

MINUTES OF A MEETING OF THE LICENSING SUB COMMITTEE E

TUESDAY, 15TH SEPTEMBER, 2020

Councillors Present:	Councillor Peter Snell in the Chair
	Cllr Brian Bell (Substitute) and Cllr Emma Plouviez (Substitute)
Officers in Attendance:	Subangini Sriraman (Principal Licensing Officer) David Tuitt (Licensing), Amanda Nauth (Legal Services Officer) and Rabiya Khatun (Governance Services Officer)
Also in Attendance:	<u>Gigi's Italian</u> Mr Algur - Applicant <u>The Stag's Head</u> Mr Hyka – Applicant Ms Susy PC Ryan } Metropolitan Police PC Atkins}

1 Election of Chair

- 1.1 Councillor Snell was duly elected to chair the meeting.
- 1.2 All parties noted that the Sub-Committee would be taking into consideration the licensing policy circulated to all parties prior to the meeting.
- 1.3 The Sub-Committee recorded their best wishes to Mike Smith on his retirement

2 Apologies for Absence

- 2.1 There were no apologies for absence.

3 Declarations of Interest - Members to declare as appropriate

- 3.1 There were no declarations of interest

4 Licensing Sub-Committee Hearing Procedure

- 4.1 The hearing procedure was set out at page 1 of the agenda pack.

5 Variation of Premise Licence: Gigi's Italian, Unit 3, 30 Felstead Street, Hackney, London, E9 5LG

5.1 Subangini Sriraman, Principal Licensing Officer, presented the report in respect of a variation application to authorise hours for the supply of alcohol (Off Premises) and remove existing conditions 12, 19 and 20. She advised that Environmental Enforcement had withdrawn their representation following an agreement of conditions with the applicant and that the representations from the Police and Licensing remained.

5.2 Mr Algur, the applicant outlined his case in support of the application and stated he was an experienced and responsible operator running the family business for over 7 years without any licensing or nuisance issues. The premises operated as a food led business and was a popular local pizzeria. He was seeking permission for the sale of alcohol on and off the premises as more of his patrons were demanding alcohol and cocktails be served with their food.

5.3 Mr Algur stated that he had no intention of operating the premises as a bar and was not seeking to sell alcohol without a meal. The variation would allow him to sell alcoholic drinks to customers ordering takeaway pizza or pasta. He also lived above the premises and had encouraged his customers to drink responsibly in order to minimise public and noise nuisance for those residents living above the premises and within the vicinity

5.4 The Chair asked the applicant whether he had contacted the Police and Licensing to address their concerns prior to the meeting. Mr Algur confirmed that he had emailed both the Police and Licensing but had received no response.

5.5 Councillor Bell sought clarification regarding the reduction in opening hours from 23.00 hours to 22.45 hours. Mr Algur confirmed that the opening hours remained unchanged at 23.00 hours and the 22.45 hours within the report was an error.

5.6 David Tuitt, Licensing, apologised for the oversight in not responding to the applicant's email prior to the meeting and explained that the team had been extremely busy due to Covid-19. He outlined his objection to the application based on the prevention of crime and disorder and the prevention of public nuisance. The premises was located within a residential area and the proposed removal of conditions 12 and 20 could potentially change the nature of the operation resulting in a negative impact on the area. Referring to the plan at page 23 of the report, it was highlighted that there appeared to be a change to the layout of the premises with tables and chairs at the front of the premises and no garden area to the side of premises as shown at page 22.

5.7 PC Ryan, the Police, apologised for not responding to the applicant's email and outlined the police's objection to the application on the grounds of the prevention of crime and disorder and public nuisance. The premises currently operated as a restaurant and formed part of a small parade of shops and restaurants in a quiet residential street, which was located on the ground floor of a residential block of apartments. Concern was also expressed about the proposed off sales and removal of existing conditions 12, 19 and 20 that related to drinking outside and alcohol being sold ancillary to food. The removal of the conditions could turn the venue into a bar and lead to an increase in public nuisance and potentially more anti-social behaviour such as noise, disorder and drunkenness on the streets that would impact on local residents. The police proposed that condition 12 be amended to include off-sales

being sold ancillary to a substantial meal.

