

London Borough of Islington

Licensing Sub Committee C - 31 August 2017

Minutes of the meeting of the Licensing Sub Committee C held at Committee Room 4, Town Hall, Upper Street, N1 2UD on 31 August 2017 at 6.30 pm.

Present: **Councillors:** Rowena Champion, Flora Williamson and Asima Shaikh

Councillor Flora Williamson in the Chair

169 INTRODUCTIONS AND PROCEDURE (Item A1)

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

170 APOLOGIES FOR ABSENCE (Item A2)

None received.

171 DECLARATIONS OF SUBSTITUTE MEMBERS (Item A3)

There were no declarations of substitute members.

172 DECLARATIONS OF INTEREST (Item A4)

There were no declarations of interest.

173 ORDER OF BUSINESS (Item A5)

The order of business would be as the agenda.

174 MINUTES OF PREVIOUS MEETING (Item A6)

RESOLVED:

That the minutes of the meeting held on 4 July 2017 be confirmed as an accurate record of proceedings and the Chair be authorised to sign them.

175 LONDON GRACE, 35 CAMDEN PASSAGE, N1 8EA - NEW PREMISES APPLICATION (Item B1)

The Sub-Committee noted that hours for Saturday had been applied for but this had been omitted from the front page of the report. The licensing officer reported that documents had been circulated from the applicant. These would be interleaved with the agenda papers. Planning permission granted was A1.

In response to questions it was confirmed that the licence was conditional on the grant of a Special Treatment Licence. The applicant stated that planning officers had not suggested that a planning application needed to be made as alcohol was entirely ancillary to the business operation. Following concerns raised regarding future use of the premises the applicant stated that there was a condition that alcohol would only be sold with a beauty

treatment and he also agreed that the Special Treatment Licence would be maintained and that this could be conditioned.

Two local residents spoke against the application. The Sub-Committee noted that the additional information circulated had only just been received and the interested parties had not had a chance to view this information. One resident stated that the premise was in a cumulative impact area, in an area where more than 50% of the premises were licensed. The area was heavily residential and would be affected by noise. Customers continue drinking very late in a residential area and residents were already suffering from noise from people coming out of bars after 8pm. It was noted that in Time Out it was stated that alcohol was included as an essential part of marketing offering a 2 for 1 cocktails with a nail treatment. This premises should not be in a saturation zone. The majority of customers would be female who could be noisier than men. The area was not suitable for a licensed nail bar. The resident questioned why the licence was being applied for if alcohol was only 8% of turnover. Another resident stated that the nail bar was situated next to the Elk in the Woods which already generated a lot of noise and was quite unsuitable for licensed premises. He considered that recent licensing decisions had downgraded the application of the cumulative impact zone. The Applestat licence had been refused for cumulative impact reasons but other licences had been granted since. All of these had food with drink. He stated that the resident living above the premises had also objected but had not attended the meeting. He asked that the Sub-Committee reject the application.

The applicant stated that he understood the concerns regarding cumulative impact although these were concerns for the late night economy with premises closing after 11pm. This application was not for this type of business and was not a front to become a bar. Earlier licensing times had been applied for on a Saturday. The cumulative impact policy was designed to give control over applications. The premises would be offering tea/ coffee and a variety of snacks. Customers could come for baby showers and could have a glass of wine with a treatment. Some customers would not want their nails done but would want to be part of the group and have a drink with other guests. There were other premises in similar areas which had no problems. If this premises caused problems the licence could be reviewed and revoked if necessary. The applicant asked that the licence be granted with the amendment to the condition proposed.

In response to questions it was noted that the last order on Thursday and Friday was 9pm and clients would be expected to leave at 9.45pm. Larger groups would generally be 11/12 people and these would normally attend on a Saturday. The premises would be closing at 8pm on a Saturday and wedding groups tended to attend as an opening activity to their day. Parties would need to order a food package, either afternoon tea or a brunch. Clients usually had one drink and then moved on. They would prefer customers not to stay as there would be other customers coming in. The basement had the treatment tables and would be used for groups of customers. Nail treatments would be upstairs. The hours for the supply of alcohol would commence from 11am to allow for brunch parties. Regarding a question about loud hen parties it was noted that parties typically were 11/12 people in size and there generally would not be more than 25 people in the premises. An event host would work with the party who would be dedicated to them until leaving. Parties were often at the weekend and did not run until the end of the day. The host would ensure parties left in a timely manner. The host would accompany customers and get their coats and see them out the door. This would not be a venue of choice for a raucous hen party. The last party would be booked between 2 – 3pm for afternoon tea. If customers were drunk they reserved their right not to serve them. It was accepted that, realistically 40 customers would be very tight in the space. They did not want a vertical drinking space for customers and the applicant agreed to amend proposed condition 16 to read 30 customers and not 40.

