

Licensing Sub Committee C - 4 October 2016

Minutes of the meeting of the Licensing Sub Committee C held at Committee Room 4, Town Hall, Upper Street, N1 2UD on 4 October 2016 at 6.30 pm.

Present: **Councillors:** Asima Shaikh, Diarmaid Ward and Nick Wayne.

Councillor Nick Wayne in the Chair

125 INTRODUCTIONS AND PROCEDURE (Item A1)

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

126 APOLOGIES FOR ABSENCE (Item A2)

Apologies for absence were received from Councillor Gary Poole.

127 DECLARATIONS OF SUBSTITUTE MEMBERS (Item A3)

Councillor Wayne substituted for Councillor Poole and Councillor Ward substituted for the vacant position.

128 DECLARATIONS OF INTEREST (Item A4)

There were no declarations of interest.

129 ORDER OF BUSINESS (Item A5)

The order of business would be as the agenda.

130 MINUTES OF PREVIOUS MEETING (Item A6)

RESOLVED

That the minutes of the meeting held on the 9 June 2016 be confirmed as a correct record and the Chair be authorised to sign them.

131 THE OLD SESSIONS HOUSE, 22 CLERKENWELL GREEN, EC1R 0NA - NEW PREMISES LICENCE (Item B1)

The Sub-Committee noted that this item had been withdrawn by the applicant.

132 HOLY PITTA YEEROS HOUSE, 74D UPPER STREET, N1 0NY - NEW PREMISES LICENCE (Item B2)

The licensing officer reported that officers visited on the 23 September at 11.41pm and had found the premises serving hot food. There were also 12 chairs outside the premises instead of the required 8. The licensee was spoken to about this matter and he stopped

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serving immediately. The following weekend there was another visit and the premises were found to be complying with their licence.

The licensing authority reported that the hours requested were within the framework hours outlined in licensing policy 8.

A local resident who spoke against the application stated that the terminal hour should be midnight during the week and 11pm on Sunday. She had seen six tables outside the premises which the resident did not think were covered by licence. The licensing officer clarified that the premises had authorisation for four tables and 8 chairs outside the premises which were to be cleared at 11pm.

The applicant's representative reported that an application had been submitted about a month ago which had been ill prepared and had longer hours. This had been refused. This revised application was more in keeping with the licensing policy and was within framework hours. The premises would not be serving alcohol. The police and the licensing authority had not put in any objection. The licensee had applied for temporary event notices over the past three months. On the evening that hot food was found to be served after hours, the premises had a sudden influx of customers after 11pm and orders had been taken.

In response to questions it was noted that after 11pm the premises was just a take away and tables and chairs would be removed. Trading after hours on that occasion was just a one off. Staff had been trained and would not serve people who were drunk. The premises had been operating for six months and there had been no issues with either this or the next door premises which was also owned by the applicant. On the evening that they had been operating after hours, customers had made their order before 11pm and the restaurant had just been completing these orders. This had been the only issue in the six months of ownership. Tables and chairs were removed 10 minutes before 11pm. It was noted that the applicant also operated La Forchetta, the next door premises and had no issues. The applicant's representative stated that he was a qualified trainer and would train all staff. They did consider employing a door supervisor but the premises was very small and so one was not considered necessary. The licensee could call on Dirty Martini if there were any issues. There were plans to employ additional staff between 11pm and 1am. The licensee was very experienced.

In summary, the local resident reported that she had seen more tables outside than they were allowed. She thought that customers could be sold alcohol from the neighbouring premises. She considered that the hours requested were outside the policy. The licensing officer clarified that the hours requested were within the framework for premises that sold late night refreshment.

The applicant stated that the application was within framework hours. Tables and chairs were shared with the premises next door but only four tables and 8 chairs would be outside these premises. The licensee had been trading for seven years at the neighbouring premises with no issues.

