

London Borough of Islington

Licensing Sub Committee A - 19 September 2023

Minutes of the meeting of the Licensing Sub Committee A held at Committee Room 4, Town Hall, Upper Street, N1 2UD on 19 September 2023 at 6.30 pm.

Present: Councillors: Heather Staff (Chair), Valerie Bossman-Quarshie
(Vice-Chair) and Praful Nargund
Also Councillors: Toby North and Nick Wayne
Present:

Councillor Heather Staff in the Chair

53 INTRODUCTIONS AND PROCEDURE (Item A1)

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

54 APOLOGIES FOR ABSENCE (Item A2)

None.

55 DECLARATIONS OF SUBSTITUTE MEMBERS (Item A3)

There were no substitute members.

56 DECLARATIONS OF INTEREST (Item A4)

There were no declarations of interest.

57 ORDER OF BUSINESS (Item A5)

The order of business would be Item B2, B1 and B3.

58 MINUTES OF PREVIOUS MEETING (Item A6)

RESOLVED:

That the minutes of the meeting held on 17 July 2023 be confirmed as an accurate record of proceedings and the Chair be authorised to sign them.

59 THE EMPRESS, GROUND FLOOR AND BASEMENT, 360 ST JOHN STREET, EC1V 4NR - NEW PREMISES LICENCE (Item B1)

The licensing officer stated that additional papers had been circulated. It was noted that there was a current live planning application for a change of use to a restaurant and public house. This had not been withdrawn. Planning officers had advised that the use of the rear yard would be in breach of the s106 agreement and Planning would need to take enforcement action.

One resident stated that he had concerns about alcohol sales and that they should be ancillary to a table meal. The change of use would need a planning application. The planning application had not been withdrawn and so contradicted the current licensing application. There had been a previous unlawful use as a public house and there had been

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noise disturbance to residents. The operating schedule did not show how the premises would be managed. Amplified music would be entirely inappropriate given the residential area. The hours sought were outside framework hours. There should be conditions to protect residents which would include a limit to framework hours, no amplified music, a programme of sound insulation, conditions related to dispersal and alcohol to be served to seated and indoor patrons only. A second resident stated that the premises had always operated as a restaurant and was in a cumulative impact area. A glass conservatory had been added at the rear at the premises but with no noise mitigation. They asked that this licence be as restrictive as the original. The building was wholly unsuitable to play amplified music and sound insulation work would need to be carried out. The use of the rear area should not be considered. A telephone number from the applicant had been refused. A third resident stated that a new planning application had been submitted for a restaurant/public house. The applicant should withdraw that planning application if that is no longer the intention. The ward councillor stated that it was not clear what the intention of the application was. It had been proposed to have a late night bar but this had now been amended. He read out a number of suggested conditions that should be imposed. These included alcohol sales to be ancillary to a table meal, that there be no vertical drinking, that hours reduced to framework hours, the prohibition of the use of the rear yard, that windows should remain closed after 9pm except for access and egress, that a limit of six smokers be permitted to stand outside and that hours for bottling out be restricted.

In response to questions, it was noted that the previous licence had only four conditions. The residents stated that there had been a lack of engagement from the applicant and they had tried to engage with the applicant but this had not been successful.

The applicant stated that the application was for the premises to be used as a pizzeria restaurant. Following the concerns raised, the hours had been reduced, conditions had been agreed with the responsible authorities and they had withdrawn their representations. Conditions that alcohol would be ancillary to a table meal and that there be no vertical drinking were agreed. The responsible authorities had withdrawn their representations in response to the conditions agreed. There was a current planning application for a change of use and the home office guidance made it clear that planning and licensing were separate regimes. The applicants' representative stated that the Sub-Committee should determine the application set out before them. With regard to Licensing Policy 1, there were no planning issues and the application was consistent with the lawful use as a restaurant. Should planning allow later hours, the applicant would need to abide by the licensing. Regarding licensing policy 2, the premises was located in a cumulative impact area, the responsible authorities had been positive and the applicant had demonstrated a high standard of management. Regarding licensing policy 3, it was considered that there was no need to rebut the presumption as the premises was already in existence and mitigation with the additional conditions was more than adequate. Regarding the proposed conditions from Councillor North, he stated that with the S106 agreement condition should not be replicated as it was a legal agreement and the rear yard was not a matter for licensing. Allowing six smokers outside the frontage was accepted. It was considered that a more appropriate time for the closing of windows and doors would be 11pm and with regards to a bottling out condition it would be open to the Sub-Committee for consideration.

