

London Borough of Islington
DRAFT
Licensing Sub-Committee C – 18 April 2013

Minutes of the meeting of Licensing Sub-Committee C held at the Town Hall, Upper Street, N1 2UD on 18 April 2013 at 6.40 pm.

Present: Councillors: Raphael Andrews, Mouna Hamitouche and Claudia Webbe.

Councillor Claudia Webbe in the Chair

188. **INTRODUCTIONS AND PROCEDURE (ITEM A1)**
Councillor Webbe welcomed everyone to the meeting and asked members and officers to introduce themselves. The Chair outlined the procedures for the meeting.
189. **APOLOGIES FOR ABSENCE (ITEM A2)**
Apologies were received from Councillor Spall.
190. **DECLARATION OF SUBSTITUTE MEMBERS (ITEM A3)**
Councillor Hamitouche substituted for Councillor Spall.
191. **DECLARATIONS OF INTEREST (ITEM A4)**
None.
192. **ORDER OF BUSINESS (ITEM A5)**
The order of business would be as on the agenda.
193. **MINUTES (ITEM A6)**
RESOLVED
That the minutes of the meeting held on the 6 February 2013 be confirmed as an accurate record of proceedings and the Chair be authorised to sign them.
194. **THE WHITEHOUSE, 313 Highbury New Park, London, N5 2LB**
APPLICATION FOR A PREMISES LICENCE REVIEW UNDER THE LICENSING ACT 2003
(Item B1)

The Sub-Committee noted the tabled coloured photos and the addendum to the noise report which would be interleaved with the agenda papers.

The Licensing Service Manager, informed the Sub-Committee that, from August 2012 there had been a history of complaints regarding noise from customers, television screens and amplified music in the rear garden area. Licensing officers had then met with the licensee in November 2012 where it was agreed that the licensee would submit a schedule to deal with the issues at the premises. This had not yet been submitted. It was therefore considered necessary that a review application be submitted to control the current situation. It was reported that a building had been erected in the garden, which was substantially enclosed. With the deterioration in management practices including the breaches of conditions, the licensing authority had serious concerns with management practices at the premises.

The Environmental Health officer reported that the smoking ban applied in structures that were substantially enclosed. The guidance was that 50% of the wall would have to be open in order for smoking to be allowed. When this premises had first been visited the structure had been 75% enclosed and since then had become even more so. Guidance had been given to the licensee and the officer reported that the premises may be prosecuted for breaches in the smoking ban.

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The noise officer reported that no response had been received from the premises regarding the letters sent about noise nuisance from the premises. A Section 80 abatement notice had been served on the premises in September 2012 but further complaints regarding amplified music in the garden had still been received. They had no confidence in the management of the premises and considered that the rear garden should be closed at 21:00 hours. A DVD was played for the Sub-Committee which indicated the noise nuisance from a resident's perspective. An appeal against the abatement notice was heard in January 2013 and was dismissed by the District Judge.

In response to questions it was noted that noise complaints had been made from more than one resident. The DVD had been filmed on the 19 September. On that particular evening the garden was filled with approximately 100 people and there was a football game being screened. The licensing service manager reported that the complaints in August 2012 mainly related to match day screenings. They had hoped that the licensee would manage the process and remove the television screens. At the meeting in November it was agreed that the licensee would produce an action plan but this had never materialised. The Sub-Committee noted that the Engin Aken's uncle was the designated premises supervisor.

Baykal Suruk and Suna Hazar, solicitors, supporting the licensee Engin Akin, spoke against the review. They informed the Sub-Committee that they had recently taken over the matter and had hoped that the issue could be resolved without coming to Committee. Agreement had been reached with the noise team on all issues except the time of closure of the rear garden, which they required to be 23:00 hours. Mr Suruk stated that as soon as his client knew that the garden needed to be cleared it had been, within five minutes. He was willing to take the TV screens and amplified system away, and had confirmed that 50% of the structure would be removed. Once the TV screens had been removed, this would significantly reduce the noise in the rear garden. The event that had caused the major problems was a one off champion's league event. Similar events occurred in the area, in the parks or at the Arsenal stadium. A petition had been signed by local residents who were happy for the garden to be used until 23:30 hours.