RESOLVED

- 1) That the application for a new premises licence, in respect of Holy Pitta Yeeros House, 74D Upper Street N1 0NY, be granted to allow:-
 - a) The provision of late night refreshment, Sundays to Thursdays from 11 pm until midnight and Fridays and Saturdays from 11 pm until 1 am.
 - b) The premises to be open to the public: Sundays to Thursdays from 10am until midnight and Fridays and Saturdays from 10 am until 1 am.

- 2) Conditions outlined in appendix 3 and detailed on page 180 of the agenda shall be applied to the licence with the following additional condition.
- All outside tables and chairs to be removed at 11pm.

REASONS FOR DECISION

The Sub-Committee listened to all the evidence and submissions and read all the material. The Sub-Committee reached the decision having given consideration to the Licensing Act 2003, as amended, and its regulations, the national guidance and the Council's Licensing Policy.

The Sub-Committee took into consideration Licensing Policy 2. The premises fall under the Angel and Upper Street cumulative impact area. Licensing policy 2 creates a rebuttable presumption that, applications for new premises licences that are likely to add to the existing 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.

The Sub-Committee noted that the intended hours of operation were within the core hours as set out in Licensing Policy 8.

No representations were received from any of the Responsible Authorities. In addition hereto, the Sub-Committee took into consideration the submissions from the Licensing Officer that he had witnessed the applicant trading outside authorised hours on 23rd September 2016 and the response from the applicant.

The Sub-Committee concluded that the licensing objectives would not be undermined by the granting of the application and that it would not add to the cumulative impact or otherwise impact adversely on the promotion of the licensing objectives.

The Sub-Committee noted the concerns of the interested party in relation to tables and chairs outside the premises. The Sub-Committee accordingly granted the application with the additional condition that the tables and chairs be removed at 11pm.

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

133

STAR FOOD AND WINE, 138-140 BALLS POND ROAD, N1 4AD - PREMISES LICENCE REVIEW (Item B3)

The trading standards officer submitted an update that would be interleaved with the agenda papers.

The trading standards officer reported that the new licence holder had worked at the premises during the seizure made in 2012. He became the licence holder in January 2016 and was managing the premises during the seizure in April 2016. He reported that, since the application had been made there had been an improvement. He asked that if the Sub-Committee considered that the licensee was unlikely to attain the high standards expected of a manager, he would ask that the licence be revoked. If the Sub-Committee considered that the improvement would be maintained he recommended suspension as a deterrent for other businesses.

In response to questions the trading standards officer considered that the alcohol had been non duty paid rather than counterfeit. No documents had been produced and the licensee stated that they had been purchased when he was not in the shop. Trading standards had

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carried out one check on the premises since 2012 but nothing had been found. He considered that the attitude of the licence holder had changed and he now understood how serious this was. He was more engaged and was keen to understand where he had gone wrong.

The licensing authority had met with the licence holder and considered that the Sub-Committee needed to hear the story around the tobacco as he was not sure that it made sense. If the licence was suspended he considered that additional conditions would also need to be added. This could include a condition about a personal licence holder being present on the premises at all times and also a condition about high strength alcohol.

In response to questions it was noted that the trading standards officer had seen some training records but would not be able to say what they were. A training course had been run by the training standards office which was attended by the licensee and one member of staff in June. It was reported that having a personal licence holder on the premises at all times that alcohol was sold would be one way of ensuring a robust operation. It was noted that the police representation on page 203 of the agenda contained an accurate summary of breaches.

The police reported that there had been poor management standards at the premises and detailed the breaches in the CCTV condition at a visit to the venue on the 22 April 2016. He stated that he believed that the CCTV was now working.

