

London Borough of Islington

**Licensing Sub Committee B - 5 May 2020**

Minutes of the meeting of the Licensing Sub Committee B held by Zoom on 5 May 2020 at 6.30 pm.

**Present:**       **Councillors:**     Phil Graham (Chair), Vivien Cutler (Vice-Chair) and Matt Nathan

**Councillor Phil Graham in the Chair**

**115     INTRODUCTIONS AND PROCEDURE (Item A2)**

Councillor Phil Graham welcomed everyone to the meeting and introduced officers and members. The procedure for the conduct of the meeting was outlined.

**116     APOLOGIES FOR ABSENCE (Item A3)**

None.

**117     DECLARATIONS OF SUBSTITUTE MEMBERS (Item A4)**

There were no substitute members.

**118     DECLARATIONS OF INTEREST (Item A5)**

There were no declarations of interest.

**119     ORDER OF BUSINESS (Item A6)**

The order of business would be as the agenda.

**120     MAGGIE AND ROSE, 7-9 ESTHER ANNE PLACE, N1 1UL - NEW PREMISES LICENCE (Item B1)**

The licensing officer stated that the hours of application had been amended as follows:- The sale of alcohol from Monday to Sunday, 12 noon until 8pm and opening hours to be 8am to 8pm. The ground floor would not be licensed for alcohol and a revised layout plan for the first floor had been circulated and proposed condition 9 had been revised to reflect this. Planning implications had been raised by the interested parties.

Two local resident objectors spoke against the application. One resident stated that there was no objection to the nursery but it would be inappropriate for a nursery to serve alcohol. He was pleased that the hours had now been reduced in line with the planning consent. He did not consider that the application was compatible to nursery use only (D1) regarding the planning consent and considered that the application be deferred until the planning situation was rectified. A second resident agreed with this objection and added that the application should be refused for the reasons of public safety and the protection of children from harm and also that the premises was in the cumulative impact area.

The applicant's representative stated that this was not a bar or a restaurant and would look like a nursery from the outside. There would be no functions in the premises. Alcohol would be limited to the first floor which contained a kitchen area, a small cinema room and a soft play area, which was indicated by a blue line on the tabled plan. Hours were limited in line with the planning permission. Play and education was the primary purpose of the facility. There were no licensable activities on the ground floor. The licensing hours were in line with licensing policy 6 for bars, which this was not. Management standards were high as required in licensing policy 8 and risk assessments would be carried out in line with licensing policy 27. The cumulative impact policy related to the night time economy and bars and restaurants and he considered that this application would fall under the exceptions to the policy in paragraph 47 as they were not alcohol led and the hours were within framework hours and in accordance with planning permission with the primary use of educating children. There had been no representations from the responsible authorities and conditions had been agreed with the police. They had run successful nursery premises in Kensington and Chelsea and in Chiswick for a number of years. The sale of alcohol would be ancillary to the main use of the premises as a nursery and was a small part of their revenue stream.

In response to questions it was noted that there were six designated classrooms with sleeping areas. Children were club members with a registered adult. The nursery was fully compliant with staff ratios as recommended by Ofsted. There were three managers on duty with a healthy ratio of staff and there were no issues over the last decade at their other premises. Gin was available in the Chiswick nursery and this would be served with a mixer. The space would not allow vertical drinking. This would be an opportunity for families to eat together in the restaurant area. Alcohol was not displayed or promoted but would be an added benefit for adult members of the family. The application was not to circumvent the planning position as the primary function of the premises would be as a nursery. Smoking would not be allowed outside. The main aim of the nursery was to provide education through learning and through play with alcohol ancillary. Adults would not be able to attend on their own as they would have electronic identification which recorded whether children were in attendance at the nursery and this could be challenged by reception staff.

In summary, the local resident stated that it was not appropriate for alcohol to be served at a nursery and raised concerns regarding the planning consent. He considered that the snug area should not be part of a licensed area and asked the Sub-Committee to refuse the application.

**RESOLVED**

That the application for a new premises licence, in respect of Maggie and Rose be refused.

**REASONS FOR DECISION**

The meeting was held under regulations made under the Coronavirus Act 2020 and it was facilitated by Zoom.

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 2 & 3. The premises fall within the Angel and Upper Street cumulative impact area. Licensing policy 3 creates a rebuttable presumption that applications for the grant or variation of premises licences which are likely to add to the existing cumulative impact will normally be refused following the receipt of representations, unless the applicant can demonstrate in the operation schedule that there will be no negative cumulative impact on one or more of the licensing objectives.

