

London Borough of Islington

**Licensing Sub Committee D - 1 August 2019**

Minutes of the meeting of the Licensing Sub Committee D held at Committee Room 4, Town Hall, Upper Street, N1 2UD on 1 August 2019 at 6.30 pm.

**Present: Councillors:** Nick Wayne (Chair), Convery (Vice-Chair) and Caluori.

**Also Present: Councillors:** Osh Gantly, Una O'Halloran.

**Councillor Nick Wayne in the Chair**

**52 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.

**53 APOLOGIES FOR ABSENCE (Item A2)**

There were no apologies for absence.

**54 DECLARATIONS OF SUBSTITUTE MEMBERS (Item A3)**

There were no declarations of substitute members.

**55 DECLARATIONS OF INTEREST (Item A4)**

There were no declarations of interest.

**56 ORDER OF BUSINESS (Item A5)**

The order of business would be as the agenda.

**57 MINUTES OF PREVIOUS MEETING (Item A6)**

**RESOLVED:**

That the minutes of the meeting held on 6 June 2019 be confirmed as an accurate record of proceedings and the Chair be authorised to sign them.

**58 ANGEL FOOD AND NEWS, 44 DUNCAN TERRACE, N1 8BW - APPLICATION FOR A NEW PREMISES LICENCE (Item B1)**

The licensing officer reported that additional photographs from a local resident had been circulated to members of the Sub-Committee.

The licensing authority reported that the premises were in a cumulative impact area. It was reported that the applicant had not shown in the application how the premises would not add to the cumulative impact. The application had shown little detail.

In response to questions regarding the ownership of the premises, the Chair of the Sub-Committee stated that there was no evidence of the applicant deliberately misleading the Sub-Committee and this was not likely to be a material consideration.

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The officer from the public health team stated that the area already had a high density of licensed premises. The premises were located in an area where there were seven off licences per thousand residents; higher than the Islington average of three. It was considered that there were already high levels of alcohol related harm in the area and further premises would add to the cumulative impact.

A local resident stated that another premises would be likely to add to crime and disorder. There was already an issue in the nearby parks with ASB and drug dealing. This application was for a new premise which would be likely to add to the cumulative impact and it was considered the impact had not been addressed or rebutted by the applicant. Duncan Street was a particularly problematic area and councillors had been working closely with the police. They had been informed that this was one of two major crime spots that the police were frequently called to and received Parkguard visits. Littering including drug paraphernalia was not a rare occurrence and many front doors had been reinforced to prevent entry. Some residents were worried about leaving their flats. The park area was two minutes' walk away from the premises and there had been increasing littering including drinking bottles cans, knives and even bleach. This was a speculative application which had not been made by the owner of the premises and the Sub-Committee were asked to reject the application. A second resident stated that there was an increasing number of bottles and syringes littering the area. There was a burden on the applicant to demonstrate a negative cumulative impact and this was a hard area to rebut that presumption as a high concentration of licensed premises already existed. This was directly in front of a primary school and was probably the worst area that the Sub-Committee could grant against the policy.

The applicant's representative clarified that the applicant was applying as a sole trader, which was perfectly legal. He had four other premises in London and would become the designated premises supervisor of this premises if the licence was granted. It was recognised that the original application was not strong on conditions but additional conditions had now been circulated. There would be two staff on the premises after 6pm and the application was within framework hours. The licensee could not be held responsible for previous incidents. This would be a convenience store and could open 24 hours a day. Low strength alcohol had been agreed as a condition, other conditions were robust and the police had not raised an objection. The police were not saying there would be an increase in cumulative impact. Staff would be trained over the next year. The close proximity of the school was not a valid ground to refuse the application. The applicant had held a personal licence for some years and he stated that the public health officer had said it would be acceptable if the application was in framework hours. There would be CCTV and staff would discourage loitering and this was conditioned.

In response to questions, the applicant's representative stated that problem drinkers would go to premises with maximum strength alcohol. Strong beers would not be on sale in this premises. Staff would be fully trained. In response to a question asking if there was anything distinctive about the premises and whether it would enhance the area, it was stated that robust conditions would stop the premises causing a problem. It was stated that the training given to the designated premises supervisor would be an enhancement to the experience that he already had. The public health officer stated that the objection to the licence was on the basis of cumulative impact and not just on the hours applied for.

In summary, the interested parties stated that they had not heard the applicant rebut the presumption. The conditions offered were standard for a well-run establishment. The applicant's representative stated that the applicant had four other shops which had no issues. He would run this premises with no addition to cumulative impact.

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### **RESOLVED**

That the application for a new premises licence, in respect of Angel Food and Wine, 44 Duncan Street, N1 8BW, 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 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.

