

Licensing Sub Committee C - 17 January 2017

Minutes of the meeting of Licensing Sub Committee C held in Committee Room 4, Town Hall, Upper Street, N1 2UD on 17 January 2017 at 6.30 pm.

Present: **Councillors:** Alex Diner, Rowena Champion and Aysegul Erdogan

Alex Diner in the Chair

135 INTRODUCTIONS AND PROCEDURE (Item A1)

Councillor Alex Diner welcomed everyone to the meeting and officers and members introduced themselves. The procedure for the conduct of the meeting was outlined.

136 APOLOGIES FOR ABSENCE (Item A2)

Received from Councillors Flora Williamson and Asima Shaikh.

137 DECLARATIONS OF SUBSTITUTE MEMBERS (Item A3)

Councillor Aysegul Erdogan substituted for Councillor Flora Williamson and Councillor Alex Diner substituted for Councillor Asima Shaikh.

138 DECLARATIONS OF INTEREST (Item A4)

None.

139 ORDER OF BUSINESS (Item A5)

It was noted that there was only one agenda item for consideration.

140 MINUTES OF PREVIOUS MEETING (Item A6)

RESOLVED

That the minutes of the meeting held on 4 October 2016 be confirmed as a correct record and the Chair be authorised to sign them.

141 BEYOND BREAD, 257 UPPER STREET, LONDON N1 2UQ - NEW PREMISES LICENCE (Item B1)

The Licensing Officer highlighted an error on page 45 of the agenda, which comprised the conditions to be attached to the licence. A new Condition 24 had been agreed with the Noise Team and amended in agreement with the applicant to read as follows:

“24. “The rear courtyard shall be closed to customers at 20:00; amended to:

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- The rear courtyard shall be closed to customers at 21:00; and
- In the event of substantiated noise complaints in connection with the use of the rear courtyard, the permitted timings for use will be reduced to 20:00 and the premises licence will be modified to reflect the revised timings.”

He drew the Sub-Committee’s attention to the additional information from the applicant, circulated as a second despatch, after the publication of the agenda.

It was noted that this information had been emailed to councillors as soon as it became available and paper copies had also been supplied to them in advance of this meeting.

In response to a question from the Chair, the Licensing Officer confirmed that the application was in a Cumulative Impact Area.

One of the local resident objectors stated that she lived above the premises and noted that the premises used to be a hairdresser and was now a café bakery and was concerned that it could set a precedent. There were six or seven other bakeries on Upper Street and these could all apply for extended hours. She felt that the part of Upper Street where she lived was different to the rest of Upper Street, with a variety of premises, such as a gift and kitchen shop and a hairdresser and, if an alcohol licence was granted to this premises, it would change the area. She referred to the Council’s Licensing Policy and, in particular, to the Policy relating to applications in a Cumulative Impact Area. She suggested that noise, crime and disorder, vandalism, issues with personal safety and smoking would increase. Her living room was above the area where tables and chairs were situated outside the front of the premises and she was able to hear the voices of people talking from that area. All of these issues were likely to affect her quality of life.

This objector went on to say that she had read the letter from the applicant to local residents, dated 14 January 2017, which had sounded promising, but her experience of reporting noise complaints suggested otherwise. She had reported hammering noises at 5.00am and drilling noise at 6.00am and the only response had been an expression of thanks from the applicant in allowing them to carry out those works, even though local residents had never given that permission. She had also emailed the applicant about loud music from the premises. She said that the applicant seemed to be taking her seriously in the past few months, but this appeared to be only a week or so before residents had received a letter about the new licence application. She complained about deliveries at unsocial hours and bottling hours. Her bedroom was at the back of the premises and she could hear music from the premises. She had had to ask patrons of the premises to move their chairs and belongings away from her front door when arriving home at night. If she could not sleep properly, it would cause huge issues for her. She did not want the premises to turn into a bar and wished it to be designated for food.