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In summary, one resident stated that it may be possible for the premises to sometimes be a party venue without guests having a treatment. It was clarified that there was a condition restricting the number of guests who did not have a treatment. The resident stated that therefore groups could have half the customers having a treatment and half not. Another informed the Sub-Committee that this was the wrong type of establishment. The customers from the Elk in the Woods often stood outside to decide where to go next. He was not satisfied with the food offer. Advice needed to be sought from planning regarding the relationship with alcohol. He was deeply concerned regarding the cumulative impact zone and that all additional grants would add to the impact on the zone. He hoped that this application would be rejected.

The applicant stated that the nail bar would be there and the Sub-Committee must consider whether it would be inappropriate to grant the licence. This was not a licence to be granted for the late night economy and was entirely appropriate considering the hours and nature of the operation.

RESOLVED

- 1) That the application for a new premises licence, in respect of London Grace, 35 Camden Passage, London, N1 8EA, be granted to allow:-
 - a) The sale of alcohol on the premises on Monday to Wednesday from 11am to 9.30pm, on Thursday and Friday from 11am to 10.30pm on Saturday from 11am until 08.30pm and on Sunday from 11am until 4.30 pm.
 - b) The opening hours of the premises are Monday to Wednesday from 9am to 10pm on Thursday and Friday from 9am until 11pm, on Saturday from 9am to 9pm and on Sunday from 9am until 5pm.
 - c) Non-standards timings on Christmas Eve and New Year's Eve from 9am until 10.30pm.
 - d) To permit the premises to be open for licensable activities for pre-booked private parties from 9am.
- 2) That conditions detailed on pages 41 and 42 of the agenda be applied to the licence with the following amendments:-

Condition 17 to read – The licence shall not have any effect unless the premises has been granted a Massage and Special Treatments licence issued by the London Borough of Islington. The Special Treatment licence shall be maintained.

Condition 16 to read – The capacity of the premises shall be restricted to a maximum of 30 customers.

Additional condition – Prominent, clear and legible notices must be displayed on the premises requesting the public to respect the needs of local residents and to leave the premises and the area quietly.

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 1 and 2 and Home Office guidance paragraphs 14:20, 14:30 and 14:36. The premises fall within the Angel

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. Home Office guidance paragraph 14 states that a special policy should never be absolute and should always allow for the circumstances of each application to be considered properly and for applications unlikely to add to the cumulative impact on the licensing objectives to be granted.

Licensing policy 2, paragraph 34-38, emphasises the thriving night time economy, the late night alcohol related crime and disorder, late night visitors to the area within the Angel and Upper Street cumulative impact area and concludes that any further expansion in the night time economy should not be permitted adversely to affect the quality of life for residents. Paragraph 4 stated that the circumstance of each application would be considered on its merits and paragraph 6 gave an example of applications of which the licensing authority considered might be exceptional including small premises with a capacity of 50 persons or less and premises which are not alcohol led and which only operate within the hours specified in Licensing Policy 8.

There were no representations from responsible authorities and the basement was regarded as satisfactory for the arrangements proposed. However, the Sub-Committee heard representations from residents about noise nuisance potentially being caused by groups of inebriated people leaving the premises and standing, talking in the street. For that reason, the Sub-Committee considered it appropriate and proportionate to the licensing objectives to impose a condition requiring the display of signs advising people to leave quietly.

The Sub-Committee noted that the hours sought were within the hours specified in licensing policy 8 and extended only to 10.30pm on Thursday and Friday evenings. The premises were not alcohol led and the consumption of alcohol was constrained by the requirements of carrying out beauty treatments on clients. Although the operating schedule spoke of parties, these parties consisted of clients for beauty treatment with one guest per client. Parties would only meet in the basement and provided with a limited amount of alcohol per person with food. The food would be provided by an outside caterer. A condition was agreed that the capacity would be limited to 30 people but generally speaking the premises did not operate to full capacity and would essentially be a nail bar with a special treatment licence, not a drinking establishment.

Clients and their visitors would not be encouraged to remain in the premises after the treatment because of the business turnover. The condition requiring a Special Treatment licence was strengthened by the requirement that the licence be maintained avoiding the risk that the premises might turn into a drinking establishment by stealth.