The Sub-Committee also 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 operation schedule that there will be no negative cumulative impact on one or more of the licensing objectives.

Twelve local representations had been received. There were representations from the Licensing Authority and from Public Health.

The Sub-Committee heard evidence from the Licensing Authority that the application had not dealt with how the applicant would rebut the presumption of cumulative impact. The public health team recommended refusal on the grounds that there was already sufficient supply in the area which already experienced high level of alcohol-related harm.

Two local residents spoke against the application. They stated that this area was a particularly difficult area with high levels of anti-social behaviour, homelessness, litter including drug paraphernalia, bottles and cans. This was one of 2 local major crime spots where the Police and Parkguard were frequently called out. They said that there was a burden on the applicant to demonstrate a negative cumulative impact and this had not been demonstrated.

The applicant's representative stated that although the original application was not strong on conditions they had now forwarded a large number of robust conditions. This included conditions regarding high strength alcohol and CCTV. The police had not raised objections. There would be two staff on duty after 6pm and the hours were within framework hours. The applicant would be the designated premises supervisor and had held a personal licence for some years.

The Sub-Committee concluded that the premises would add to the availability of alcohol in an area where there was already a large number of licensed premises with associated anti-social and criminal behaviour and therefore have a cumulative impact on the licensing objectives. In accordance with licensing policy 2, the Sub-Committee was satisfied that the grant of the application would undermine the licensing objectives.

The Sub-Committee concluded that the applicant had failed to rebut the presumption that the application, if granted, would add to the cumulative impact area. The applicant did not show any exceptional circumstances as to why the Sub-Committee should grant the application.

**59 TETTO'S ITALIAN KITCHEN, 313 Highbury New Park, N5 - APPLICATION FOR A NEW PREMISES LICENCE (Item B2)**

The Chair of the Sub-Committee stated for the record that he had worked previously with the applicant's representative, however he would deal with the application with the same independence as he always used when considering applications.

He also noted the planning issues detailed in the papers and stated that the applicant could seek an adjournment at any time and if there was no request, the members would consider the application on its merits.

The licensing officer stated that the licence holder had arranged a meeting which a few residents had attended. One resident had withdrawn their objection following this meeting. He reported that the residents who had attended had been broadly happy. Emails had been received in support but these had not met the representation deadline. The current licence had later hours than the current application and this licence could be used if this application was rejected. However, the applicant would have to put the previous layout back as the change in plan was significant.

The Sub-Committee noted that there was a planning application that had been refused and which was currently going through an appeal process. The planning team were currently holding off enforcement until the appeal had been determined. If the licensing application was granted this would need to be revisited.

The licensing authority stated that their representation was still maintained. There were outstanding planning and building regulation issues and they did not have confidence in the licensee to promote the licensing objectives given the scant regard given to legislation. The additional area applied for was double the size of the current licensed area.

The planning officer advised that the applicant had been served an enforcement notice relating to the upper floors. A retrospective application had been refused and an appeal lodged. It was noted that if the licence was granted then more urgent enforcement action may need to be considered in terms of noise nuisance.

The interested parties raised concerns regarding the scale and impact of the property. The property was unlawfully built. It was stated that it was clear in licensing policy 1 that planning consent was expected to be in place. The application had been refused on the grounds of amenity and it was considered that this was relevant to the licensing application. They considered that this raised concerns relevant to the promotion of the licensing objectives. They stated that the works had increased the area four fold. This applicant had stated that this was a family restaurant but it could result in 300 covers with over 900 customers many of which would attend by car. The facilities were not suitable for live music and the applicant had shown a general disregard for planning and procedure and the application should be refused. The air conditioning units had been tested and it had been necessary for the noise team to visit. Opening hours were longer than the extractor fans were expected to operate.

In response to questions and concerns that this was being called a family restaurant when the sale of alcohol was originally applied for until 3am, it was noted that this term was introduced by the applicant following concerns raised to noise nuisance and music. There

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was concern expressed that promises could be made by the applicant but hours requested were similar to nightclub hours.

The applicant's representative stated that the current licence allowed for opening hours to 3.30am but this application was only until 1.30am on Friday and Saturday. There had been considerable expense by the applicant and the premises was previously a significant eyesore.

The architect stated that this development had been inherited. There were currently three enforcement notices outstanding. One for the UPVC windows, second, for the conversion to flats on the upper floors and third, on the mansard roof. An application had been made for a rearrangement of flats to be compliant and this had yet to be determined. The applicant had engaged and had submitted two pre-applications. It was noted that elements of the restaurant may be unlawful but the bar and restaurant did not have enforcement action against them. There was an application for the air conditioning unit.