The licensee's representative stated that this was a family run premises that had been managed by Mr Kavruk senior in 2012. In January 2016 he decided to transfer responsibility to his son and his son became the designated premises supervisor in January 2016. Mr Kavruk senior and his son had an argument and his son left the premises which resulted in chaos in running the shop in the early part of 2016. In February 2016 there was an incident at the premises involving Mr Kavruk senior, an allegation was made and the CCTV was provided as evidence. A temporary CCTV system was set up but this had not been adequate and had not held recordings for 31 days. The incident had led to Mr Kavruk senior contacting his son and he returned to the premises. Mr Kavruk junior was not around when the alcohol was purchased but he accepted he was responsible as designated premises supervisor. The tobacco in the shop was being looked after. Mr Kavruk junior was aware that it should not have been there and accepted this mistake. Mr Kavruk junior had now sought advice about training. The issue between father and son caused a breakdown in management and the running of the shop. All conditions were being complied with and all issues corrected. They agreed to a condition about having a personal licence holder on the premises and also about restricting high strength alcohol. Mr Kavruk junior stated that he had not known how to operate the temporary CCTV unit properly. He stated that all staff would be trained and retrained every three months. He would ensure that this would not happen again. He stated that the illicit products must have come into the shop while he was away. Trading standards then found them. He agreed that they should not have been there and alcohol would be bought from the cash and carry in the future. It was accepted that management standards had fallen below the standard expected when he was absent from the premises. Purchases of alcohol would only go through Mr Kavruk junior and would be at a cash and carry. In 2012 he was an employee only and not responsible for management and his representative stated that, in any event, had he been found guilty it would have been a spent conviction after twelve months. It was noted that the trading standards officer had visited since 2012 and had found no problems. Mr Kavruk junior took over at the early part of the year and was not aware of the illicit items. He stated that he would do anything to ensure that this did not happen again. He would show invoices monthly. He would be there all of the time if he had to be. There would be a minimum of two staff present at all times. The member of staff who sold the tobacco was not aware it was illicit. It was not hidden from view but was at the front of the counter. A nearby café

owner had asked if the licensee could keep the tobacco at his shop for safekeeping. The licensee stated that, if it was conditioned, a personal licence holder would always be at the premises. If the licence holders could not be available shutters would be closed over the alcohol. Mr Kavruk junior left in the middle of January, before the incident. He became the designated premises supervisor on the 20 January 2016 but then he had a fall out with his father. He was back running the business in April but he did not know anything about the non-duty paid alcohol found in the premises. He asked other people about the alcohol in the shop but nobody, including his father, could give him a straightforward answer. His father was only working in the shop for half a day and while he was away there was another man helping his father out in the shop. He did not know why some high strength lager was only priced at £1.35 rather than £1.99. He no longer wished to sell high strength beers. Training had been carried out on the 24 September and further training was booked for 24 December.

In summary, the trading standards officer stated that the Sub-Committee needed to assess whether or not the licensee could manage the business in the future and whether or not a suspension or revocation would be appropriate.

The licensing authority stated he had not been convinced by the evidence. He was concerned that there had not been high standards of management in the premises. The licensee had attended training given by trading standards in 2015. He stated that he had attended this training and knew it was very thorough.

The police stated that they had no evidence that the CCTV hard drive had been taken by police in response to the incident in the premises.

The licensee's representative stated that all conditions proposed were agreed. The licence holder would ensure compliance with these conditions and promote the licensing objectives. The Sub-Committee may feel a suspension with conditions was proportionate and be a deterrent to Mr Kavruk and other licence holders.

RESOLVED

1) That the premises licence, in respect of Star Food and Wine, 138-140 Balls Pond Road, N1 4AD be suspended for a period of two months and modified with the addition/amendment of the following conditions:-

- Conditions 2 and 3 of the current licence shall be replaced with the police CCTV condition as follows:- CCTV shall be installed, operated and maintained in agreement with the Police. Maintained means that the system will be regularly serviced (at least once a year) and checked every two weeks to ensure that it is storing images correctly and a log kept and signed by a supervisor to this effect. The system will provide an identifiable full head and shoulder image of everyone entering the premises and will operate in any light conditions within the premises. The system will cover the full exterior of the premises and shall record in real time, date and time stamped and will operate whilst the premises is open for licensable activities. The recordings will be kept for a minimum of 31 days and copies will be made available to an authorised officer or a police officer (subject to the Data Protection Act 1998) within 24 hrs of any request free of charge. There will always be a member of staff on duty who can operate the system, to allow Officers to view recording and if required by a Police Officer, provide a copy of images immediately free of charge to assist in the immediate investigation of offences. If the system malfunctions and will not be operating for longer than one day of business then Police must be informed.
- A personal licence holder shall be on the premises at all times during opening hours.
- No beers or ciders in cans or plastic bottles above 6.5% shall be sold on the premises.