The Sub-Committee concluded that for these reasons and with the additional conditions, granting the premises licence was unlikely to add to the existing cumulative effect and it was proportionate, appropriate to the licensing objectives and in the public interest to grant the premises licence.

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PANZO PIZZA, 50 EXMOUTH MARKET, LONDON, EC1R 4QE - PREMISES LICENCE VARIATION (Item B2)

The licensing officer reported that the premises was in a cumulative impact area and conditions detailed on page 81 would be added to the licence.

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In response to questions, the Sub-Committee noted that the area to be used was the raised paved area only and that the permission granted by Greenspace was until 5pm only. The hours for the sale of alcohol would remain the same.

The noise officer reported that she was not aware of the contract with Greenspace. She had proposed conditions and the applicant would need to renegotiate hours with Greenspace if they needed to use the area after 5pm. The premises were close to residential accommodation so conditions were proposed to prevent noise nuisance.

The manager agreed with the noise conditions but would prefer customers to remain outside until 9pm in order that customers could arrive for 7.30pm. They would only use the area in the summer as they would not be using heaters. There would not be any loud music played and they would just be selling pizzas.

In response to questions it was noted that the park closed at 5pm. The area was cordoned off with a rope so people who were not customers would not be able to use the area. The manager stated he had not been involved in the discussions with Greenspace. The contract expired at the end of November and this licence would allow the applicant to use the space next summer. This was the first year they had used the outside space at the rear. There was no space at the front of the restaurant. He would prefer if customers could be allowed to remain outside until 9pm.

The noise officer stated that she suggested that the conditions as she had proposed and these included that the rear outside area be cleared of all customers by 8.30pm.

RESOLVED

- 1) That the application for a premises licence variation, in respect of Panto Pizza, 50 Exmouth Market, London, EC1R 4QE be granted to allow:-
 - a) An extension of opening hours from 7am to half past midnight, Mondays to Saturdays and between 9am and midnight on Sundays.
 - b) An amendment of the licensed area to include a garden area at the rear of the premises, within Spa Fields Park.
- 2) That conditions detailed on page 81 of the agenda 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 1 and 2 and Home Office guidance paragraphs 14:20, 14:30 and 14:36. The premises fall within the 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. Home Office guidance paragraph 14 states that a special policy should never be absolute and should always allow for the circumstances of each application to be considered properly and for applications unlikely to add to the cumulative impact on the licensing objectives to be granted.

Licensing policy 18 stated that the licensing authority is committed to protecting the amenity of residents and business in the vicinity of licensed premises and would impose appropriate

restrictions on the licence to support the prevention of undue noise disturbance. The use of the terrace would be restricted by the hours set out in the proposed conditions suggested by the Noise officer and also that the terrace would only operate (subject to agreement from Greenspace in any event) during the summer months as there were no plans to put heating on the terrace. The area would be cordoned off by a rope and customers would have to partake of a meal. Street drinkers would not be encouraged.

The Sub-Committee considered that the rebuttable presumption was engaged but was satisfied that the operating schedule together with the additional conditions imposed suggested by the noise officer would avoid any potential problems and it was appropriate and proportionate to the licensing objectives and in the public interest that the licence should be granted.

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GOLDEN BEE, FIRST, SECOND FLOORS AND ROOF TERRACE, 262-264 OLD STREET, LONDON, EC1V 9DD - NEW PREMISES LICENCE (Item B3)

The licensing officer reported that two documents had been circulated and tabled a plan of the premises in the area. These would be interleaved with the agenda papers. She reported that drone footage would also be shown of the location.

The licensing authority reported that this premises was in a cumulative impact area. The application was to extend the hours for two floors with possibly an increase of 200 additional people. 150 of these could be on the roof terrace. There was nothing in the acoustic report regarding management of the dispersal arrangements. This area abutted the Hackney cumulative impact area where core hours were 2am. The area was already saturated and extremely busy. This new application contained reduced conditions to the current licence. He stated that he would expect evidence to persuade the Sub-Committee why granting the licence should be permitted. He considered that this application was not exceptional to the policy and there was nothing in the application that would persuade the authority to deviate from the policy. He stated that the applicant should come back and address the special nature of the application. The northern line was not on the night tube and nothing had changed in the area since the Licensing policy was brought in. He considered that there would be an additional 200 people for three hours at this location.

The noise officer stated that she had proposed compromise timings that had not been accepted. The measurement position for the roof was 5Ba below maximum levels agreed with the previous acoustic consultant. She did not know about the maximum capacity and was concerned that people noise could not be controlled. Customers talking in the bar on the first floor would be affected by the loud music and would be talking very loudly on the roof terrace. Noise levels could depend on the wind direction. No dispersal policy had been submitted. For the temporary event notice a football game had been screened which would generate a lot of noise.