In response to questions, it was noted that the applicant had run a pizza restaurant for six years which had no vertical drinking. There were no off sales of alcohol. He stated that the premises had been run as a pub previously, so it was planned to be a pub and a restaurant, however planning consent had taken a long time and a business decision had been made to operate as a restaurant only. The licensing officer reported that there was a licence for the premises in existence since 2005. The applicant stated that he had spoken to a couple of neighbours but not fully engaged. He said that he engaged with patrons at his bars and nightclub but that in the restaurant, people would come in for pizza, wine or beer and then

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leave. For future engagement he would invite neighbours to the restaurant. If there were complaints he would apologise and they could go through the agent. The applicant's representative stated that was a procedure to increase the level of noise protection to ensure that they would not cause a nuisance and conditions were in place to prevent issues. The Sub-Committee noted that there was a proposed condition that asked that a telephone number be made publicly available and it was concerned that the applicant was not aware of this condition. The applicant was asked about the bottling out condition and he initially stated that unfinished bottles could be taken home. When the terminology was explained he stated that all the bins were in the back yard. The applicant's representative stated that the s106 dealt with the use of rear yard and there would be an unnecessary duplication if a condition was added to the licence.

The licensing officer advised the Sub-Committee that bottling out hours could be added to the condition regarding the collection of refuse.

In summary, the interested parties were concerned that they would need to enforce against the use of the back yard when the garden was just below residential balconies. This was not a neighbourly action. They expected that the noise nuisance would add to the cumulative impact and expected that conditions would be in place. He had lodged an application with planning for a public house only two months previously and the applications needed to be consistent.

The applicant's representative stated that the premises was to be run as a restaurant and not a pub. There was an outstanding planning application. The applicant had been involved in licensing for 20 years, currently running a premises in Archway, He had the advice of a consultant and understood the implications of not following the conditions. He considered that the impact would be mitigated due to the extensive conditions applied.

RESOLVED

That the application for a new premises licence, in respect of The Empress, Ground Floor and Basement, 360 St John Street, EC1V 4NR 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 Policies 2 & 3. The premises fall within the Bunhill 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 operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives.

Twelve local resident objections had been received. Three residents attended with Councillor North. One resident explained that they owned the freehold of their building. Conditions had been agreed with the responsible authorities.

The Sub-Committee noted that the hours sought were within the hours specified in licensing policy 6.

The Sub-Committee heard evidence from the residents about concerns that this would in fact be run as a public house. There had been problems experienced with anti-social

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behaviour and noise when in a previous operation it had run as The Empress of Russia public house. Planning permission had not been granted for this use. The applicants' representative explained that initially the applicant had hoped to run a public house but because of delays in obtaining planning permission he had now decided to run the premises as a restaurant. One of the residents said there was confusion because he was not clear why there was a current planning application for a restaurant and public house. The applicant should commit to running the premises as a restaurant, as in this application and withdraw the planning application for a public house. The Sub-Committee noted that the applicant had not made clear from the start of the meeting that a new application had been submitted to planning for the use of the premises as a public house. The conditions did not include the usual restaurant conditions about alcohol being served ancillary to food and table service.

The residents were concerned about the use of the rear outside yard, which was included in the application for licensing. Under a Section 106 agreement with the residents as freeholder, the use of the area was prohibited. The applicants' representative asserted this was purely a planning issue and not a relevant consideration for a Licensing Sub-Committee. However, the resident explained that they would have to enforce against the applicant if he used the rear yard. The back of the building was a glass extension to the rear yard and there were problems with noise and the close proximity of residents.

The Sub-Committee considered licensing policy 26, where garden tables and chairs are provided outside, users could potentially cause a nuisance. The Licensing Authority expected applicants to provide comprehensive details in their operating schedule how these areas would be managed to prevent noise and smoke fumes to residents. The applicant had not addressed this.

Under licensing policy 22, the Licensing Authority is committed to preventing public nuisance in the vicinity of licensed premises and to protect the amenity of residents. Applicants are expected to address these issues in their operating schedules. Under Licensing Policy 23, paragraph 128, the Licensing Authority will seek to balance the protection of residents from undue noise and the activity that is the natural by-product of people going about their business, entertainment and leisure.