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- All alcohol to be sold in lockable cabinets and cabinets to be locked at all times when a personal licence holder is absent from the premises.

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 LSC found the following facts to have been established that:

- The premises licence was initially granted for 138-140 Balls Pond Road on 12th September 2012
- Prior to the new premises licence being granted for 138-140 Balls Pond Road, there were two separate premises licences, one at 138 Balls Pond Road and one at 140 Balls Pond Road.- these 2 licences were surrendered when the new licence for the combined premises was granted
- The current licensee and DPS is Mr. Omur Kavruk, who has been employed at the business since 6th July 2012.
- The Licensee attended training for off licence managers provided by the Council. The training and the hand out slides together with the most recent guidance on illicit alcohol and tobacco was provided to all attendees and it was stressed that illicit goods found in off licences was likely to result in strong action
- In January 2016, the respondent became a licensee and DPS.
- On 22nd April 2016, a significant quantity of illegal tobacco was found by HMRC officers in two bags kept behind the counter.
- At the time, the respondent informed the HMRC officers that the tobacco belonged to the owner of a nearby café and that he was just looking after it for him.
- On 22nd April 2016, Mr. Love of the Islington Council Trading Standards Section found and seized non duty paid alcohol. Some of the alcohol was behind the counter and some was in a store room.
- CCTV footage from the 19th April 2016 to 22nd April 2016 was requested by the police. This wasn't provided.
- Invoices for the goods seized were not provided to the police
- The duty payable on all the seized goods totalled approximately £1028.
- The Respondent has ordered a new CCTV system, attended training Health and Safety training provided by the Council and has co-operated with the licensing authority and has requested unannounced visits.

The Licensing Authority was concerned about the explanation provided by the licensee for the presence of illicit goods on the premises and found the explanation unsatisfactory and improbable. It appeared as if the licensee was attempting to protect someone.

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The Licensing Authority in determining an application for the review of the premises licence, must take such steps as necessary for the promotion of the licensing objectives.

The Act provides that those steps are as follows:-

- To modify the conditions of the licence (that could be altering, omitting or adding a new condition)
- To exclude a licensable activity from the scope of the licence
- To remove the designated premises supervisor from the premises licence
- To suspend the licence for a period not exceeding three months
- To revoke the licence
- Leave the licence in its existing state

The Sub-Committee was most concerned about the behaviour of the licensee from January to April 2016 and seriously considered revoking the licence.

It was however mindful of the representations by the Trading Standards officer in relation to the attempts made by the licensee since April 2016 to put his house in order, to take his managerial responsibilities seriously, to ensure he and his staff are receiving proper training and most importantly the positive steps taken by the licensee to work with the Licensing Authority to address their concerns and properly comply with the conditions of the licence.

The Sub-Committee imposed specific conditions that a) there should be a personal licence holder on the premises at all times when alcohol was sold and b) alcohol would need to be sold from lockable units. The Sub-Committee imposed these conditions because they were not confident that the licensing objectives would be upheld if there was not a personal licensee on the premises, based upon the poor standards of management exhibited in the past.

Taking all the above mentioned factors into account, the Sub-Committee concluded that the appropriate and proportionate decision at this stage would be not to revoke the license but to suspend the licence for a period of two months and to add the conditions above to the licence.

134 THE GREEN HOUSE CAFE, 49 GREEN LANES, N16 9BU - APPLICATION FOR TEMPORARY EVENT NOTICE (Item C1)

The Sub-Committee noted that this item had been withdrawn by the applicant.

The meeting ended at 8.30 pm

CHAIR