Three local resident and two local resident's association objections had been received. Conditions had been agreed with the police, the Council's noise service and the Council's trading standards service.

The Sub-Committee heard from residents who raised concerns regarding the cumulative impact area and the inappropriateness of an educational establishment being licensed to serve alcohol in a cumulative impact area. They also raised concerns about the need to protect children from harm.

The Sub-Committee heard evidence from the applicant that this was an exception to the cumulative impact area policy because the premises was not alcohol led and the hours it was seeking to be licensed sat outside the night-time economy hours. It was not a bar, had no vertical drinking or off sales and would not add to street drinking.

However, the Sub-Committee was concerned that granting an alcohol licence to a nursery in a cumulative impact area was incompatible with the Councils licensing policy and would not promote the licensing objective, the protection of children from harm. The Sub-Committee also considered that the applicant had not rebutted the presumption that the grant of a new premises licence would add to the existing cumulative impact and would therefore normally be refused.

The Sub-Committee concluded that the granting of the licence would not promote the licensing objective of protection of children from harm.

The Sub-Committee was satisfied that it was proportionate and appropriate to the licensing objectives and in the public interest to refuse the licence.

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**AKSU FOOD CENTRE, 691-693 HOLLOWAY ROAD, N19 - NEW PREMISES LICENCE (Item B2)**

The licensing officer reported that a new layout plan had been received. There were currently two licences but the premises were to be amalgamated. The unit at 691 had a 24 hour licence whilst the unit at 693 had shorter licensing hours. Conditions had been agreed with the police apart from condition 4 as detailed on page 99 of

the agenda. The applicant had submitted alternative wording which had been circulated to members.

The licensing authority referred to licensing policy 14, paragraphs 106 and 107 which stated that applicants should work with the licensing authority and the police and that the licensing authority may consider controls on the sale of super strength beers or ciders. She stated that the formula for calculating a minimum price used in Scotland (referred to as 'the Scottish formula') and that had been proposed by the applicant could be difficult for staff to work out and considered that, if the licence was granted, the condition should be for the sale of beers and ciders at 6.5% abv. She also raised concerns regarding the larger floor space, the training of staff and how records would be kept and concerns regarding the number of staff employed, particularly after 11pm.

The police stated that agreement had been reached with conditions, except regarding condition 4. The alternative condition was complex and confusing and conditions needed to be clear for the licensee, the police and licensing officers. He considered that it would not solve the problem regarding the availability of high strength alcohol and would not prevent the cheap and easy availability of ciders. The area was a particularly challenging one and he would ask that the Sub-Committee accept the police condition.

In response to questions the police stated that the area was very challenging in relation to street drinking, anti-social behaviour and vagrancy. There had been no reported issues regarding the venue. In high risk areas they would normally want to apply a 5.5% alcohol condition, however, following engagement with the applicant would accept 6.5% in this case.

The officer from the public health team raised concerns regarding the increased footage would be a bigger draw to those looking to buy alcohol, particularly late at night. High strength alcohol was often the drink of choice for vulnerable drinkers. This area had a higher rate of alcohol specific admissions than the rest of Islington.

The applicant stated that he had circulated his submissions in advance of the meeting to assist the process. He stated that two premises would be joined into one to enable a wider variety of produce. The premises would have the same hours but would have greater controls and restrictions. He highlighted licensing policies 2, 3, 4, 5, 6, 7 and 14. Regarding the cumulative impact policy, he said that two licences would be replaced with one licence, the area for which alcohol was currently displayed was reduced and marked on the plan and all conditions applied promoted the licensing objectives and licensing policy. With reference to condition four, an alternative condition was offered. One that was used in Scotland and Wales. This dealt with the minimum unit price where alcohol would cost substantially more than neighbouring premises. He referred members to paragraph 10.22 of government guidance in relation to standard conditions and that it may be appropriate to impose new conditions to prohibit discounting. He stated that there were some items above 5.5% which would be classed as a premium product and urged the Sub-Committee to grant the licence with or without the amendment. He

stated that one way to control high strength alcohol was through the price and this was recognised policy in Scotland and Wales. He hoped that the Sub-Committee would grant his proposed condition but if not, he asked that they grant the licence with condition 4.

The licence holder reported that he had been in the area for seven years and two other staff had personal licences. His sisters and a friend who was a staff worker lived above the premises. Other premises in the area sold cheaper alcohol than his premises. The maximum strength of alcohol on his premises was 8% and he also sold premium products. He had three staff on the premises during the day and four at the weekends. There was a nightclub nearby and patrons purchased drinks and food and Archway tube was a 24 hour service over the weekend. He worked with the Police and the Council in what was now a busy area, in order to survive. This was a local shop and he hoped that the Sub-Committee would grant the licence.