In response to questions, the legal officer advised that questions should not be asked about the petition as it had not been seen by the applicant to the review. Mr Akin advised that there had been no limit to the hours in the garden previously and the noise officer had advised previously that the garden could be used until 23:00 hours. The noise officer informed the Sub-Committee that at a previous visit she had informed Mr Akin that she had needed to check the timings and informed him subsequently in a letter dated 31 August and again in a letter dated 20 September, that the garden should only be used until 21:00 hours. Mr Suruk advised that an acoustic report had not been sent as the previous solicitor had been dealing with this matter. The solicitor had received the report but had not passed the recommendations onto Mr Akin. The licensing officer advised that a condition of the licence was to provide an acoustic report. This had only just been provided. It was noted that the garden was not part of the licensed area. All alcohol had now been removed from the bar area. Mr Akin was willing to appoint a member of staff for the garden area. The noise officer advised that the noise from patrons could not be limited so the only solution would be to place a time limit to 21:00 hours to limit the noise. There were front terraces that could still be used at the front of the premises.

In summarising, the licensing authority reported that officers had been negotiating with the licensee since September and progress had only been made following submission of the review. The garden had still been used with TV screens despite the licensee knowing that this was a problem for residents. Mr Suruk reported that they had not received the acoustic report from the previous solicitor. If this had been received it would have been complied with. The hours in the garden were only an issue due to the noise from the TV screens. If these were removed it would not be necessary to limit the closure of the rear garden to 21:00 hours.

Members of the Sub-Committee left the room to deliberate before returning to announce their decision.

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RESOLVED:

That the premises licence in respect of The Whitehouse, 313 Highbury New Park, N5 be modified as follows:-

- a) That the Designated Premises Supervisor be removed from the licence.
- b) That the following conditions shall be applied to the licence.
 - i) The conditions of the current licence subject to the deletion of conditions 16 and 17 of Annex 2.
 - ii) The following additional conditions.
 - Television screens and speakers shall not be permitted in the garden at any time.
 - There shall be no amplified music in the rear smoking area and the area shall be supervised at all times whilst it is in use.
 - The rear garden shall not be used by patrons after 21:00.
 - No alcohol to be sold or consumed in the rear garden.
 - A revised layout of the premises that reflects the current arrangements be submitted within 4 weeks of the determination of the review application.

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 were particularly concerned with the evidence presented of poor levels of management that had been demonstrated by the licensee for a considerable time. The Sub-Committee noted the evidence of the licensing authority that the licensee had consistently failed to engage with the authority in relation to condition 16 and 17 of the licence. The Sub-Committee also took into consideration the levels of noise nuisance emanating from the rear garden especially when football matches were screened. An abatement notice had been served on the licensee recently which had been appealed and the appeal had been dismissed by the magistrate court.

In reaching their decision, the Sub-Committee took into particular consideration Licensing Policy 030 and decided against revoking the licence. The Sub-Committee was of the opinion that the licensing objectives could be achieved by the removal of the designated premises supervisor and the imposition of additional conditions.

**195. MOONLIGHT SUPERMARKET, 131-133 HOLLOWAY ROAD, N7 8LX
APPLICATION FOR A NEW PREMISES LICENCE UNDER THE LICENSING ACT 2003 (Item B2)**

The police officer reported on their representation regarding alcohol related crime in the area. He raised concerns regarding the transfer of the licence from a smaller to larger premises. He considered that this would result in greater footfall in the premises and lead to an increase in alcohol sales.

The health authority highlighted a number of issues in their submission including the high level of ambulance call outs in the area. Hospital admissions in the area were lower in the ward compared to the borough whilst ambulance call-outs were higher. Additional availability would result in an increase in alcohol related harm.

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The licensing authority reported that this premises was in a cumulative impact area and in the application this did not seem to be an exceptional case or have mitigating factors and was therefore recommended for refusal.