Another local resident reiterated that the nature of the area would change if other bakeries in the area also applied for an alcohol licence. She said that she would no longer feel safe if alcohol was being sold at the premises. She referred to recent vandalism to premises in the vicinity.

A local resident also expressed concern that the granting of an alcohol licence to these premises would set a precedent. He was concerned that alcohol would be available “in the street” and that the premises was close to a school. An accumulation of licensed premises, such as The Sampler and 100 Islington, which were in close proximity to this premises, could cause problems. His home backed on to the garden at the back of the premises and he was concerned to see that the times which the courtyard could be used had changed back to 21:00 hours. There had been lots of noise in the courtyard from May to August and

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it had proved difficult for his children to sleep. He hoped that the closing times for the courtyard could be changed to an earlier hour. He was also concerned that there would be smoking in the courtyard. He liked the bakery but was concerned that it might change to a bar.

One of the resident objectors asked for clarification from the Licensing Officer on the planning status of the premises for change of use.

The Licensing Officer replied that he had spoken to an officer in the Planning Team and that this was a "grey area". The view expressed was that, if the licence was granted, use would remain as A1 if alcohol was sold as ancillary to food, but it may need to change to A3 use. The applicant's representative confirmed that the premises had A1 use and this was unlikely to change.

Another of the local residents supported the representations already made by objectors to this application. She suggested that 20:00 hours should be the cut off point for use of the courtyard, especially because of the noise nuisance to sleeping children. She suggested that the hours being sought by the applicant were too long and they should be from 11:00am to 20:00 hours only.

In response to a question from a member of the Sub-Committee as to whether any of the other premises nearby, who served alcohol, affected them in any way, one of the residents said that she was affected by noise from 100 Islington. Another resident said that she was affected by noise from Gem Restaurant, especially on Fridays and Saturdays. There were generally too many groups of people in the area.

In response to a further question from a member of the Sub-Committee as to whether any anti-social behaviour had been witnessed, one of the residents said that she had had to ask a woman to move her chair and belongings away from the entrance to her front door, outside Beyond Bread, so that she could gain access to her flat, and the woman had been rude in response. However, the resident did not attribute this to the woman having consumed alcohol. In response to a question as to whether any formal complaints had been made to the Council's Noise Service about the premises, one of the residents said that she had made a complaint online.

Members sought clarification from residents as to whether they thought there was likely to be less noise from the premises if alcohol was ancillary to food. It was clear that residents did not wish to see a club or bar on the premises.

The applicant's representative gave an overview of the nature of the business at Beyond Bread, stressing that it was a mainly food-led premises. The applicant wished to offer gluten-free alcohol with table meals and there would be no vertical drinking. If the Sub-Committee were minded to grant a licence, it could be subject to review if there were complaints about noise, or any other anti-social behaviour, whereas without a licence it would only be subject to statutory noise powers.

In response to residents' concerns, the applicant's representative referred to the Council's Licensing Policy 2 relating to Cumulative Impact Areas, to paragraph 34 relating specifically to the Angel and Upper Street Cumulative Impact Area and paragraph 36 which related to the Council's Core Strategy and paragraph 37 which referred to the fact that the area still featured as a late night alcohol related crime and disorder hotspot. He suggested that this was what Licensing Policy 2 was to address, rather than this particular application as there was no link with this premises and crime and disorder in the area. Although there had been noise impact on local residents, the Licensing Policy provisions were formulated to mitigate crime and disorder in the area and this premises would not add to those. He referred to the

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National Guidance on Licensing which stressed that the focus had to be on the “licenseable activity”, as in the operating schedule.

He stressed that alcohol would be sold ancillary to table meals, that conditions had been agreed between the applicant and the Police and Noise Teams and that doors and windows would be kept closed as far as possible, and the courtyard closed at 9.00pm, to mitigate any impacts on residents and the local area. He pointed out that, although the conditions on the licence permitted the courtyard to be open until 9.00pm, this would reduce to 8.00pm if there were substantiated noise complaints.

