

Licensing Sub Committee B - 23 April 2020

Minutes of the meeting of the Licensing Sub Committee B held by Zoom on 23 April 2020 at 6.30 pm.

Present: **Councillors** Sheila Chapman, Phil Graham and Marian Spall.

Councillor Phil Graham in the Chair

101 INTRODUCTIONS AND PROCEDURE (Item A2)

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

102 APOLOGIES FOR ABSENCE (Item A3)

Apologies were received from Councillor Vivien Cutler and Matt Nathan.

103 DECLARATIONS OF SUBSTITUTE MEMBERS (Item A4)

Councillor Sheila Chapman substituted for Councillor Vivien Cutler and Councillor Marian Spall substituted for Matt Nathan.

104 DECLARATIONS OF INTEREST (Item A5)

There were no declarations of interest.

105 ORDER OF BUSINESS (Item A6)

The order of business would be as the agenda.

106 MINUTES OF PREVIOUS MEETINGS (Item A7)

RESOLVED:

That the minutes of the meetings held on the 3 January 2020, the 9 January 2020 and the 23 January 2020 be confirmed as an accurate record of proceedings and the Chair be authorised to sign them as soon as practicable.

107 KISS ME LOUNGE, 326 ESSEX ROAD, N1 - PREMISES LICENCE VARIATION (Item B1)

The Licensing Officer reported that the Noise Team had put forward additional conditions, which had been agreed by the applicant. The Noise Team had therefore withdrawn their objection.

The Licensing Authority's representative stated that she had seen the new conditions put forward by the Noise Team and the Police, but some anomalies remained e.g it was not clear whether six or eight smokers were to be permitted outside the premises. The current licence permitted only six at any one time. The applicant needed to be clear about how many smokers were to be permitted both at

the front and the rear of the premises. The applicant was proposing to offer a take away food facility in sealed containers, but had mentioned in their application that there would be deliveries of take-away food by motorised vehicles. She questioned whether the applicant would restrict the music they intended to play to classical and jazz music. Condition 18 referred to the monitoring of patrons who were drinking in the garden area, yet elsewhere in the application it was stated that no-one would be permitted outside. Police and Licensing Officers had visited the premises on 17 April at 11.00am following complaints about noise from the premises and a noisy flue. They found seven men on the premises playing cards. One of these men lived in the basement of the premises and the rest lived above. They had direct access into the restaurant. She queried why they had broken Covid19 regulations by gathering in this way and why they had been allowed into the restaurant? The Council's Licensing Policy required high standards of management from its licence holders. The variation in hours requested by the applicant, until 00:30 Sunday to Wednesday and until 01:30 Thursday to Saturday, were not in line with the Council's conditions for take-away food which were midnight.

The Licensing Officer drew the Committee's attention to the fact that the complaint referred to on 11 April was at 11.00pm at night and related to noise from an air conditioning unit.

One of the objectors to the application stated that the 77 page agenda document, which contained representations from 15 residents, the Police and the Council's Noise Team, was robust and damning of the application. He went on to say that the written response from Kiss Me Lounge did not respond to the substance of the representations made by local residents, particularly with regards to public health and nuisance issues. Neither had they responded to the points made about secondary smoke risks to residents. Their plan to restrict smokers to the outside area at the rear and until 1.00am did not respond to the representations made by local residents. He referred to another incident at the premises on 5 April, for which he had photographic evidence, of a barbecue party in the rear area, where patrons were smoking. In addition, there was a patron smoking at the front of the premises. He said that even he was able to detect tobacco smoke and smells from the barbecue. There was empirical evidence of the dangers of secondary tobacco smoke, which would affect all the residents in the vicinity of these premises. He stated that the applicant had not responded adequately to the issue of dealing with noise complaints. The automatic front door of the premises opened and closed whenever anyone, including the bouncers, entered or exited. Local residents would be able to hear music from the premises. The applicant had stated that the doors would be shut, meaning that they would have to disengage the automatic front door, which could be dangerous. He suggested that the applicant had been disingenuous and deceptive to state that the applicant wanted to encourage a "family restaurant, where parents can bring their children for a relaxing meal with ambient music in the background". If that was the case, he could not understand why the applicant was seeking a variation to their licence to remain open until 1.00am, when children should be in bed. These deceptions and prevarications, plus the incidents on the 5 and 17 April and the information in the agenda pack were not reassuring to residents.

Another objector said that he had seen seven or eight men having a barbecue at the premises. His main concerns were about noise, as he had two children. If people congregated outside the premises, it was not clear how the applicant would deal with the noise made.

