

Licensing Sub Committee C - 26 January 2016

Minutes of the meeting of the Licensing Sub Committee C held at Committee Room 4, Town Hall, Upper Street, N1 2UD on 26 January 2016 at 6.30 pm.

Present: **Councillors:** Gary Poole, Michelline Ngongo and Angela Picknell.

Councillor Gary Poole in the Chair

95 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.

96 APOLOGIES FOR ABSENCE (Item A2)

Councillor Doolan submitted apologies for absence.

97 DECLARATIONS OF SUBSTITUTE MEMBERS (Item A3)

None.

98 DECLARATIONS OF INTEREST (Item A4)

None.

99 ORDER OF BUSINESS (Item A5)

It was noted that Item B3 – Khamara Lounge, 296 Holloway Road, N7 6NJ had been deferred. Items B1 and B2 would be considered in the order of the agenda.

100 MINUTES OF PREVIOUS MEETING (Item A6)
RESOLVED

That the minutes of the meeting held on the 18 November 2015 be confirmed as a correct record of proceedings and the Chair be authorised to sign them.

101 SEASONS, 53 STROUD GREEN ROAD, N4 2EF - PREMISES LICENCE VARIATION
(Item B1)

The licensing officer reported that the premises were in a cumulative impact area and this was a variation to include the back garden. The Planning Department were not clear regarding the use of the rear garden and the onus was on the applicant to ascertain whether a planning application was required.

The licensing authority reported that they had submitted a representation on the grounds of public nuisance. They had considered licensing policies 1, 2, 9, 10, 11, 12, 18 and 20. The garden would more than double the size of the premises and there had been no reference in the application as to why the premises would not add to the cumulative area. Applications in these areas should be refused unless the Sub-Committee was satisfied that the premises would not add to the cumulative impact. The operating schedule did not supply detail on how the outside area would be controlled and there was no reference to capacity or dispersal issues. There were historic anti-social behaviour issues around that area and the application would add to an already large area but had not put forward controls. The applicant had not sufficiently dealt with issues in the schedule and had made no response to the representations that had been made.

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A local resident who lived next door and whose garden ran parallel to the restaurant stated that he had two children that needed their sleep and if this licence was granted the children would no longer be living in a healthy family friendly environment. In 2011 the restaurant had opened their garden without consent. They had put boards up and advertised on their website. Customers were not seated at tables or drinking alcohol with their meals. There were persons under the age of 16 present. The premises were in a cumulative impact area and there was a rebuttable presumption. He considered that noise levels would increase, signage would not be sufficient and there would be anti-social behaviour which would be harmful to his family. A private walkway leading to the property would become insecure and would no longer be safe for children to play in. Local residents usually rented properties and so moved on where there was a nuisance property and did not object to applications. He asked that the application be refused but if it was not, that the hours be reduced to 11-5pm on Mondays to Thursdays, that food waste be disposed of properly and that the alleyway not be opened to the public. There should be a smoking area in the garden, there be no glass bottles and that customers be seated. There should be no parties or BBQs.

The licensee reported that there would be 35 customers in the garden. Their clientele was quiet and they had been in the area for five years, complaint free. There had been no incidents and there would be no off sales. All customers would be served at tables and would be monitored by staff. He was seeking to appease the local authority and agree to conditions. Outside dining was increasing and in the summer months they had seen trade fall off. In 2011 they had opened their garden to friends. No money had changed hands. They did not advertise this event to the public and when asked to by their neighbour he had dispersed the crowd immediately.

In response to questions he was not aware that there was a planning issue. He would be happy to restrict the hours. He was aware of the cumulative impact policy but did not consider that the premises would contribute to it. Customers would be drinking wine with a meal. The applicant stated that the representation from public health had been solicited from the local resident. The Chair stated that the Sub-Committee needed to balance the requirements of both customers and residents and was concerned that the conditions, hours and the mention of the cumulative impact was not in the original application. The applicant stated that he had approached the local resident several times but had found him unapproachable. It would not be a problem to restrict an area of garden for smoking. This would be a full service restaurant and staff could speak to guests if required. There would be 35 customers outside and 35 inside.

In summary, the licensing authority stated that it was unfortunate that conditions had not been communicated before the meeting. The officer had concerns that the premises customers would be doubled. He considered that the applicant should have considered further conditions prior to the meeting. He did not believe that the applicant had considered the cumulative impact policy or adequately addressed public nuisance concerns.

The licensing officer reported that the representation received from the Whittington Health team was from a health visitor and not from Public Health as a responsible authority.

The local resident stated that the rear garden had been neglected following the event in 2011.

The applicant apologised for not approaching the licensing authority with changes prior to the meeting. He thought that negotiation would occur at the meeting. He considered that he required the licence for the on-going sustainability of the business and the increasing trend for people to eat and drink outside resulted in lost business in the summer.