A member of the Sub-Committee asked how customers would be managed, if an alcohol licence was granted, given the volume of noise complaints to date and the lack of communication between the applicant and residents. The applicant’s representative drew the Sub-Committee’s attention to paragraph 3 of page 96 of the supplementary papers, which stated (final line) “...and to respond promptly to any complaints about noise through a single point of contact”. This was backed up in the Noise Management Plan, at page 22.

In response to a question, the applicant confirmed that, since Christmas, the premises was opening at 8.00am and closing at 5.00pm. The maximum number of people who could be catered for was 44, though there were not always that number of patrons on the premises. Weekends were often busy and the premises could be full. Weekdays were not so full.

A member of the Sub-Committee asked whether, if the Sub-Committee considered that alcohol was having an impact on the area, the applicant would still ask for extended hours? The applicant’s representative said that the premises was A1 use at all times and that there was no restriction currently on their opening hours. There was no proposal for a 24 hour bakery and he had asked the Sub-Committee to concentrate on licensable activities only. In response to a question from a member of the Sub-Committee as to why the applicant had not responded to residents’ complaints before November 2016, the applicant’s representative stated that that had been the experience of one resident. However, he acknowledged that the noise complaints could have been managed better. He said that there had been a dramatic improvement in communications between the applicant and local residents, in the run up to the Sub-Committee.

The applicant stated that he had visited the flat of one of the residents above the premises and, as a result, had removed speakers from the ceiling of his premises. He said that he understood noise problems and took them seriously.

In response to a question from a member of the Sub-Committee as to why the applicant wished to serve alcohol from the premises at 8.00am, the applicant’s representative said it was to tally with the opening hours. The applicant said that these were standard hours and were not a reflection of the actual hours they wished to sell alcohol from the premises.

The Chair of the Sub-Committee invited the applicant to inform the Sub-Committee at this point of the actual hours they were seeking for the sale of alcohol. Following consultation between the applicant and his representative, the following hours were proposed: 10.00am to 10.00pm on Monday to Thursday, 10.00am to 10.00pm on Friday to Saturday and 11.00am to 9.00pm on Sunday.

The Chair of the Sub-Committee pointed out that the only reference to a Cumulative Impact Area appeared in a representation from one of the local residents. This was an important matter for consideration by Islington’s Licensing Sub-Committees and he queried why there had been no reference to it in the applicant’s original application. The applicant’s representative said that the applicant’s solicitor had completed the application. He added that, as a solicitor, he saw no reason to refer to it in an operating schedule.

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The Sub-Committee noted that the applicant operated another premises in Fitzrovia, but there were no tables outside, or alcohol licence.

The Chair of the Sub-Committee pointed out that page 25 of the agenda, which comprised a plan of the premises, included the word "Bar" on the drawing, even though the Sub-Committee had been informed that the applicant did not wish the premises to become a bar. When asked how the applicant would ensure that alcohol would be ancillary to the sale of food, the applicant's representative said that the design of the premises meant that there was nowhere for vertical drinking. All food and drink had to be ordered at the counter and staff would know if someone was sitting down and the food they had ordered.

In summing up, the residents asked the Sub-Committee to refuse the application, as the licence would attach to the premises and noise would escalate, that the courtyard hours needed moderating and that the granting of a licence to these premises could possibly add to the Cumulative Impact Area. Also, one of the residents said that she lived directly above the premises and there had been more late nights and noise since July. In response to a question, she said that she considered "late" to be 10.00pm to 11.00pm.

The applicant's representative pointed out that one of the conditions agreed with the Noise Team had been "Noise or vibration must not emanate from the premises so as to cause a nuisance to nearby properties", the Council could take a dim view if this condition was not complied with, especially if there was a review of the licence. He hoped that the applicant would be afforded the opportunity to run his business in a responsible way. He was a very experienced restaurateur, who had operated alcohol-led premises in the past.