In response to questions it was noted that the applicant had agreed to reduce the sound levels to 80 dBA.

The applicant's representative stated that the application was to allow the roof terrace to remain open after midnight. The overall capacity of the premises was 300 and that was not changing. They had operated temporary event notices in 2016 where the roof terrace had been open until 2am and in 2017 until 3am. There had been no complaints. The premises would not cause concerns. The location was next to six lanes of traffic and across the road was outside a cumulative impact policy area. The premises was not near the Farringdon/Clerkenwell areas of cumulative impact. There was no area of special policy on the other side of the road. There were no resident, Councillor objections or police objections. The noise team would withdraw their objection if the hours on the roof terrace

was closed at 1am. There were no complaints from the closest residents in Cowper or Tabernacle Street. There had been one complaint in five years. This was following a re-opening and was a teething issue. They set a lower level as a result of this. There was no evidence that the extension of hours would undermine the licensing objectives. The licensing policy was based on historical data which was outdated. The police were the main source of crime and disorder and they had not objected to the use of the roof terrace until 3am. TENs had been used up until 2am and 3am.

The acoustic consultant stated that they considered that the sound levels had been set too high so were happy to reduce the level. A survey was undertaken when the terrace was full and in use which covered the worst case scenario. Noise could not be heard from the terrace above the noise from cars. Measurements along Tabernacle Street did not show any drop off in noise following the closure of the terrace. He considered that the noise terrace did not make a significant impact. There had been no complaints from residents.

The Sub-Committee was shown drone footage which was described by the applicant's representative as showing roof terrace encased by high rise all around. He stated that this was why the roof terrace had operated without complaint. He was confident that the roof terrace could be used until 3am without complaint and bring the use into line with the rest of the building.

In response to questions it was stated that temporary event notices had operated until 2am in 2016 and up to 3am in 2017 without complaint. The noise survey indicated (as detailed on page 5 of the acoustic survey) that there was no noise increase associated with the premises being open longer. The graph in the survey indicated the noise levels on Singer Street remained consistent, indicating that the roof terrace did not affect noise levels on the street. It was noted that there was a noise peak at 3.30am at dispersal. It was noted that closing time at XOYO was 5am. The applicant's representative stated that people smoked outside XOYO which was why there was a sustained increase in noise from 2.30am. It was noted that the peak may be related to the dispersal in Singer Street although it was stated that no residents had objected to the noise from dispersal. Councillor Shaikh stated that extending the hours would allow more people in the area for longer which would have a cumulative effect and that the data did show an increase in noise when customers were leaving the premises. In relation to dispersal the applicant's representative stated that the overall capacity was not increasing. Some customers may leave but the premises did not allow new admissions after 1 – 1.30am. The premises operated normally at full capacity. The dispersal time for XOYO was 5am and for Club Aquarium at 7am. The capacity for Golden Bee was 300 persons. Even without the roof terrace operating the premises was at full capacity and there would be no overall increase. Management led a graduated approach to dispersal. A dispersal policy was not included in the application as it was stated that applications needed to be appropriate and proportionate. There had been no complaints in five years and it was not considered necessary to include a document where no concerns had been raised. The premise was already licensed until 3am and dispersal had not been an issue. Hours were not being extended but the application was to allow the roof terrace to be used until 3am. Dispersal would continue as it was currently. Currently there were 8 or more door supervisors, there were notices regarding dispersal around the building, door supervisors were there to keep the noise level down when customers were leaving and taxis were ordered. This practice would continue.

The second floor was a small mezzanine area with around 40 people. This was a quiet area with background music only. The applicant's representative stated that the proposed conditions almost mirrored the current conditions and invited the Sub-Committee to add others if they required. There was no capacity limit conditioned as this was dealt with in the fire risk assessment, however there was no objection to a capacity condition of 300. The applicant's representative stated that the fire risk was for the whole building with a capacity of 300. The roof terrace could occupy 150. The fire risk assessment did not include the ground floor but was for the entire Golden Bee premises. This capacity had been agreed

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with the fire service. The capacity was not increasing but there would be more room for people to move around the building. The applicant's representative highlighted paragraphs 15 and 16 in the circulated paper and stated the figures indicated that there were approximately three anti-social behaviour matters in the entire Bunhill area/ward each week. The evidence dated back to 2004. There had been no public objections to the roof terrace. It was noted that conditions 20 and 22 of the current licence were not included in the proposed conditions. The applicant's representative invited the Sub-Committee to adopt the current licence conditions if they preferred.