RESOLVED

That the application for a premises variation at Seasons, 53 Stroud Green Road, N4 3EF 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 Policies 1 and 2 and also home office guidance paragraphs 13.20 and 13.30. The premises fall under the Holloway and Finsbury Park 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.

Under licensing policy 1 the Licensing Sub-Committee considered the location of the premises and the character of the area. The garden was situated closely to residential premises containing young children and opening the garden doubled the capacity of the premises. There was a potential impact on the licensing objectives of public nuisance and protection of children from harm given the evidence that the children needed sleep in the daytime as well as night.

Home office guidance 8.35 states that applicants are expected to include positive proposals in their application on how they will manage potential risk and where specific policies apply in the area. Applicants are also expected to demonstrate an understanding of how the policy affects their application. Licensing policy 9 states that applicants are expected to describe in the operating schedule how high management standards will be achieved in relation to promoting the licensing objectives. Applicants are required effectively to complete their own detailed risk assessment to enable the licensing authority to assess the adequacy of steps outlined for the promotion of the licensing objectives.

The Sub-Committee considered that the applicant had failed to rebut the presumption and had failed to demonstrate in the operating schedule the measures he would take to address the potential negative cumulative impact on the licensing objectives of public nuisance and the protection of children from harm. He seemed unaware of the potential for a negative impact on the licensing objectives of opening up the garden from 11am to 11pm. There were no exceptional circumstances in this case.

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MEDITERRANEAN RESTAURANT, 61 CHAPEL MARKET, N1 9ER - NEW PREMISES LICENCE (Item B2)

The licensing officer reported that the application had been deferred from July to allow the applicant to apply for planning permission. A3 had been granted except for a proposal regarding the extraction fan which would be determined in March 2016. It was noted that the noise conditions had been accepted. The acoustic condition which had been tabled and would be interleaved with the agenda papers had also been agreed.

The Sub-Committee moved into private session under paragraph 7, of Part 1 of Schedule 12A of the Local Government Act 1972 to consider an incident which had taken place at the premises on the 12 December 2015.

The Sub-Committee noted the evidence given by the police officer in private session and the response given by the applicant

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On return the applicant's representative stated that this was an application for a new licence. One of the joint Directors had seven years' experience running a coffee shop within Chapel Market and would be applying for a personal licence. There had been a temporary event notice from the 14 January to the 20 January and there had been no incidents. All staff would be trained. Additional conditions were tabled at the meeting which would be interleaved with the agenda papers. Restaurant conditions were offered. There would be no bar and no take out was agreed. There were generally no single people at the restaurant as it catered mainly for couples, music was background only and there had been no noise complaints. There had been one complaint about odour on the 5 November. The use of the first floor terrace was prohibited. The restaurant would be trading within framework hours. There would be 16 CCTV cameras on the premises. There had been a one off incident in December. The designated premises supervisor would be replaced and it was stated that the premises would not increase the cumulative impact.

In response to questions it was noted that there would be 70 covers in the restaurant. One of the Directors who would be taking over as licensee should the licence be granted was asked a number of questions regarding how he would mitigate the cumulative impact. He stated he would train his staff in entry and how they should serve at tables. He would not serve too much alcohol. He would also check tables. He would operate Challenge 21, put up signage and not allow glass or bottles outside so neighbours would not be disturbed. It was noted that the premises would operate as a restaurant and not a take away.

In summary, the police stated that it would be better to have a new application rather than a transfer of the licence. He stated that he had seen the CCTV relating to an incident in December 2015 and his version differed from the applicant's version. He considered that the licence should not be granted.

The applicant's representative stated that he would transfer the licence if granted. Conditions would mean that this grant would not add to the cumulative impact. The premises would not be a bar and would therefore have less of a cumulative impact.

RESOLVED

That the application for a new premises at the Mediterranean Restaurant, 61 Chapel Market, N1 9ER 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 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 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 home office guidance, paragraph 9.12 that states that the Sub-Committee should accept all reasonable and proportionate representations made by the police. Under licensing policy 10 when assessing the applicant's ability to demonstrate a commitment to high standards of management, the licensing Sub-Committee took into account whether the applicant was able to demonstrate a track record of compliance with

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legal requirements and was able to run his business lawfully and in accordance with good business practice.

There had already been a serious incident on the premises before any licence was granted. The applicant had behaved unwisely and had not managed the situation well. There was no evidence of any improvement in management standards.

The Sub-Committee considered that the granting of a new licence would undermine the licensing objective of crime and disorder. Further, under licensing policy 2 the premises were in an area of cumulative impact. Granting the licence would be likely to add to the cumulative impact.

103 **KHAMARA LOUNGE, 296 HOLLOWAY ROAD, N7 6NJ - NEW PREMISES LICENCE**

(Item B3)

The Sub-Committee noted that this item had been deferred to a future meeting.

104 **EXEMPT MINUTE - MEDITERRANEAN RESTAURANT, 61 CHAPEL MARKET, N1 9ER**

(Item B2)

The meeting ended at 8.05 pm

CHAIR