The Sub-Committee questioned the applicant about arrangements made for 'bottling out.' There can be noise nuisance as a result. The applicant was unclear as to what was meant by bottling out and he initially said that this meant when patrons had not finished a bottle of wine and were allowed to take it home.

The residents were adamant that no consultation had taken place with them. The applicants' representative emphasised that the applicant had fully consulted with all the Responsible Authorities. The Sub-Committee questioned the applicant on approaches he had made to local residents. The applicant said he had spoken to a couple of neighbours. When the premises opened he said he would invite neighbours to a pizza evening. If there were any complaints he would apologise. Complaints could be made through his agent. The applicant said he had run a number of businesses such as nightclubs and he would have consulted with neighbours in such a case but this was a restaurant and not the same.

60 **CIRO'S, UNIT 6, THE IVORIES, 6-8 NORTHAMPTON STREET, N1 2HY - NEW PREMISES LICENCE (Item B2)**

The Licensing Officer reported that there were representations from the police and the noise team which had been withdrawn following conditions being agreed. The applicant had further proposed an on-sale time of 10.30pm to allow drinking up time. Music would be background only and therefore recorded music had been withdrawn. He informed the Sub-

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Committee that there had been two applications made on the same day for the same site but they were both very different in scope.

A planning officer was in attendance to respond to questions about the planning consent. He advised that an air conditioning unit on the roof was subject to planning control. The hours requested for this application were beyond the hours granted for the air conditioning unit however, he had been advised that the premises would not connect to these units. He advised that planning and licensing were separate frameworks and an approved licensing application would not prevent a breach of planning. In response to a question, it was reported that applicants often proposed the hours of use for mechanical plant but planning would apply an appropriate decibel level.

One local resident stated that if the application was for a deli, coffee shop with alcohol ancillary to food, the planning use would remain in Class E. However, he had concerns that only small plates were being provided and no hot food. There was a large area indicating storage of alcohol with no food preparation area and he considered that alcohol would not only be ancillary. He was concerned that the main use would be for a wine bar and planning would be required for a change of use. The hours of opening extended well past the hours permitted by the current planning consent and he considered that residents would be asked to monitor the premises. Other deli cafes in Islington offered a far greater food offering. A second resident raised concerns regarding the planning condition. The planning officer took into consideration the close proximity to residential accommodation and restricted the hours of use for the air conditioning unit to 8am to 6pm. He considered this application to be in breach of these hours. There had been no mention of sound insulation in the premises. This was a quiet residential area and he asked that the application should be refused. A third local resident reiterated that this was a densely residential area. The property looked over a number of social and privately owned flats. Any venue would bring considerable noise and disturbance and the elderly and vulnerable particularly would be impacted. The air conditioning unit was not currently turned off at 6pm and residents would like this condition to be enforced. It was considered that this was an unsuitable building for an alcohol licence and wished that residential amenity be maintained.

The Sub-Committee heard from the applicant who stated that her intention was for the business to be a café/deli with alcohol as an option. She would not be serving alcohol after 10.30pm, she would have CCTV and staff would be fully trained for Challenge 25.

In response to questions from the Sub-Committee she stated that she wished to showcase natural wine with food. This would complement the food offering but was not the sole focus of the business. It was table service with small tapas style plates and sharing plates with soft drinks available. She maintained a small air conditioning unit but this was separate to the unit on the roof of the development. Music would be background and she would have an open-door approach for residents. She did not currently have a phone number that residents could have but they could reach her by email. In response to a question about reaching out to the community, she stated that several people had spoken to her about the application but once she had explained the business model they had seemed quite happy. She had not known there were any issues until she had received representations about the application. She stated that she would be the chef and manager. There would be table service and staff would be trained by her. There was no vertical drinking. There were 30 seats in the premises. 36 covers would be the maximum with the outside tables. She would be the designated premises supervisor, the chef and the manager and would hire another member of staff in case another personal licence holder was required. Off sales would be in a closed bottle. The applicant stated that she would be happy with a terminal hour of 10.30pm and she considered that the venue would have similar food and vibe both in the day and evening. She had looked at a number of places to set up the business. There were

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a couple of pubs and a coffee shop in the local area and she considered that this premises would be a positive influence.