The general manager stated that he had previously managed 24 hour venues with 500 customers. There was no application made for dancing and this could not therefore be a covert nightclub. The current premises hours were until 3am and this application was until 1.30am on Friday and Saturday with hours to the sale of alcohol until 1am. Recorded music would be until midnight on Friday and Saturday and live music would be until 10.30pm. If this application was refused the applicant would need to consider the options. There had been a £1.3 million investment in the premises with 200 menus and wine lists. The hours in the application had been reduced prior to objections being received.

In response to questions, the applicant stated that an option, should the application be refused, would be to return to the original layout, although this would not be an option that they would want to do. It was noted that the area that was currently licensed was only part of the premises. The smoking area was proposed to be on the public highway and the furthest from the residential area. There had been another partner involved in the project and most building work had been carried out by himself. Once the existing problems had been realised the applicant took advice and submitted new plans. All of the previous wrongs they had tried to legalise. Live music would only be unamplified and would not be played in the outside area. They would agree to reduce the hours for live music and it could not be heard, even from some parts of the restaurant. Concern was expressed that the hours requested for a family restaurant would be until 1.30am. In response the applicant stated that the premises would not always be open until this time but they would want to have the option available. They did not expect full capacity. It was noted that the premises had been advertised as being open until 1.30am but this had now been removed. The owner had purchased the property in November 2018 and the structure was enclosed after this time. The previous partner had told them that he had applied for planning consent but he had not been truthful. The General Manager stated that he had previous experience at Club Reina and Aquarium nightclub. It was noted that, at a review hearing in November 2017, the Licensing Sub-Committee had been concerned with the ability of the General Manager to manage Club Reina and had agreed the need for the general manager to leave the business. The general manager stated that there had not been a single issue with Club Reina following the review. The police had no issues with him and he would not be granted a personal licence if they considered there was an issue with him. He stated that he was moving away from managing nightclubs as he now was starting a young family, although working at the nightclubs had given him a lot of experience.

In summary, the interested party raised concerns about the additional car parking issues. She stated that enforcement action for the licensed area was only in abeyance. This did not mean that the structure was lawful. The conservatory had only been erected in the past two months whilst the new owner was in post. When the noise from the extractor fans was

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heard the noise team were contacted and the noise team requested that the premises close.

The applicant's representative stated that he did not want to encourage driving to the premises. They had listened to the concerns and he stated that all concerns had been tackled and resolved. Conditions were appropriate and dealt with the provision for a family restaurant.

### **RESOLVED**

That the application for a new premises licence, in respect of Tetto's Italian Kitchen, 313 Highbury New Park, N5 2LB 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.

Twenty-six local resident objections had been received and there was one objection from a local ward councillor. Objections had also been received from the licensing authority, the police and the noise team. Conditions had been agreed with the police and the noise team and their representations had therefore been withdrawn.

The Sub-Committee heard evidence that there were concerns around public nuisance arising from the number of cars that would be driving to and from the premises, given the scale of the proposed premises. There had also been a failure to comply with planning requirements, giving rise to the service of several planning enforcement notices. The proposed licensed area had a substantially larger square footage than the current licensed area. The current owner of the premises was also the owner whilst the works that gave rise to the planning enforcement notices were carried out.

The Sub-Committee was concerned that the licensing objectives would not be upheld as the applicant had not demonstrated acceptable standards of management to date and the owner had been either negligent in supervision or complicit in the applicant's failure to comply with planning requirements during the recent works.

The Sub-Committee had to be confident that the applicant would comply with any licensing conditions imposed and was concerned about the impact on the surrounding area of the scale of the proposed licensed premises, which raised concerns that, without modification and without good standards of management, could give rise to public nuisance.

Taking Licensing Policy Number 1 into account, the Sub-Committee concluded that it was not satisfied that the licensing objectives would be upheld as, given the scale of the project, it had concerns around public nuisance combined with concerns relating to standards of management.

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### **ISLINGTON SQUARE, ESTHER ANNE PLACE, N1 - APPLICATION FOR A NEW PREMISES LICENCE (Item B3)**

One resident raised objections on the grounds of public nuisance. They stated there would be an impact on residents in a densely populated area. There had been no clarity with regards to the number of people and the management of noise and traffic. This was a densely populated area with narrow streets. Lighting or sound could not be controlled. The residents had been informed that it would be impossible to control numbers. This had been marketed similarly to Covent Garden events but this was not located in the same type of

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area. A second resident stated that there would be public nuisance. The applicant would have no control over the dispersal from these events and no control over numbers attending. They considered that, if the application was refused the applicant could use temporary event notices which would not prevent them from holding these events. The Sub-Committee was asked to consider licensing policies 21 and 22 in relation to public nuisance or restrict events to the arcade area and to 8pm. They asked the Sub-Committee to consider licensing policy 25 in relation to dispersal. No recorded music should be heard outside of the site boundary. It was further noted that there had been a marked increase in people loitering outside, over the past six or seven months with people sitting on windowsills during the day. The residents would be very concerned if this was to be replicated during the evenings.

