

MINUTES OF A MEETING OF THE LICENSING SUB COMMITTEE D

THURSDAY, 1ST OCTOBER 2020

Councillors Present: Councillor Emma Plouviez in the Chair
Councillor Brian Bell

Officers in Attendance: Amanda Nauth, Legal Officer
Suba Sriramana, Principal Licensing Officer
Gareth Sykes, Governance Services Officer

Also in Attendance: Item 6 (Review)

Applicant:
Channing Rivirie, Licensing Authority

Licensee:
David Dadds, Solicitor (legal representative for the applicant)

Responsible Authorities:
Environmental Protection:
Olaekan Olaosebitan

Police:
PC Kerrie Ryan and PC Neal Hunwick

Item 6 (Variation)

Applicant:
David Dadds, Barrister (legal representative for the applicant)

Responsible Authorities:
Channing Rivirie, Licensing Authority
Environmental Protection:
Olaekan Olaosebitan

Police:
PC Kerrie Ryan and PC Neal Hunwick

1 Election of Chair

1.1 Councillor Emma Plouviez was duly elected as Chair of the meeting.

2 Apologies for Absence

2.2 There were no apologies for absence.

3 Declarations of Interest - Members to declare as appropriate

3.1 There were no declarations of interest.

4 Minutes of the Previous Meeting

4.1 There were no minutes for consideration.

5 Licensing Sub-Committee Hearing Procedure

5.1 The Chair outlined the hearing procedures (C and A) to be followed by all parties present, as set out in the agenda pack and circulated prior to the meeting.

6 Application for Review of Premises Licence: U7 Lounge, Unit 7, 2-4 Orsman Road, Hackney, London N1 5FB

6.1 The Principal Licensing Officer, Suba Sriramana, introduced the review, which was brought by the Licensing Authority on the grounds of the prevention of crime and disorder, prevention of public nuisance, alleged public nuisance created by the operation of the premises and alleged non-compliance with conditions/authorisation of the premises licence. It was noted that a number of additional papers had been submitted including a police witness statement and emails from local residents in objection to the application.

6.2 The applicant, the Licensing Authority, presented their case in support of the application for calling a review. The review was submitted due to residents' complaints about the conduct of the premises and issues of non-compliance by way of unauthorised alcohol sales.

6.3 The committee next heard from the Responsible Authorities. The police began by explaining that they had been made aware of the review made by the Licensing Authority. The police had visited the premises since it re-opened in early and mid July 2020. The police also cited another incident on the 12th September 2020 in which there was a large group of people drinking alcohol who initially refused to leave the premises. The police had requested the Closed Circuit Television (CCTV) footage from the evening but to date they had not received that footage. The police commented that despite their visits they had seen little improvement and their concerns remained.

6.4 The committee next heard from the representative from the council's Environmental Protection team. They confirmed that they had now withdrawn their submission. It was noted that previously they had made a representation ,however, they now reported that they had not received any recent noise complaints from local residents. There had been no complaints since sound

insulation measures had been put in place. The smoking area had also been moved

- 6.5 The legal representative for the licensee, Mr Dadds, made his submission responding to the submissions made and the steps his client had taken to address them. It was noted, for example, that the Premises License holder and landlord had implemented a number of works at a considerable cost e.g. soundproofing.
- 6.6 A brief discussion ensued between the Committee Chair and Mr Dadds over whether the latter had received the supplementary papers. The legal officer for the committee confirmed that Mr Dadds would not normally receive the names and addresses of those local residents who had made complaints.
- 6.7 Mr Dadds clarified that he was not suggesting that the local residents' complaints that were made were not valid. Moreover, weight was attached to those complaints. Mr Dadds highlighted that the leading case in the context of this meeting was East Gwent which highlighted that much weight should be given to a statement made by a person who was not present as a matter for the sub-committee. Mr Dadds also highlighted that, since December 2017, there was no evidence of incidents of crime and disorder nature. Mr Dadds also proposed a number of additional changes including, for example, limits to the use of the outside garden area and the removal of conditions 31 and 25. It was noted that a Temporary Event Notice (TEN) was in operation on the 26th January 2020
- 6.8 In response to a question from Mr Dadds, the Chair of the committee would not for the moment take into account proposed new conditions. The sub-committee needed to first understand the complexity of the case involved.
- 6.9 In response to a question from the Chair of the Committee, Mr Dadds replied that the car park and gate belonged to his client but the local residents also have right to access.
- 6.10 In response to a question from the committee's legal officer, Mr Dadds replied that it was understood that the police had not come back and collected the CCTV footage.
- 6.11 The sub-committee entered into the discussion phase of the meeting where a number of points were raised including the following;
 - The police understood that they were to be contacted to inform them when it was convenient for them to collect the CCTV footage
 - Mr Dadds queried the police's description of the September event, it was felt that the description of those at the party was not relevant. It was understood that no crime and disorder had occurred
 - The licensing authority stated that use of PACE interviews in licencing hearings was commonplace. They had apologised for some data being shown in error and this had been corrected