Jun Simon, agent, representing the applicant Cihangir Eren, reported that the applicant had been running the premises next door since 1997. This had been a 24 hour premises since 2005. He reported that the space allocated to alcohol in number 135 Holloway Road was smaller than in 131/133 Holloway Road. He had prepared a notice of surrender and following the appeal period would surrender the licence for the next door premises. Taking over the premises at 131/133 was a commercial decision and the premises at 135 would be used for storage whilst the front of the premises could be rented out. He considered that this would not be an additional impact as the alcohol area would be smaller.

In response to questions, he reported that No 131/133 was a larger premises but the number of alcohol items and the area was much smaller. If they wished to change the floor area they would need to make an application. He considered he was reducing the number of alcohol items and would therefore reduce the amount of crime and disorder. Mr Eren was aware of the clientele in the area and would not serve alcohol to customers when drunk.

In summarising, the police reported that the premises were in an area of cumulative impact. The premises was a larger shop with a greater diversity of product which was designed to increase the amount of footfall and was more attractive for people to enter and buy alcohol. The health authority raised concerns regarding the 24 hour licence and reported that the number of premises selling alcohol needed to be reduced and not increased. Mr Simon reported that the applicant was not expecting to have increased sales of alcohol. His client had 16 years' experience in the area and had a very good relationship with his neighbours.

Members of the Sub-Committee left the room to deliberate before returning to announce their decision.

RESOLVED:

That the premises licence in respect of Moonlight Supermarket, 131-133 Holloway Road, N7 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 002. The premises fall under the Holloway and Finsbury Park cumulative impact area. Licensing policy 002 creates a rebuttable presumption that applications for new premises licences are likely to add to the existing cumulative impact and will accordingly normally be refused unless an applicant can demonstrate why the operation of the premises involved will not impact adversely on the cumulative impact or otherwise impact adversely on the promotion of the licensing objectives. The Sub-Committee was concerned of the potential that the granting of the new licence would add to the crime and disorder, public nuisance and public safety in the area concerned. The applicant did not rebut the presumption and did not show any exceptional circumstances as to why the Sub-Committee should deviate from the norm in refusing such an application.

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196. DA HAI CHINESE SUPERMARKET, 334-336 CALEDONIAN ROAD, N1 1BB - APPLICATION FOR A NEW PREMISES LICENCE UNDER THE LICENSING ACT 2003 (Item B3)

RESOLVED:

That, as the applicant was not in attendance, this item be deferred to a future meeting.

197. ROHAT'S FRUIT BASKET, 93A STROUD GREEN ROAD, N4 3PX - APPLICATION FOR A PREMISES LICENCE REVIEW UNDER THE LICENSING ACT 2003 (Item B4)

The trading standards officer reported on papers tabled at the meeting which would be interleaved with the agenda. The licensee received a visit from trading standards officers following a complaint from a local resident. Illicit tobacco and alcohol were found in the premises. The owner and licensee, Bulent Dogan, had confirmed that he had read the guidance previously sent to the business. At the time of the seizure it was noted that several of the licence conditions had not been complied with. The manager of the shop had been instructed by Mr Dogan not to buy from people calling at the shop but there was no written instruction to this effect. The owner and licensee, Mr Dogan, stated he did not realise that illicit tobacco and alcohol was being sold in his shop. When the caller to the shop returned to sell more alcohol, Mr Dogan did not call the trading standards team with any details. Mr Cengiz, who bought the illicit alcohol, remains as manager in the shop. There were no CCTV recordings available of the wine seller. The officer considered that revocation of the licence was the only appropriate action in this case.

In response to questions, the trading standards officer reported that due to the low cost of the alcohol he would have good reason to believe that no duty had been paid on the wine – the amount paid (£1.33 per bottle) was much less than the duty payable on each bottle (£1.90). The Sub-Committee noted that Mehmet, an employee, had been sacked but Sinan Cengiz, whose responsibility was to obtain wine and tobacco for the shop, remained. At a visit by licensing officers as late as the 28 March it was noted that there were still breaches of conditions in the premises.