The applicant stated that they would not be adding to the cumulative impact. These events would be part of the opening of Islington Square, the new anchor for the Town Centre. There was to be a cinema, gym, offices, the Theatre and 300 apartments. They would need to attract local people into the development and off their laptops. There would be art, furniture, photography classes, Christmas food etc. They would want to be neighbourly and have planning conditions to protect amenity. During the evening they would have onsite security and a management plan. If the application was successful, the licence would commence in October as the consultation period had been extended. They were taking steps to manage the smoking areas for construction workers. The smoking areas would be on the estate once opened. Security would be encouraging patrons to exit via Upper Street. Conditions had been agreed with the noise service. Residents would be living on the estate and they would want to keep noise to a low level. They consulted with the residents and met on a monthly basis. There would be a security team in place, CCTV and the police would also have an office on the estate which they could work from.

In response to questions, it was noted that there would be a phased opening. Events would be mainly small with approximately 60 people. Mainly ticketed events. There was expected to be a large event around Christmas for 500 people with amplified music for a community choir and a jazz performer. It was noted that 499 people would be the maximum allowed. This would not be a regular occurrence. This was a time limited application. They did not wish to apply for a permanent licence. It was noted that not all events would be ticketed. Police would be notified of events and it was agreed that residents could also be notified. Deliveries would be finishing at an earlier time. Some units were keen to do cookery schools and it would be helpful if this type of event finished at 10pm to allow for greater flexibility, although it was accepted that events outside of the shop units could curtail at 9pm.

In summary, the residents stated that there had been a lack of clarity and there had been little reassurance. They urged the Sub-Committee to refuse the application.

### **RESOLVED**

- 1) That the application for a time limited new premises licence, in respect of Islington Square, Esther Anne Place, N1 be granted until 29 February 2020 to allow:-
  - 1) The provision of regulated entertainment in the performance of plays, the showing of films and the performance of live music Monday to Sunday from 12 noon until 9pm.
  - 2) The provision of regulated entertainment by the playing of recorded music Mondays to Saturdays from 12 noon until 9pm and Sundays from 12 noon until 8pm.
  - 3) The provision of regulated entertainment for the performance of dancing Mondays to Sundays from 12 noon until 8pm.

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That conditions on pages 171 and 173 of the agenda shall be applied to the licence with the additional conditions as follows:-

To reduce the permitted hours for all proposed activities in the area indicated on the map to 12:00 to 21:00 hours on any day, to allow time for dispersal.

To amend Annex 1 condition 7 to include representatives of neighbouring residents' associations and any residents' association for occupiers of Islington Square.

To amend the period for no collections or deliveries in Annex 3, condition 4 to be between the hours of 9 pm and 8 am.

### **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 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.

Seven local resident objections and two local resident associations had been received. There had been no representations made by 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, who objected particularly on the grounds of public nuisance, that there would be a great impact on residents in a very densely populated area. There was no clarity on the number of people at the events held. They reported that there had been an increase in the number of people loitering and smoking outside during the day and they would expect this to be exacerbated if there were events held at night. They asked that the application be refused but, if the Sub-Committee did not refuse the application, the hours should be reduced, resident associations be notified of events and the hours for deliveries be amended.

The Sub-Committee heard evidence from that applicant that these events were part of the opening of Islington Square. Events were expected to be small with some events would be ticketed with limited numbers. There was expected to be one event near Christmas with 500 people expected that required amplified music. The applicant agreed that proposed activities could be limited to 9pm on any day to allow for dispersal, that resident's associations be notified of events and that the hours for deliveries be reduced. A security team would be in place during the evening and would be encouraging an exit of patrons via Upper Street to reduce impact to Almeida and Studd Street.

The Sub-Committee concluded that the application for a time limited premises licence with the proposed expiry date of 29<sup>th</sup> February 2020 could be permitted so long as it was subject to the conditions as proposed including the amendment to Annexe 1 paragraph 7, limiting the licensed hours to 21:00 to permit dispersal from events. The Sub-Committee was



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satisfied that the licensing objectives would be promoted and that therefore it was reasonable and proportionate to grant the licence.

The meeting ended at 9.00 pm

**CHAIR**