- On the suggestion that the licensing objectives had not been undermined, examples were cited in appendix D which showed the complaints from the residents to the licensing service which appeared to suggest that the licensing objectives were at risk of being undermined
- Mr Dadds in response to the licensing authority replied that the breach of the licensing objectives had been addressed, in that his client had not fully understood the original condition, and the police had agreed to remove the condition in question
- The Chair of the committee explained that the licensing authority had made it clear at the PACE interview to the licensee that the condition as in place and that the subsequent failed test purchases were a repeated breach by which that time the licensee must have understood what the conditions meant
- During the PACE interview the licensee had made clear that there would be staff retraining and that when the test purchase had occurred in July 2020 there was an expectation that the person would order their drink, go to a table, and then order food
- The sub-committee were entitled to take into account everything that had been recorded in the PACE interview
- Mr Dadds was of the view that use of the PACE interview was a breach of the GDPR rules because the person interview had come in voluntarily as part of an ongoing investigation of a crime not in relation to a review hearing

6.12 In their final remarks the police were keen to work with the licensee to find a way forward. They recognised that this was complex matter, but they felt their concerns had been relayed and could be addressed in the variation.

6.13 The licensing authority reiterated their concerns over compliance of the licence and they were not confident that the licensee could not operate the licence in a manner that supports the licensing objectives.

6.14 Mr Dadds in his closing remarks explained that his client had engaged with and addressed the issues raised by Environmental Health and there had also been positive engagement with the Police. He disputed the case put forward by the Licensing Authority and he stressed that his client was keen to resolve the matter and a number of additional conditions had been offered to this effect.

The decision

The Licensing Sub-Committee, in considering this decision from the information presented to them within the report and at the Review hearing today have determined that having regard to the promotion of the licensing objectives and in particular:

- Prevention of public nuisance

that the premises licence for U 7 Lounge, Unit 7, 2 – 4 Orsman Road,

Hackney, London N1 5FB be revoked.

The Reasons for the Decision:

The Licensing sub-committee felt after carefully considering the application from the Licensing Authority, considering representations from the Metropolitan Police Service, Other Persons, the representations from the Licensee's representative, and the supporting evidence decided that revocation of the license was appropriate, and a necessary course of action, given the repeated failures to comply with the terms and conditions of the premises licence which is taken very seriously. The sub-committee also considered the other options available to them, as detailed in the report, and were satisfied that none of these would adequately address the likelihood of public nuisance re-occurring or the licensing objectives being undermined in the future.

The sub-committee considered the evidence relating to the incidents that lead to the Review being called by the Licensing Authority. They took into consideration that the Designated Premises Supervisor (DPS), while supervising the premises she allowed the incidents to occur, which undermined the Licensing objectives:

- i) the holding of an unauthorised event without a Temporary Event Notice;
- ii) failing two test purchases and operating the premises like a bar with no food menus;
- iii) failing to adhere to warning letters and engage with the Licensing Authority to resolve the issues and non-compliances of the conditions on the licence;
- iv) failing to comply with condition 31 of the premises licence to only supply alcohol with a substantial meal and for alcohol to be served by waiter/waitress service only;
- v) failing to comply with licensing regulations and noise complaints from local residents;
- vi) failing to provide CCTV footage when requested to do so by the Metropolitan Police Service.

The sub-committee felt these incidents are completely unacceptable. There are very serious concerns about the ability of the licence holder to uphold the Licensing objectives following these incidents. The sub-committee recognised that this was poor judgement on the part of the licence holder/ DPS.