Mr Loughlin, counsel, spoke in support of the licensee, Mr Dogan. He reported that Mr Dogan had previously worked in licence premises in Southgate. He considered that the identification of the sellers in the shop were not clear from the descriptions in the tabled emails. There was nothing to suggest that Mr Dogan was aware that illegal cigarettes were being sold in the premises. Regarding the alcohol, the Glens had labels that appeared to be genuine, there were two bottles only of the Zoladhowa vodka and there was no evidence to suggest that the wine had been non duty paid. Mr Loughlin accepted there was evidence of poor practice and there had been lapses but concerns were now being addressed. There had been no suggestion that any underage sales had been made. There had been no further breaches over the past five months and he considered that a suspension of the licence would be more appropriate than a revocation when you only considered the small bag of illicit tobacco and the two bottles of Zoladhowa vodka in the shop that Mr Dogan would not have been aware of.

In response to questions Mr Loughlin reported that Mr Dogan believed the Glens vodka to be genuine and the wine was sold by a caller but he believed it to be duty paid. Mr Dogan only became aware of the tobacco when found by trading standards officers. He accepted that the standard of management had lapsed and was not robust enough. Mr Cengiz had made breaches in conditions and yet he was still employed. The Sub-Committee noted that Mr Cengiz was Mr Dogan's brother in law. Mr Loughlin informed the Sub-Committee that a new manager could be appointed if required. The CCTV was not checked daily. He had no knowledge of Challenge 25. This had now been rectified. The Sub-Committee considered that Mr Dogan had not taken any measures to mitigate staff stealing from him.

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In summary, the trading standards officer reported that illicit tobacco and alcohol had been found on the premises. If guidance had been followed, some of the Glens vodka would have been spotted as the labels on the 70cl bottles did not fluoresce. The invoice provided for the wine had an incorrect date, incorrect registered office and the telephone number did not work. Two months after the seizure there were still found to be breaches in the conditions in the licence. Trading standards were not contacted when the wine salesman returned. The refusals book only started in March after consultants had been employed. The trading standards officer recommended revocation of the licence.

Mr Loughlin reported that the evidence supplied by the unknown party was not admissible. The breaches of the licence were relatively minor and concerns were regarding the manager. He was still employed through misguided loyalty. There was no evidence that the wine was non duty paid and there had been one isolated incident. He did not consider that revocation was proportionate and he proposed suspension with additional conditions and/or the removal of Mr Cengiz as manager.

Members of the Sub-Committee left the room to deliberate before returning to announce their decision.

RESOLVED:

a) That the premises licence in respect of Rohat's Fruit Basket, 93A Stroud Green Road, N4 3PX be revoked.

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.

There was undisputed evidence of the sale of illicit goods in the premises. The respondent blamed his manager and an employee for the illegal activity and submitted via his barrister that he was unaware of the illegal business taking place at the shop. The implication of this being that the manager and staff member had been concealing the illicit goods from him and had been selling the illicit goods when he was not present in the business. The further implication was that CCTV footage in the shop had either not recorded the transactions or was not examined as it should have been by the licensee. The licensee further submitted that measures had now been put in place at the business so as to prevent a recurrence of the illegal activity. Under questioning by the Sub-Committee it emerged that the manager, who the licensee submitted had been involved in the illicit sale of goods had not been dismissed and that he was still the manager of the premises.

The licensing authority supported the application brought by Trading Standards under section 51 of the Licensing Act 2003. There had been a history of breaches in relation to this licence albeit by a different licensee. The Sub-Committee found that the licensee failed to demonstrate a comprehensive knowledge of best practice and was not able to run his business lawfully in accordance with good business practice. The licensee failed to take adequate measures against the offending manager at the appropriate time. He did offer to substitute his manager through his barrister in a late submission to the Sub-Committee. This offer was only made after it was elicited by questioning by the Sub-Committee that the manager was still in post. If this information had not been forthcoming through questioning by the Sub-Committee it was clear that the intention of the licensee was for his manager, who had committed an illegal offence, to continue in post managing the business. This indicates that his motive for making such a late offer had more to do with his desire to protect his licence than a willingness and comprehension of sound management standards.

In reaching their decision, the Sub-Committee took into particular consideration Licensing Policy 010 regarding high standards of management and licensing policy 026 regarding the sale of illicit

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goods.

The meeting finished at 11:15pm.

CHAIR