

**Licensing Sub Committee B - 15 September 2020**

Minutes of the meeting of the Licensing Sub Committee B held by Zoom on 15 September 2020 at 6.30 pm.

**Present:**      **Councillors:**      Phil Graham (Chair), Matt Nathan and Marian Spall.

**Councillor Phil Graham in the Chair**

**182      INTRODUCTIONS AND PROCEDURE (Item A1)**

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

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

Apologies for absence were received from Councillor Vivien Cutler.

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

Councillor Spall substituted for Councillor Cutler.

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

There were no declarations of interest.

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

The order of business would be Item B3 followed by Item B1. It was noted that Item B2 had been adjourned at the request of the applicant.

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

**RESOLVED:**

That the minutes of the meetings held on the 21 July 2020 and the 6 August 2020 be confirmed as an accurate record of proceedings and the Chair be authorised to sign them.

**188      HERMIL LOUNGE, 230 HORNSEY ROAD, N7 7LL - NEW PREMISES LICENCE (Item B1)**

The licensing officer advised that this item had been adjourned from July 2020. This was to ascertain the planning position regarding the premises, for the licensing officer to make a site visit, for details of the noise complaints and to ascertain dimensions and use of the areas in the premises. In addition, the residents wished to know if the applicant was involved in managing other premises in the road. The resident present at this meeting had not been present at the previous meeting. It was noted that the premises had a new name, Paradiso Deli. A revised plan of the premises was circulated during the meeting.

## Licensing Sub Committee B - 15 September 2020

In response to questions, the Licensing officer confirmed that, at the last meeting, the applicant had stated that he had planning permission as the structure was already there and he had not carried out the work, however, the applicant was the leaseholder when the works had been done.

The planning officer advised that a retrospective planning application had been submitted for works to the premises which was being rejected and planning had asked the applicant to submit a full planning application.

Noise complaints had been logged and visits made. Details were at Appendix 6 of the report.

In response to questions, it was noted that, at the previous meeting the applicant had stated that the front had already been set back whilst the resident present had said that he had carried out the works. The applicant stated that he managed two premises, numbers 163 and 230. The applicant stated that the work to the frontage had already been carried out when he had taken over the lease and due to technical reasons the lease had to be backdated to July as the previous tenants had defaulted with the landlord. The applicant had been asked if he would take over responsibility of the lease from 1 July and he had agreed. He stated that the works at the front were carried out by January 2019. The licensing officer stated that it was his understanding that the lease was taken over in July 2019 and the works were carried out over December 2019/January 2020. He confirmed that the applicant managed the business on the other side of the road. The applicant stated that there had been no incidents at his premises at 163 Hornsey Road. He was asked about the procedure regarding the sale of alcohol to those who appeared to be underage. He stated that he would ask their age and not serve alcohol to underage persons and would consult their parents if they were present. He was asked what other actions he would take and he had nothing further to add. This would be a walk in venue for those over 25 years of age only and he served only those over 25 years of age as youngsters caused problems and he didn't let them in.

In summary, the resident objector stated that she had evidence that the work to the frontage had been finished in February 2020. The applicant's premises at number 163 had anti-social behaviour issues with customers shouting at 1- 2am in the morning. Customers of these premises were mainly men and it was not a welcoming venue. She was concerned that this venue would be the same. She considered that the applicant had lied and did not consider that he was of good character.

The applicant stated that he had no incidents over ten years and decent people attended his premises. He provided what customers wanted. He adhered to policies. He wished to run a family restaurant and did not want a very late venue. The licensing officer had visited the premises.

**RESOLVED**

That the application for a new premises licence, in respect of Hermil island Lounge, 230 Hornsey Road, N7 7LL be refused.

**REASONS FOR DECISION**

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

This item had been adjourned after being part heard to find the answers to questions about the planning position regarding the front porch, alleged noise nuisance due to construction works, plans to the premises and for the licensing officer to carry out a site visit. The same Sub-Committee were in attendance and had listened to all the evidence and submissions and read all the material including the updated information. The applicant had been in attendance previously but was no longer represented by his licensing consultant therefore the Sub-Committee continued with the hearing by asking questions of the objector and the applicant who were then able to summarise.