The sub-committee heard in evidence that the Licensing Authority had proposed graduated steps to improve the premises, however, the licence holder was not able to comply with these steps. The sub-committee when making their decision took into consideration the lack of confidence in the management. They were not confident, given the issues raised, that the current management in charge of the premises and Designated Premises Supervisor (DPS) are capable of upholding or promoting the licensing objectives.

7 Application to Vary the Premises Licence: U7 Lounge, Unit 7, 2-4 Orsman Road, Hackney, London N1 5FB

- 7.1 The Principal Licensing Officer, Suba Sriramana introduced the variation to the premises license. The proposed variation was for: to extend hours for supply of alcohol for consumption on the Premises, to add hours for supply of alcohol for consumption off the premises, to add hours for provision of regulated entertainment, the removal of current condition 31 and amendments to condition 33 and the current plan. The sub-committee noted that the police had agreed a number of conditions with the applicant and representations had been made in objection from the Environmental Enforcement, Licensing and other persons.
- 7.2 The sub-committee noted that the conditions agreed with the police included a reduction in hours. Mr Dadds acknowledged that his client was content to agree to the conditions at page 107 in the meeting papers.
- 7.3 Mr Dadds made his submission explaining that the maximum capacity for the premises would be 95 customers including the rear outside area. The rear outside area would not be used after 21:00 hours except for no more than 10 smokers, no drinks in open containers will be taken outside after 21:00 hours (an amendment to condition 24). The hours would be reduced, the front of the venue would not be used by smokers, condition 31 would be removed and condition 25 would be modified. There would also be a written dispersal policy agreed with the police. The police were satisfied with the modifications to the license. Mr Dadds, as highlighted in the review application, was of the view that the local resident objections related to the loss of the amenity space. It was felt that the changes proposed would not undermine the licensing objectives.
- 7.4 In response to a question from the sub-committee's legal officer, Mr Dadds clarified that hours for all licensable activities would cease at 23:00 hours Sunday to Thursday and midnight on Friday and Saturday.
- 7.5 In response to a question from the Chair of the committee, Mr Dadds confirmed that the change in the licensable hours was to enable customers being served alcohol in the garden area. Condition 25 would be amended to take into account the drinking in the outside area.
- 7.6 In response to a question from the Chair of the committee, Mr Dadds replied that he would take steps to make it clear on the plan that the outside garden area was part of the premises. Mr Dadds clarified that the outside area would be for the consumption of alcohol only, there would be no on sales in the area.

- 7.7 Councillor Bell queried the closing hour on Sunday - 23:00 hours was not what the applicant had applied for. In the application report the Sunday hours go up to 22:00 hours. Mr Dadds replied that if that was the case then that was all that could be applied for. It was agreed that part of the application would be withdrawn as it was noted on the current licence the Sunday hours were up to 23:30 hours. The sub-committee was asked to allow for the 23:hours closing. A discussion ensued over whether the applicant was entitled to ask for withdrawal on part of the license. The sub-committee insisted that the application had been advertised with the 22:00 hours for the Sunday, however as Mr Dadds was withdrawing that part of the application and asking for a reduction from the original license from 23:30 down to 23:00 hours, it was felt there was no prejudice to the public.
- 7.8 In response to a question from the sub-committee's legal officer, Mr Dadds clarified that the non-standard hours were being removed.
- 7.9 The police confirmed that they had been in discussion with the applicant and they feel that they would be able to operate within that license and therefore policy concerns had been allayed.
- 7.10 The licensing authority made their representation raising concerns relating back to the previous review application. It was felt that there was a risk that the public nuisance objective would be undermined. There were also concerns raised about the significant capacity increase to the premises, it was noted on the existing licence that there was a limit of 40. It was suggested that this application either be deferred or refused until the outcome of the review application was determined.
- 7.11 The sub-committee next went to the discussion phase where the following points were raised:
- The outside garden area would be managed with a member of staff going out plus a camera in the area and that the area would be closed off at 21:00 hours. The small smoking area would periodically be supervised throughout the evening to ensure customers were respectable to the neighbours. There already signs around the premises to this effect asking to keep the noise down
 - Access to the garden area was accessible via the licensed premises only. It was entirely enclosed. There was no public access
 - The dispersal policy would be agreed by the police and the licensing authority

