sought a transfer of the licence if it was still in existence so would not be adding to the cumulative impact. They were not seeking seasonal extensions. The caution had been accepted at another premises in the borough which had been let to another individual who had actually been in breach of the law. The applicant's representative stated that Mr Xie accepted the caution, as he did not understand the position. The lack of address on the application form was an oversight.

In response to questions it was noted that there were no non-standard timings requested. It was reported that all aspects of the application had been discussed at length with the

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police. It was agreed that the door supervisor be from an external agency. There would be a noise limiting device installed. The applicant, through the use of an interpreter, was unable to name for the Sub-Committee any of the licensing objectives. It was noted that the applicant had let his shop to a tenant and he was removing alcohol from the shelves when he had a visit from council officers. It was accepted that he should have exercised greater supervision.

In summary, the licensing authority stated that the Thwaites case could be distinguished from this premises as, in that particular case the premises were being well run and had no history of complaints. In this instance the applicant had received a caution. Also, the Thwaites case was possibly not in a cumulative impact area. He advised that the number of covers could be provided. In response to this, the applicant's representative stated that there could be a maximum of 40 covers upstairs and 40 covers downstairs. The licensing authority further stated that the applicant had said that he received a formal caution for an offence that he says he did not commit and he wondered why this would be the case. Alcohol would be sold in four karaoke rooms without food and there was therefore the potential for excess alcohol. The premises were in a cumulative impact area and the applicant, although he had a personal licence was unable to answer questions about the licensing objectives. The licensing authority considered this to be unsatisfactory.

The resident reported that she still had concern about the noise from the karaoke rooms and that you could drink in these rooms. She also raised concerns about the number of people in the premises.

The applicant's representative reported that the applicant's response about the licensing objectives was due to the language barrier and there would be two employees on the premises who could speak English adequately. The noise team had not objected and there was no evidence to say there would be noise disturbance. He considered that they would not add to the cumulative impact and considered that their application had been hampered by a diabolical previous licensee. Each application should be considered on its merits. In the Thwaites case it stated that there should be no speculation on what might happen. A number of bespoke policies had been produced and new conditions offered. Residents had the power of review and the applicant risked losing the licence if he failed to run the licence properly. The applicant's representative asked the Sub-Committee to grant the licence.

**RESOLVED** that the application for a new premises licence for Old Friend, 277 Caledonian Road, N1 1ET 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 and Home Office guidance 13.30. The premises fall under the Kings Cross 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 in the operating schedule 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 considered that the activities proposed were likely to add to the existing cumulative impact of the area. The applicant had not demonstrated that the operation of the premises would not impact adversely on the licensing objective of public

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nuisance and the Sub-Committee did not regard this as an exceptional case. There were no conditions which could effectively mitigate the negative impact on the licensing objective of public nuisance and it was appropriate and proportionate and in the public interest to refuse the application.

The Sub-Committee noted that the previous premises had ceased to operate before this application was submitted. Although the previous licensed premises had had a troubled history, the Sub-Committee accepted the argument of the applicant's representative that it should concentrate on the merits of the current application and gave no consideration to earlier issues with another premises licence holder.

The police, public health and noise team had withdrawn their representations when conditions had been agreed, however, the licensing authority continued to be concerned about the potential for public nuisance. One of the conditions stated that there would be no vertical drinking anywhere on the premises. The Sub-Committee noted that it was not clear from the operating schedule whether the restaurant condition would apply to the entire premises and it was confirmed that in the basement area, where karaoke would take place, substantial meals would not be served. There could be a total of 80 patrons on the premises including 40 downstairs and it would not be possible to impose a condition realistically requiring a restaurant condition to apply to the entire premises.

Under licensing policy 10 the licensing authority, when assessing the applicant's ability to demonstrate a commitment to high standards of management will take into account whether the applicant can demonstrate a comprehensive knowledge of best practice, can understand verbal and written advice and requirements, can demonstrate knowledge of the licensing objectives and their responsibilities under the Licensing Act, can run his business lawfully and in accordance with good practice and is able to demonstrate a track record of compliance with legal requirements.