In summary, the residents considered that this was not a serious business plan but was an application to operate a wine bar. There had been no discussion with residents. This was a tapas bar where food proportions were small and the amount of alcohol was large. This was a residential area and off licences are closed at 8pm. When Arsenal were playing they hoped that the applicant would be able to control patrons standing outside, drinking and not blocking the public highway.

The applicant did not feel the need to add anything further.

RESOLVED

That the application for a new premises licence, in respect of Ciro's, Unit 6, The Ivories 6-8 Northampton Street, N1 2HY 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 4. The Council has adopted a special policy relating to cumulative impact in relation to shops and other premises selling alcohol for consumption off the premises. Licensing policy 4 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 or subject to certain limitations, following the receipt of 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.

Conditions had been agreed with the Police, Noise Team and Trading Standards and their representations had therefore been withdrawn.

Six local resident objections had been received and three residents spoke at the meeting against the application. It was pointed out that this was a densely populated residential area and the amenity of residents needed to be protected. The premises looked out onto flats which housed elderly, vulnerable people and children. Concerns were expressed about planning issues and the noise from the air conditioning units on the roof but the applicant confirmed that she would not be using the air conditioning. The planning officer stated that planning issues were separate from the licensing framework and breaches were matters for enforcement by planning.

The Sub-Committee took into account licensing policy 22. The licensing authority is committed to preventing public nuisance by protecting the amenity of residents in the vicinity of licensed premises. There were complaints about the effect of noise from the café if the sale of alcohol was to be permitted and the Sub-Committee heard evidence that Arsenal supporters came to the area on match days with the possibility of anti-social behaviour.

The Sub-Committee heard from the applicant that there would be three tables outside and took into account licensing policy 26. The licensing authority expects applicants to provide comprehensive details in their operating schedule on how outside areas would be managed to prevent noise and pavement obstruction. This was not provided.

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Licensing policy 8, paragraph 91, states that the licensing authority is committed to promoting high standards of management in all licensed premises and expects applicants to demonstrate this through their operating schedule and management practices. Experience indicates that where these requirements are not adhered to, the licensing objectives are likely to be undermined.

The applicant did not appear to have consulted with local residents and had not been aware of the concerns of residents. She thought that perhaps a notice she had displayed in the window about the availability of natural wines might have upset residents. The Sub-Committee noted that she had agreed condition 20, which stated that the premises licence holder shall not advertise the availability of off sales of alcohol by any notice visible to passers-by. When asked about how she would keep her premises cool and ventilated on a hot day in summer, the applicant said she would keep doors and windows open. She had agreed condition 31, to keep all doors and windows closed after 9pm but did not mention this. The applicant was unclear on how she would manage premises in the evening and what differences she might expect in the nature of her trade. There were 30 to 36 covers. She would be there all the time. She would be designated premises supervisor, chef and manager and thought she might be assisted by either 3 or 4 other people.

The Sub-Committee was concerned that she did not fully understand the responsibility involved in taking on a premises licence and selling alcohol. This was a new venture for the applicant and she had not clearly explained how she would anticipate and mitigate any problems that might arise.

The Sub-Committee concluded that the granting of the licence would not promote the licensing objectives.

61 **FANN, 28 CHAPEL MARKET, N1 9EN - NEW PREMISES LICENCE (Item B3)**

The licensing officer reported that no further information had been received. There were no residents present at the meeting.

The Licensing Authority stated that this had been a confused application and now the hours requested were for the sale of alcohol and regulated entertainment until 10pm each day with late night refreshment until 2am. There was insufficient information given to explain how the premises would be operated. The premises was in a very busy area cumulative impact area and the applicant had not explained how they would deal with issues. The Police stated that they had liaised with the applicant once the application was submitted as it was a confusing application which exceeded framework hours. They were unable to agree on the late-night refreshment hours and he asked that members question the applicant to satisfy themselves regarding the excess hours. This area was extremely busy and the applicant had no mitigation to prevent anti-social behaviour.

The business partner and owner attended the meeting. He stated that he had run similar premises in Newcastle and Edinburgh until 2 and 3am. They had initially wanted live singers but after speaking to the Police had decided against this. They wished to offer hot food for Chinese students and the late hours were intended for the take away part of the business. They had spoken to students who could not find anywhere to eat after 12 am. The business partner was living above the restaurant and there was a lot of noise in the road. Anti-social behaviour was not caused by the restaurant. Their price point was at a slightly higher price than other take aways.