The applicant's agent said that the rear garden would be used until 10.00pm and the front until 11.00pm and not 1.00am. The premises was not a smoke-free zone and the applicant would try to keep smoking by patrons to a minimum. The proposal to extend the opening hours to 1.30am was because the applicant hoped to encourage families, not just babies, but young people of 18 years and over. The take away facility would be offered, but there were no plans to use delivery vehicles. He understood the concerns expressed, but the applicant had agreed the new conditions proposed by the Police and the Noise Team, so was trying to understand and address all of the residents' concerns. The applicant wished to have a good working relationship with residents. The applicant had been in business for fifteen years and did not want to cause any problems. The applicant wished to offer good quality Mediterranean food to the public and wanted it to be a welcoming place for families. He noted that some residents had withdrawn their representations. Some residents had thought that, because of the name of the premises, it would be run as a lap-dancing club. CCTV would be operated at the premises, together with SIA approved door supervisors. The designated smoking area would not be used until approved by the Licensing Authority. He said that the applicant was doing their best and wanted to offer this facility to the public.

A member of the Sub-Committee asked for further information about the incidents of people gathering at the premises.

The applicant's agent said that, due to the Coronavirus regulations, the staff at the premises were anxious and were considering how to provide a take away food service. All of the people gathered there were related and lived in the building. They disinfected the premises and used hand sanitiser before and after their discussion and had not thought that it would be an issue. The room they used was well ventilated. After the Police had spoken to them, they returned to their flat, proving that they would comply with instructions. They had offered hand sanitisers as a gift.

A member of the Sub-Committee said the fact that the owners of the business did not follow Government rules was concerning. She asked whether the owners lived on the premises and whether they all comprised one household? The applicant's agent said that some of them lived in the basement and the others lived above the premises. A member of the Sub-Committee said that this meant that they could not be one household. The applicant's agent said that it was one building.

A member of the Sub-Committee then questioned the status of the applicant's agent and asked whether he would be managing the premises and, if not, what his status was in this meeting. The applicant's agent replied that the applicant did have an official agent but, because she was not able to be present this evening, he had been asked to act on their behalf. It was stated that the applicant was unable to

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attend as his pregnant wife had a late hospital appointment. A member of the Sub-Committee noted that this meant that neither the licence holder, who would be managing the premises, nor the applicant, were present at this meeting. It appeared that none of the people concerned had paid attention to the Covid19 regulations. She queried how he could be acting as the applicant's agent and asked whether he was paid? He responded by saying that a colleague, who was actually observing this meeting, had asked him to stand in for the agent. The person who was observing the meeting stated that she was a Director of ESI Licence and Legal Consultancy Limited, who were acting for their client, the applicant. She said that the applicant had sent an email to say that they could not attend the Licensing Sub-Committee. In response to a question from a member of the Sub-Committee as to her role, she stated that her company acted as agents for the applicant. The Chair sought confirmation from her that, if the Sub-Committee imposed additional conditions to the licence, she was empowered to accept them? She confirmed that she was. She had agreed to the additional conditions imposed by the Police and the Noise Team and confirmed that she was authorised to accept or deny any further suggested conditions.

Members of the Sub-Committee expressed their surprise that nobody concerned with the business was present at this meeting.

The Chair of the Sub-Committee asked for confirmation of the end time for takeaways. The applicant's agent replied that it would be 10.00pm every night. On the question of deliveries, the agent stated that there were no current deliveries, nor any plans for any in the future. In response to a question as to who would monitor the smoking area, the agent said that it would be one person's role to monitor the smokers in the rear of the premises. The Chair of the Sub-Committee queried whether smokers would only be allowed in the rear of the premises, since reference had also been made to them being permitted at the front? The applicant's agent said that there would be smoking at the front. However, it was not thought that there would be as many smokers at the front of the premises, as it was not a pub/club. She suggested that if one or two people wanted to go out to smoke, staff at the premises would not be able to stop them. She confirmed that staff would stop patrons taking their drinks outside.

The Chair asked for clarification of the type of music to be played at the premises. The applicant's agent replied that it would be ambient/background music and not pop or disco. It would be music that people could enjoy whilst dining and would not be loud. There would be no live music, or bands. There could be one or two persons playing a violin or a saxophone.

A member of the Sub-Committee referred to one of the representations made by a local resident about the noise from the automatic doors as they opened and closed. The applicant's agent said that the doors would have to be changed, as it would be impossible to stop people using them. She suggested that a sign could be put on the door asking patrons to be considerate to the neighbours by keeping noise to a minimum. If patrons were too loud, they would be asked to leave the premises.