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 Holloway Road and Finsbury Park cumulative impact area. The particular problems of this area are adverse impacts on licensing objectives associated with late night venues and alcohol related anti-social behaviour especially as a result of drinking in the street. It is a commercially busy area. There is concern about the impact of the licensing objective of public nuisance associated with alcohol in the area.

Licensing policy 2 stated that in considering applications for new licences the licensing authority will take into account whether the premises are located in an area of cumulative impact, the location of the premises and character of the area, the potential impact on residents living in close proximity to the premises, past compliance history of current management and whether the applicant is able to demonstrate commitment to a high standard of management.

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. Licensing policy 3, paragraph 56, states that applications with comprehensive operating schedules which are not alcohol led and hours of operation consistent with framework hours may be able to demonstrate that there will be no negative cumulative impact on one or more of the licensing objectives. The Sub-Committee noted that the hours sought were within the hours specified in licensing policy 6.

## Licensing Sub Committee B - 15 September 2020

Six local resident objections had been received. There had been no representations made by the responsible authorities.

The Sub-Committee heard an update from the licensing officer about the status of the planning permission and that there was still no consent for the frontage. The planning officer was in attendance and was able to clarify the position. The applicant had submitted a certificate for lawfulness but he had now been asked to submit a full planning application. The licensing officer stated that residents were concerned about the applicant's involvement in other local licensed premises, in particular 236 Hornsey Road. In response to questions from the Councillors, the applicant stated that he had an involvement in 163 and 230 Hornsey Road but not 236 Hornsey Road.

In response to a question from the Sub-Committee, the licensing officer confirmed that, at the last hearing, the applicant had said that he had planning permission for the works carried out to the front of the premises. The applicant had said that the frontage was already there when he had taken over and he had not done the works. However, he was in fact the leaseholder at that time. The Sub-Committee was very concerned at this apparent inconsistency by the applicant.

In answer to questions, the applicant explained that his lease, which was dated July 2019 had been backdated and he was not actually in the premises at the time. His solicitor could confirm this. However, his solicitor was not present at the Sub-Committee meeting. The Sub-Committee were concerned that the lease was therefore false but the applicant explained that the previous lessee had a problem with tenants who were in arrears and wanted to evict them. The works to the frontage were carried out in December 2019/January 2020. The licensing officer summarised that his understanding was that the lease was dated July 2019, the works were carried out December 2019/January 2020 but the applicant physically entered the premises after that date. The applicant accepted that he was responsible from July 2019.

The Sub-Committee asked the applicant about his understanding of the licensing objectives. Specifically what would he do if a underage person asked for alcohol. The applicant said if the parents were around he would consult them. He would not serve alcohol because of Challenge 25. He made no reference to asking for ID or to entering a refusal in a refusals book and these were conditions he had proposed on his operating schedule.

Licensing policy 8 states that, when assessing the applicants ability to demonstrate a commitment to high standards of management the licensing authority will take into account whether the applicant can demonstrate comprehensive knowledge of best practice, can demonstrate knowledge of the licensing objectives and their responsibilities under the Licensing Act 2003, is able to run their business lawfully and in accordance with good business practice and can demonstrate a track record of compliance with legal requirements.

The Sub-Committee was concerned that the applicant had given answers which seemed confusing and inconsistent and he had not referred to measures that he himself had suggested in his operating schedule. As this was a cumulative impact area and there were particular problems with public nuisance in the locality, high standards of management at these premises were essential to avoid an adverse impact on the licensing objective of public nuisance. The Sub-Committee was not satisfied with the answers that had been given by the applicant himself and was not confident that he would adhere to high standards of management at the premises. In the circumstances, the Sub-Committee determined to refuse the license, considering this appropriate to the promotion of the licensing objectives and in the public interest.

**189     BISCUVI, 12-14 THEBERTON STREET, N1 0QX - NEW PREMISES LICENCE (Item B2)**

The Sub-Committee noted that this application had been adjourned at the request of the applicant.