The applicant had accepted a police caution for selling alcohol without a licence in other premises within the last 18 months. Although the applicant's representative stated that this had been due to a misunderstanding and he had not committed the offence, the Sub-Committee considered that it could not go behind the fact of the caution.

When the applicant was questioned on his understanding of the licensing objectives, it became clear that he could not speak English. His colleagues translated the question but he was still unable to answer. The applicant's representative stated that he would be the general manager and there would be an under manager and another person who could speak adequate English at the premises. However, they made no representations at the Sub-Committee and there was no evidence that the applicant could understand his responsibilities under the Licensing Act.

### **73 THE FIG TREE, 35 UPPER STREET, N1 OPN - APPLICATION FOR A NEW PREMISES LICENCE (Item B3)**

The licensing officer reported that noise and police representations had been withdrawn as conditions had been agreed. A letter had been received from the applicant stating that this licence replaced a previously held licence. The letter would be interleaved with the agenda papers.

A local resident reported that Upper Street was already saturated and was concerned regarding off sales. There would be noise following the closure of the premises after 12:30 at night. There was too great a concentration of licensed premises in the Angel area and the saturation policy should be applied. She was very frustrated about the number of licenses being granted and stated that this would be another one that would add to the cumulative impact.

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The licensing officer reported that this would be a licence for on sales only and the resident stated that this would be an improvement.

The applicant's representative reported that the premises were acquired in 2003 for A3 use. The applicant undertook his responsibility towards training. In 2009, planning permission was granted for 3 residential units above and during construction work the premises caught fire. The freeholder was ordered by the court to put them the applicant back in the premises. He understood the saturation policy. He advised that if there had not been a fire they would still be operating under the original licence and so would not have an additional impact. This licence was for a restaurant which served alcohol only with a meal. There was no bar area. They had not any issues or complaints prior to the fire and hoped to join the local pubwatch. Training would be available for all staff. Opening times and conditions had been agreed and the applicant wanted to run the premises as it had been run previously. The opening hours had been amended. The applicant was a responsible operator and it was hoped that he would be given the opportunity to run the premises.

### **RESOLVED**

- a) That a new premises licence in respect of The Fig Tree, 35 Upper Street, N1 0PN be granted:-
- i) To permit the sale by retail of alcohol, on supplies only, Sundays to Thursdays from 11:00 until 23:00 and Fridays and Saturdays from 11:00 until midnight.
  - ii) To allow late night refreshment, Fridays and Saturdays from 23:00 until midnight.
  - iii) The premises to be open to the public, Sundays to Thursdays from 09:00 until 23:30 and Fridays and Saturdays from 09:00 until half past midnight.
- b) Conditions as outlined in appendix 3 as detailed on page 183 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.

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 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 Sub-Committee noted that there were now no off sales which was a main concern of the residents, two of whom had withdrawn. They noted that the applicant had previous experience of running a similar business in the same location lawfully and had demonstrated a track record of compliance with legal requirements. In his presentation he demonstrated a comprehensive knowledge of best practice and had agreed conditions with the noise team and police. The application was for a restaurant operating within core hours set out in licensing policy 8.

The Sub-Committee considered that the grant of the premises licence could potentially add to the existing cumulative impact. However, the applicant demonstrated in his operating schedule with the agreed conditions that there would be no negative cumulative impact on any of the licensing objectives.

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The Sub-Committee considered that it was appropriate, proportionate and in the public interest to grant the licence.

**74**      **424 ST JOHN STREET, EC1V 4NJ - APPLICATION FOR A NEW PREMISES LICENCE (Item B4)**

The licensing officer reported that the applicant was not in attendance. A letter and email had been sent informing the applicant of the notice of hearing.

**RESOLVED** that the item be adjourned to a future meeting.

The meeting ended at 8.50 pm

**CHAIR**