In response to questions, the Police Licensing Officer noted that there was agreement on the condition that all spirits be kept behind the till. He commented that selling miniature bottles of alcohol was an expensive way of purchasing high strength alcohol and not like cheap lagers which could be purchased off the shelf. Premium ales and craft beers were expensive. The condition about the keeping of spirits behind the till mitigated against the purchase of cheap, plastic bottles of cider.

In summary, the licensing authority considered that it would be difficult to work out the strength/unit price according to the Scottish formula and would accept a 6.5% abv maximum strength condition.

The police stated that the Scottish formula was far too complicated and did not address the issue of the sale of high strength alcohol.

The officer from public health stated reduced strength alcohol should be sold to reduce alcohol related harm and this policy targeted those it would have most impact on.

The applicant's representative reported that the Scottish formula calculation was straight forward to calculate. The price was set and the sales assistant would have that price to work with. This application was supportive of the cumulative impact policy. The licensable area would be reduced and the number of licences would be reduced should this application be granted.

### **RESOLVED**

The Sub-Committee has decided to grant the application for a new premises licence in respect of Aksu Food Centre, 691-693 Holloway Road, N19 to allow the sale of alcohol, off supplies only, from Monday to Sunday for 24 hours.

Conditions detailed on pages 99 - 101 of the agenda shall be applied to the licence with the following amendments:-

- Replacement of condition 5. Alcohol shall only be displayed or sold in the area hatched on the premises plan.

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- Proposed condition 6 to be deleted.
- Condition 4 to read. No beers, lagers or ciders of above 6.5% ABV shall be sold at the premises save for premium beers and ciders supplied in glass bottles.

### **REASONS FOR DECISION**

The meeting was held under regulations made under the Coronavirus Act 2020 and it was facilitated by Zoom.

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 2 & 3. The premises fall within the Archway cumulative impact area. Licensing policy 3 creates a rebuttable presumption that applications for the grant or variation of premises licences which are likely to add to the existing cumulative impact will normally be refused following the receipt of representations, unless the applicant can demonstrate in the operation schedule that there will be no negative cumulative impact on one or more of the licensing objectives.

The Sub-Committee also took into consideration Licensing Policy 4 which creates a special policy relating to cumulative impact in relation to shops and other premises selling alcohol for consumption off the premises.

Representations had been made by the Licensing Authority, the Police and Public Health. Two ward councillors also put in a representation against the application.

The Sub-Committee considered Licensing policy 14 which stated that where appropriate the Licensing Authority would consider imposing controls on products sold where representations indicate localised problems. This provision could include banning the sale of super strength beer, lager and cider in premises as part of a package of measures to deal with problems associated with drinking in the street.

The Sub-Committee heard evidence that the police had reached agreement with all conditions put forward except for condition 4 where the applicant proposed a minimum pricing system. They stated that the condition put forward by the applicant, which was based on the licensing system in Scotland, was complex and confusing and would not solve the issue of limiting the easy availability of high strength alcohol. The licensing authority also stated that the Scottish formula would be difficult for staff to calculate and that if the licence was granted the strength of alcohol should be 6.5% at the maximum. The applicant denied this. Public Health submitted that the increased frontage of the premises would act as bigger draw to those looking to purchase high strength alcohol, particularly late at night.

The Sub-Committee heard evidence from the applicant's representative that as this would involve joining two premises, this application would reduce the number of

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licences from two to one. It would reduce an area for which alcohol could be displayed to that indicated on a plan.

The Sub-Committee considered that the proposed condition from the applicant's representative would not stop street drinkers buying cider even under the minimum pricing system as the price would not be prohibitive to street drinkers. The Sub-Committee noted that the condition proposed and supported by the responsible authorities had been developed and was used in Islington as part of a package of measures to deal with problems associated with drinking in the street and that there were particular problems of this sort in Archway.

The Sub-Committee concluded that the granting of the licence with the agreed conditions would promote the licensing objectives. The Sub-Committee was satisfied that the operating schedule demonstrated high standards of management and that the proposed use, with the extensive conditions agreed and with the addition of condition 4 granting the premises licence would not add to the cumulative impact on any of the licensing objectives. The Sub-Committee was satisfied that with the addition of condition 4, there would be no cumulative impact on any of the licensing objectives by granting a licence.

The Sub-Committee was satisfied that granting the premises licence was proportionate and appropriate to the promotion of the licensing objectives and in the public interest.

The meeting ended at 8.35 pm

**CHAIR**