**190     COMMON GROUND, 49 STROUD GREEN ROAD, N4 3EF - NEW PREMISES LICENCE (Item B3)**

The licensing officer advised that additional paperwork had been circulated to members of the Sub-Committee and both parties.

The planning officer advised that under the new planning class system, which had commenced on the 1 September 2020, both A1 retail and A3 café were in the same 'E' use class. Planning consent would therefore not be required for a change of use from a retail shop to a café/restaurant. A retrospective application would be sought for structures and decking in the garden.

Local residents objected to the application. It was stated that they shared a boundary wall with the café and there had been no mention of the use of the garden space by the applicant in the planning application and she considered that the use of this space would be ancillary and would be a change of use. The café was in a cumulative impact area. The applicant had not submitted an outside seating plan and 40 persons could be seated outside. The area was above 190 square meters and she considered this to fall outside permitted development. She considered that the applicant was not stating the true use for the area. The staff had not abided by the hours and caused hours of disturbance to residents creating a major impact and had meant that they were unable to use their own outside space using a local park instead. This would not be possible in the colder months. Tables had been placed against the boundary wall and many customers were smoking causing a health risk to the family. Her main concerns included the lack of planning permission, toxic smells, compromised privacy, a considerable increase in numbers leading to cumulative impact. She asked that residents be put before business profit. She asked that conditions be placed on the license regarding the types and times of use. She had logged issues but had been advised not to do so now, although issues were still constant.

In response to the amount of use that the residents considered would be appropriate, it was stated that there would need to be mitigation measures installed by the applicant before this could even be considered. The planning officer advised that the planning use covered the whole unit including the garden and was irrespective of the floor area.

The applicant advised that the premises was a coffee shop and eatery serving good quality food and coffee. They were not required to seek planning consent. They employed thirteen staff and had a professional and committed team. The café was doing well thanks largely to being able to use the rear garden. They were requesting an alcohol licence in response to requests from customers, this was not a pub/ bar and it was nice for the choice of an alcoholic drink with a meal and to help with revenue for the café. The café had been hard hit during Covid 19 and this would allow trade for a few evenings a week. They were requesting later hours on three evenings a week Thursday to Saturday. The garden would close at 9pm and this would allow one evening meal sitting. Music would be played at ambient levels and back doors would be locked at 9pm. No rubbish would be removed after 6pm and staff would be monitoring the space during the evening. CCTV had been installed and it was proposed to put rubber buffers on chairs to limit the noise. Prominent signs would be put up and there would be good communication with neighbours. There were aware of complaints from one particular neighbour but stated that this was not the majority consensus. Complaints had commenced from the application date. There had been more than 50 complaints but no issues had been found and they it was hoped that this would be taken into consideration. The applicant and the evening manager would both have a personal licence. There would be table service with meals. A local neighbour spoke in support of the premises. She stated that she worked in a stressful environment and had been working from home and proper rest was important. She had no issues with the premises and noise levels had been ambient. She was in meetings all the time at home and background noise had not been a problem. Families enjoying a drink and meal had been acceptable noise and she had not felt disturbed. There had been constant communication with the applicant who asked if she'd had any issues. She understands that the objectors had a family. Her flat overlooked the garden and she was fine with the venue remaining open later.

In response to questions it was noted that the neighbour who supported the application had the same view of the garden area as the neighbour who objected to the application. It was noted that the plan did not show the tables and chairs in the outside space and there would be 8 tables in the garden and sheds to accommodate patrons. There would be approximately 30 patrons in the garden at the most. It was noted that there were no smoking signs on the tables that were alongside the party wall. It could be possible to put planting between the tables and the party wall and the applicant was open to reasonable agreement regarding this.

In summary, the objector stated that she had submitted a detailed 24 page account. The on-going anti-social behaviour issues had not been validated as, due to Covid 19, visitation had not been possible in properties. She asked that there be

a fair hearing by allowing validated evidence and asked that the matter be adjourned.

The applicant stated that the business had just scraped through the pandemic and this would make a difference to their survival. Money had been raised through crowdfunding by 300 customers. The garden was very important to the business and for those patrons who had no outside space. They were sympathetic to their neighbours and only one neighbour had complained consistently and it was hoped that this would not affect their application.