In summary, the licensing authority considered that this was an ill-conceived application. There was no fire risk assessment in the submission so there had been no time to consider this. He considered that more information should have been included in the original application. This was not the forum to raise matters now. Licensing officers could do inspections if this information had been received previously. Issues could not be substantiated at this stage. He did not consider that the applicant had rebutted the presumption and considered that the application should be resubmitted taking all issues on board.

The noise team stated that they visited on the 15th April following a noise complaint. Six days later on arrival customers were singing Happy Birthday loudly from the terrace. Temporary Event Notices were for once in a while occasions which was different to extending hours every weekend. She stated you could not control people noise or the direction of the wind.

The applicant's representative stated that this was a properly submitted application. The fire risk assessment could be made available. The capacity was fixed. Later hours were not being applied for. The Sub-Committee needed to show that the grant of the application would undermine the licensing objectives. There had been no representations from residents or local councillors. The premises had been operating for five years. There had been no objections to temporary event notices. There was one complaint about noise following the re-opening which had been accepted as a teething problem and there had been no incidents since. The report from the noise expert indicated that even when the premises was closed the noise outside remained constant. There was no discernible difference with noise levels whether or not the premise was open or closed. He asked that the application be granted as sought.

RESOLVED

That the application for a new premises licence, in respect of Golden Bee, First, Second Floors and Roof Terrace, 262-264 Old Street 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 1 and 2 and Home Office guidance paragraphs 14:30. The premises fall within the Bunhill 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. Home Office guidance paragraph 14.30 states that a rebuttable presumption is created by a special policy that applications for the grant or variations of premises licences, likely to add to the existing cumulative impact will normally be refused or

subject to certain limitations, following relevant representations, unless the applicant can demonstrate in the operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives. Applicants should give consideration to potential cumulative impact issues when setting out the steps they will take to promote the licensing objectives in their application.

This was an application for a new premises licence for all three floors including the roof terrace, although the premises had been operating under a licence with similar conditions with shorter licensing hours for the sale of alcohol on the second floor and the closure of the roof terrace at midnight. The new proposed hour of 3am was a substantial change and likely to have an effect on the cumulative impact of the area and in particular on the licensing objectives of public nuisance and public safety. The proposal was outside core hours set out in licensing policy 8.

Licensing policy 9 stated that it expects the operating schedule to describe how the highest standards of management in licensed premises would be achieved in relation to the promotion of licensing objectives. Paragraph 67 of licensing policy 9 states that the operating schedule must include all information necessary to enable the licensing authority and responsible authorities to assess whether the steps outlined for the promotion of the licensing objectives were satisfactory. It was also anticipated by paragraph 68 that applicants would have regard to Islington's licensing policy when preparing operating schedules so that they would be aware of the expectations of the licensing authority and other responsible authorities. This would include the fact that the premises were in a cumulative impact area.

The applicant had produced an acoustic report but the noise officer did not accept that it gave the full story. The noise officer stated that noise nuisance could vary between nights depending on the direction of the wind. On two occasions noise had been heard by the team at ground level from the roof terrace including the singing of 'Happy Birthday'. She emphasised that people noise could not be controlled. There was a difference between TENs that only operated once in a while and a licence that operated every day.

The applicant had repeated substantially the same conditions including that members of staff should keep nuisance and disturbance from the roof terrace to a minimum level but he had not described how this would be done in the operating schedule, nor how dispersal would be carried out, nor had he added any conditions about capacity given that the second floor and the roof terrace were to be licensed for the sale of alcohol for an extended period.

The applicant responded to the licensing officer's observations by saying that there was no point in including a condition on capacity as it would be duplicating other legislation and that capacity would not be increased, that there was a dispersal policy in force, that no complaints had been received when TENs had operated. These issues were raised at the hearing and were not in the operating schedule and, as the licensing authority stated, were unverifiable by the responsible authorities who had not had an opportunity to consider the information that was being raised at the hearing.

As set out in the document from LBI Parkguard, there were issues of anti-social behaviour and drug use in the area. There was a potential for a cumulative impact on the licensing objectives of public nuisance and public safety which gave rise to the presumption under the special licence and this had not been rebutted in the operating schedule by the applicant. It was not possible to propose suitable conditions in this case because insufficient information had been provided by the applicant for the risks and solutions to be properly assessed.

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The Sub-Committee considered that it was proportionate and appropriate to the licensing objectives and in the public interest to refuse the application as submitted.

The meeting ended at 9.45 pm

CHAIR