The Sub-Committee left the room at 7.50pm to deliberate and returned at 8.00pm.

RESOLVED:

That the application for a new premises licence in respect of Beyond Bread, 267 Upper Street, London, N1 2UQ be granted

- 1) To allow the sale of alcohol, on supplies only, Monday to Saturday from 10:00 until 22:00 and Sunday from 11:00 until 21:00.
- 2) To permit opening hours from Monday to Thursday from 08:00 until 23:00, Friday and Saturday from 08:00 until 00:00 and Sunday from 09:00 until 23:00.
- 3) Conditions detailed on pages 44 and 45 of the agenda shall be applied to the licence, with an amendment to condition 24 as follows:
 - The rear courtyard shall be closed to customers at 20:00

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 within 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

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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.

Nine local resident objections had been received. Representations had been made by the Police and Noise Team but these were withdrawn after conditions had been agreed.

The Sub-Committee noted that the hours sought were within the core hours specified in licensing policy 8. The Sub-Committee also noted that, during the Sub-Committee meeting, the applicant offered to reduce the hours sought.

The Sub-Committee heard evidence from local residents that they were concerned about noise from the premises. Residents had experienced noise nuisance from music, loud talking and renovation works and were concerned that, for several months up until November 2016, their complaints had been ignored. There was particular concern about noise in the rear courtyard, which particularly impacted upon residents with children. The local residents expressed concern that, because the licence attached to the premises, if the bakery were to close, the premises could become a bar. The Sub-Committee noted one resident's concerns about patrons blocking the entrances to the residential properties above the premises.

The Sub-Committee heard evidence from the applicant that alcohol would only ever be served with food and that the premises was not a vertical drinking venue. The Sub-Committee noted that the premises had a licence to place tables and chairs on the pavement.

The Sub-Committee heard evidence that the applicant was an experienced restaurateur, who had previously managed licensed premises.

The Sub-Committee noted the applicant's submission that, due to the size and nature of the business, the premises would not add to the cumulative impact in the area; there was no link between the premises and any increase in crime and disorder and the residents' concerns could be dealt with by way of conditions.

The Sub-Committee was satisfied that, with the amended hours and the proposed conditions, the applicant had demonstrated that the operation of the premises would not add to the cumulative impact, or otherwise impact adversely on the promotion of the licensing objectives. The Sub-Committee was satisfied that residents' concerns regarding noise would be addressed by the conditions agreed with the Noise Service, particularly the condition relating to the rear courtyard. The Sub-Committee noted that the agenda at page 45 was incorrect in that the applicant had agreed with the Noise Service that the courtyard would be closed at 21:00 hours but, in light of residents' concerns regarding children in neighbouring premises, and in light of the reduced licenseable hours offered by the applicant, the Licensing objectives would be best promoted by the courtyard closing at 20:00 hours.

The Sub-Committee was satisfied that the conditions relating to "No vertical drinking" (condition 20), "Alcohol will only be served with food orders" (condition 3) and "Only Gluten Free Alcohol" being sold (condition 1), would address residents' fears that the premises could become a bar. The Sub-Committee also noted that, in an open letter to residents dated 14 January 2017, the applicant had stated that there would be a single point of contact for complaints.

The Sub-Committee was satisfied that, with the reduced hours and conditions, the grant of the licence would promote the licensing objectives. The Sub-Committee considered

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licensing Policy 2 in relation to cumulative impact, Licensing Policy 8 in relation to hours of operation and Licensing Policy 9 in relation to standards of management. The Sub-Committee also considered national guidance, particularly paragraph 2.16.

The Sub-Committee was of the opinion that this was a reasonable, proportionate and appropriate decision, taking all factors into consideration.

The meeting closed at 8.15pm.

CHAIR