**RESOLVED**

- 1) That the application for a new premises licence, in respect of in respect of Common Ground, 49 Stroud Green Road, N4 be granted to allow the sale of alcohol, on supplies only, and recorded music from Monday to Thursday 12 noon until 5pm, Friday 12 noon until 10.30pm, Saturday 9am until 10.30pm and on Sunday from 9.30 am until 5pm.
  
- 2) That conditions detailed on pages 166 and 167 of the agenda be applied to the licence with the following additional conditions.
  - The garden area be closed at 5.30pm except on Fridays and Saturdays when it can remain open until 9pm.
  - There will be no music played in the garden.

**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.

The Sub-Committee took into consideration Licensing Policies 2 & 3. The premises fall within the Holloway Road and Finsbury Park 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. This is a commercially busy area of Islington and, as stated in Licensing Policy 3, paragraphs 52 – 53, the licensing authority is committed to working with potential applicants to maintain a well-managed evening economy that meets residents and business needs while minimising any adverse impacts in terms of crime, disorder, nuisance and anti-social behaviour. Local issues in the area are associated with the late night venues, alcohol related anti-social behaviour especially as a result of drinking in the street and negative impacts associated with visitors to large scale sporting and other

## Licensing Sub Committee B - 15 September 2020

events. Licensing policy 3, paragraph 56, states that applications with comprehensive operating schedules which are not alcohol led and which have hours of operation consistent with framework hours may be regarded as possible exceptions to the special policy if applicants can demonstrate that there will be no negative cumulative impact on one or more of the licensing objectives. The Sub-Committee was satisfied that there would be no negative cumulative impact on the licensing objectives by granting the licence.

However, as referred to in Licensing Policy 24, use of a garden with tables and chairs for smoking drinking and eating can cause nuisance to neighbours. Where smoking drinking and eating takes place outside the licensing authority expects applicants to provide comprehensive details in their operating schedule on the location of outside areas, how they will be managed to prevent noise and smell, arrangements for clearing tables and chairs and preventing nuisance from smoke fumes to residents living in close proximity.

Three local resident objections and one local business objection had been received. Conditions had been agreed with the Police and the Noise Team.

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

The residents questioned whether the use of the garden would be permitted by planning. A planning officer was present at the hearing to clarify issues related to planning. He explained that prior to September 2020 there were concerns about a change of use from a shop to a café/restaurant. However, due to a change in law these concerns no longer applied and the use of the premises was authorised as both A1 retail and A3 café were in the same 'E' use class.

The residents referred to café staff working long hours and then socialising and said that the café had strategically placed patrons against the party wall so that smoke entered their home. The Sub-Committee asked the applicant whether some space could be made immediately next to the party wall, for example could pot plants be placed in the area? The applicant stated that there were no smoking signs on the tables next to the party wall and pot plants had been placed alongside the wall. The outside area was very important to the viability of the business especially with the problems caused by Covid 19. However, they were open to reaching a reasonable agreement about what to do.

The residents had logged 50 complaints with the noise team on an almost daily basis throughout July and August 2020. They had now been advised not to report nuisance on the ASB portal and they felt they were in a Catch 22 situation.

The Sub-Committee asked the objectors what level of use of the garden they would find acceptable. The residents said that a lot of work mitigating noise etc would have to be done by the applicant before they could talk of appropriate times and use of the garden. They looked to the applicant to take that step. The applicant



## **Licensing Sub Committee B - 15 September 2020**

stated that there would be no more than 20 people in the garden and it would be closed at 9pm and they did not play music outside.

The Sub-Committee noted that the residents had children who would need to go to school on a Friday and might be disturbed by noise from the garden late at night.

The Sub-Committee concluded that the granting of the licence with the conditions, reduced hours on a Thursday and ceasing use of the garden by 9pm on Fridays and Saturdays and 5. 30pm on other days of the week would promote the licensing objectives. The granting of the premises licence would be unlikely to have an adverse cumulative impact on the licensing objectives.

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

The meeting ended at 8.10 pm

**CHAIR**