In response to questions, the applicant stated they would be mitigating noise by closing the front door and having a take-away only. There would be online ordering. The back door

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could be used for delivery and drivers could park away from the premises. The sale of alcohol until 10pm was late enough for the premises. They had decided on this area as the family owned the building and it was therefore a low cost start up. They considered that stopping the sale of alcohol until 10pm would prevent drunk customers. Alcohol would only be served with food and would be sold at a higher price point. Staff would be told how to refuse certain customers. ID would be checked. They would ask patrons who might be a problem to kindly leave the premises. The application for choral music was a mistake and karaoke was not the intention. They found that students were writing essays at midnight and wanted a late takeaway. Students who were drunk would be refused and they would have to call the police if necessary. The rear was a quiet street and they could half close the shutter on the front door. They did not create much noise during cooking and their ventilation system was top of the range. Orders would be mostly through the online platform. He stated that he would ideally use electric bikes for deliveries. The Sub-Committee reminded the applicant that there was a proposed condition that requested no motorised deliveries of takeaway food or drink.

In summary, the Licensing Authority stated that the condition about non-motorised deliveries had been previously agreed. The Licensing Authority stated that shutters should not be half closed but should be completely closed with a closed sign. She raised concerns about the hours, which were outside core hours. The police considered that there was no major reason why the hours should be until 2am, seven days a week.

The applicant stated that even 1am would be fine with them. A Sub-Committee member advised the applicant that you could choose a non-motorised option when using a delivery platform.

RESOLVED

- 1) That the application for a new premises licence, in respect of Fannn, 28 Chapel Market, N1 9EN, be granted to allow:-
 - a) The sale of retail of alcohol, on supplies, Mondays to Sundays from 11am to 9.30pm to allow for a half hour drinking up time.
 - b) The sale of retail of alcohol off supplies, Mondays to Sundays from 11am to 9pm
 - c) The provision of late night refreshment, Sundays to Thursdays from 11pm until midnight and Fridays and Saturdays from 11pm to 1am (take away only);
 - d) The premises to be open to the public, Sundays to Thursdays from 11am until midnight and Fridays and Saturdays from 11am to 1am (open for orders and payments only after 10pm).

That conditions detailed on pages 154 to 158 of the agenda shall be applied to the licence with the following amendments.

- Music to be background only.
- The door at the front of the premises be closed to the public from 10pm with a closed sign attached.
- Deliveries from the rear of the premises only.
- The rear exit of the premises to be fully illuminated.

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.

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The Sub-Committee took into consideration Licensing Policies 2 & 3. The premises fall within the Kings Cross 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 operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives.

Three local resident objections had been received. No residents attended the meeting. Conditions had been agreed with the Noise Team. There were outstanding representations from the Licensing Authority and the Police.

The Sub-Committee noted that the hours sought were not within the hours specified in licensing policy 6 in relation to late night refreshment and this was the focus of concern from the Police representation. There was also concern about the size of the premises and the wide variety of entertainments proposed particularly in relation to problems with noise. However, the applicant showed a willingness to address these issues. He agreed that the inclusion of choral music entertainment was a mistake and that he had not initially appreciated how small the premises were. He accepted that background music was probably sufficient. He anticipated selling Chinese food to Chinese students and this was the reason for the request for late night refreshment. Orders would be entirely online after 10pm and he stated that the food would be picked up from the back door either by car or in person. He proposed that the front of the premises could be closed at 10pm. The Sub-Committee pointed out to him that he had a condition that deliveries should be made by non-motorised vehicles only and the applicant requested advice on how to arrange that through his online platform.

The Sub-Committee was concerned that given the conditions in Chapel Market and the cumulative impact associated with noise and anti-social behaviour at night that the applicant had failed to satisfy them as to why late-night refreshment should be granted beyond framework hours. The Sub-Committee also had concerns about safety at the rear of the premises and considered that the rear exit should be illuminated.

However, with the conditions discussed with the applicant and added by the Sub-Committee, particularly in relation to background music only and with the reduced hours for late night refreshment, there would be no negative cumulative impact on any of the licensing objectives.

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

The meeting ended at 10.05 pm

CHAIR