In summing up, the Licensing Authority's representative stated that it was unusual for a licence applicant not to attend a meeting where their licence was to be considered. It was essential that they attend as they could have described to the Sub-Committee how they would run the premises. The Sub-Committee needed to be reassured that they would run the premises responsibly. However, having listened to the agents, she had no confidence that that would be the case and recommended refusal.

One of the objectors stated that he had not been convinced to drop his representation and remained confused about the applicant's plans for a smoking area(s). The agent had implied that there would be two bouncers, one at the front and one at the back of the premises, which was hard to believe. He noted that the automatic door to the premises had just been installed and again found it hard to believe that it would be replaced so soon. He had not been convinced by the statements made by the first agent about the monitoring of smokers.

The applicant's agent said that the premises owners did not want to ruin their reputation and would do whatever it took to obtain the variation to their licence. He suggested that the applicant would be prepared to change the automatic door. They already had a licence and wanted to have good working relationships with their neighbours. They accepted the additional conditions and would comply with them. The applicants had not taken any action to date to imply that they would not comply with the conditions on their licence.

RESOLVED

That the application for a variation to the premises licence in respect of Kiss Me Lounge, 326 Essex Road, London N1 refused.

REASONS FOR DECISION

This 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.

Fifteen local resident objections had been received. Conditions had been agreed with the police and the noise team and their representations had been withdrawn. The Licensing Authority were still concerned about the application and their representation remained.

The Sub-Committee noted that the hours sought were outside the hours specified in licensing policy 6. Paragraph 84 of the Licensing Policy 6 states that applicants and licence holders who wish to provide licensable activities outside the specified hours should ensure that the operating schedule specifies detailed measures to mitigate the negative impact on the licensing objectives.

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The Sub-Committee considered licensing policy 22 which states that the licensing authority is committed to protecting the amenity of residents in the vicinity of licensed premises particularly when late hours have been sought.

The Sub-Committee was concerned and surprised that there was no attendance from the business owners, the designated premises supervisor or the manager but were represented at the meeting by their licensing agents. The Sub-Committee questioned the agents about their role in the licensing application and in particular whether the agents had authority to agree additional conditions. The agents appeared to hesitate initially before asserting that if there were any further conditions they had authority to accept or deny them.

The Sub-Committee heard evidence that since the COVID 19 lockdown had come into effect there had been two incidents of people congregating on the premises. Residents referred to a barbecue in the back garden on the 5 April 2020 involving seven or eight men in the garden who were smoking. One of the residents stated that he could smell the smoking and the barbecue. In addition, police and a licensing officer had attended the premises on the 17th April at 11pm. They had found seven men playing cards in breach of the COVID 19 regulations. The agents questioned whether this was relevant to the licensing application. The agent stated that it was a well ventilated room and they all lived in the same building, some in the basement and some in rooms above. They were all related and they worked in the premises and they had met to discuss takeaways. The Sub-Committee considered that if the owners did not follow government guidelines in this emergency, it was a cause of concern and very relevant to licensing policy 8 regarding high standards of management, including legal requirements. The men did not appear to be members of a single household.

One of the residents expressed considerable concern about the impact of smoking in the garden, which was overlooked by his children's bedroom. The agent said that there would be two SIA door supervisors, one at the front of the building and also in the rear garden. The agent also pointed out that it was not a smoke free zone so that people could smoke, even in the street and there would be nothing they could do.

Questions were asked about how the business could minimise noise from music by keeping doors and windows shut when music was playing. At the front of the premises, an automatic door had just been installed which could not be kept shut. The agent said the applicant would change these doors. They would do whatever it took and they should be given the benefit of the doubt as they were successful businessmen.

Licensing policy 8 states that, when assessing the applicants' ability to demonstrate a commitment to high standards of management, the licensing authority would take into account whether the applicants could demonstrate a comprehensive knowledge of best practice, could understand verbal and written advice and legal requirements, a knowledge of licensing objectives and relevant parts of the licensing policy and

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their responsibilities under the Licensing Act. It states 'experience indicates that when these requirements are not adhered to, the licensing objectives are likely to be undermined'. The agent explained that the owners were not present because they did not speak English, amongst other reasons.

The Sub-Committee concluded that it had insufficient information about the business because of the absence of any relevant people connected with the business and had no confidence that conditions would be complied with. Although the agents stated that they were trying to have a good relationship with residents it was clear that this had not been the case so far. There remained uncertainties about how the proposed variation would be managed and whether the licensing objective of preventing public nuisance would be compromised.

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

The meeting ended at 7.36 pm

CHAIR