- The capacity of 95 was considered to be relatively low - the premises could actually hold more. However, it was noted that the premises was not in a cumulative impact area
- The concerns about capacity were about about noise and disturbance rather about fire safety
- As long as the line was drawn around the outside area, that was considered to be on the premises and therefore off sales was no longer applicable. The applicant made clear if the application was granted then sales would be made in the premises to take outside into the garden area
- The safe capacity for the premises was 250
- Regarding local residents it was understood that the landlord and the tenant had some discourse with some local residents. From the application report details it appeared to suggest that the local residents in question were near to the outside amenity area owned by the landlord
- No complaints had been received from anyone living above the premises
- It was felt that 10 smokers outside was still quite a large number of smokers. It would be no more 10, but some nights it could be less

7.12 The police had no further comments to add.

7.13 The licensing authority reiterated their view that the license should not be granted under the outcome of the review was determined, as well as their concerns about the capacity. The licensing authority highlighted that the Business and Planning Act 2020 did not specify changes or variations to premises licences, it just stated 'vary a licence'.

7.14 Mr Dadds believed that the discussion about the Business and Planning Act 2020 was perhaps for another time outside the hearing. The only reason for the application to make sure the customers could go into the outside garden area for alcohol consumption. It would be unlawful for the sub-committee to wait to make a decision pending the outcome of the review - statutory guidance made clear that every licensing application must be considered on its own merit and the sub-committee would do what was appropriate to promote the licensing objectives in each individual case and application.

7.15 The licensing authority accepted that the outcome of this application was at the discretion of the sub-committee but they did have the power to adjourn any decision until such time they seem fit before they determine any application.

7.16 Mr Dadds commented that any adjournment would have to be under premises license regulations. The hearing had already started and any determination had to be done with five working days. It was reiterated that the police did not object to the application and the Environmental Health had also removed their objections. Since the changes made there had not been any objections from local residents. The hours and conditions set were reasonable, the variation would remove the alcohol ancillary to food conditions which would not undermine the licensing objectives. The applicant had taken positive steps to work with the responsible authorities and its neighbours.

7.17 The licensing authority welcomed an offer from Mr Dadds to replace the current DPS but that would be determined on the level of experience of the new DPS. Mr Dadds replied that there would have to be a variation to the premises licence to take into account a new DPS and the police would have an opportunity to vet that person.

The decision

The Licensing Sub-Committee in considering this decision from the information presented to it within the report and at the hearing today has determined that having regard to the promotion of all the licensing objectives:

- The prevention of crime and disorder;
- Public safety;
- Prevention of public nuisance;
- The protection of children from harm;

the application to vary the premises licence has been refused in accordance with Licensing Policies LP1 and LP2 within the Council's Statement of Licensing Policy.

Reasons for the decision

The Licensing sub-committee, having heard from the Licensing Authority believed that by granting the variation application it was likely to result in the licensing objectives being undermined.

The sub-committee took into consideration that the Metropolitan Police Service had withdrawn their representations, and agreed conditions with the applicant before the hearing.

The sub-committee took into consideration the representations made by the Licensing Authority at the Review hearing also heard on 1st October 2020. The Review hearing related to the applicant's current licenced premises. The sub-committee when making their decision took into consideration that the Licensing Authority were seeking revocation of the premises licence at the Review due to the lack of confidence in the management and the Designated Premises Supervisor. There were concerns that this would result in people

drinking and staying in the area for longer, and could result in increased anti-social behaviour in the area. It was noted that the premises is situated in a residential area.

The sub-committee took into consideration when refusing this application the issues relating to the premises. They were not satisfied that the applicant was able to demonstrate that they had engaged with the Licensing Authority to resolve their concerns. The sub-committee had concerns about whether the applicant was able to manage the premises responsibly. Therefore, it was felt that the licensing objectives could not be promoted by granting this variation application, and as such believed it was appropriate to refuse the application in its entirety.

8 Temporary Event Notices - Standing Item

8.1 There were no Temporary Event Notices for consideration.

Duration of the meeting: 14:00 – 16:15

Signed

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Chair of Committee, Councillor Emma Plouviez

Contact:

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