5.8 In response to questions from the Chair regarding the proposed removal of conditions, Mr Algur stated that he had lived above the premises for over 10 years and had served his neighbours and customers without any issues. He wanted to offer his customers the choice of purchasing alcohol to be consumed off the premises with their meal. He assured the Sub-Committee he had no intention of turning the premises into a bar at present or in the future and was a responsible operator having no complaints since 2013. There had been no objections from his neighbours and local residents to the application.

5.9 Councillor Plouviez highlighted that condition 12 duplicated condition 20 and that the Sub-Committee were minded to delete condition 20. Mr Algur agreed to the deletion of condition 20.

5.10 In response to a question from the Chair, Ms Nauth clarified that under the Business and Planning Act 2020 off-sales was permitted until 23.00 hours until September 2021. Under this provision, alcohol could be sold without food but any conditions in the existing premises licence took precedence over new legislation.

5.11 PC Ryan asked if the licensable area could be clearly marked on the plan. Mr Algur confirmed that the outside seating area at the front of the premises was part of the premises and had been used for several years. The outside area was important in sustaining his business and he believed that he did not require a licence to use this area during 2020 due to the Covid-19 restrictions.

5.12 The Chair noted that the external area had not been included in the application and asked if the Sub-Committee could consider the changes to the licensable area. Ms Nauth stated that the applicant must inform Licensing Services of the use of any external areas of the premises and any changes to the layout.

5.13 Mr Tuitt and PC Ryan stressed that the off-sales should be ancillary to a substantial meal and should also apply to the outside seating area at the front of the premises.

5.14 In their closing remarks, PC Ryan and Mr Tuitt indicated that they would be willing to agree to a condition that alcohol should only be sold to those persons taking substantial table meals and that consumption of alcohol should be ancillary to these meals. Mr Tuitt stated that the layout issues could be resolved following the meeting. Mr Algur emphasised that he had been using the outside seating area for many years without any issues and was willing to engage with Licensing Services to resolve any issues.

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 approved in accordance with the Council's Statement of Licensing Policy with the following amendments :-

- Any alcohol sold or supplied for consumption off the premises must be with a substantial meal and in a sealed container.

- Condition 12 of the licence to be amended and read as follows:

“Alcohol shall not be sold, supplied, or consumed on the premises otherwise than to persons who are taking substantial table meals from the menu and that the consumption of alcohol by such persons is ancillary to taking such meals. The supply of alcohol shall be by waiter or waitress service only”.

- Conditions 19 to remain on the current premises licence.
- Delete condition 20 of the licence as it duplicates condition 12.

Reasons for the decision

The application to vary the premises licence has been approved, with the above amended conditions, the Licensing sub-committee was satisfied that the licensing objectives would not be undermined.

The sub-committee took into consideration that the applicant contacted both the Metropolitan Police Service and the Licensing Authority prior to the hearing to try and resolve their concerns. The sub-committee also took into consideration that the applicant had agreed conditions with Environmental Enforcement and they have subsequently withdrawn their representation. It was noted that the premises is located in a residential area, and there were no objections from local residents.

The applicant stated in their representations that their food was popular in the area, and they wanted to now have alcohol and cocktails with food. The applicant stated that they had no intention of running a bar or to sell alcohol without food. They wanted to sell alcohol with take away pizza. The applicant was not proposing to change the hours.

After hearing from the applicant, and carefully considering the representations of the Responsible Authorities (Licensing Service, and the Metropolitan Police Service), who both now agreed the applicant's variation application, and both Responsible Authorities requested a condition that off-sales must be sold ancillary to a substantial meal. The sub-committee took into consideration from the evidence presented that the premises is located in a quiet street. The sub-committee were also satisfied that the conditions that the applicant has agreed would promote the licensing objectives.

The sub-committee took into consideration that the applicant was an experienced premises operator, and the premises was a food led business which had been operating for over seven years. There had been no issues with the premises over the period that the applicant had been running the premises. The sub-committee felt that it would go against the Council's Licensing Policy to remove the ancillary conditions 12 and 19 from the licence which could result in a negative impact on the area. The sub-committee felt that by giving permission for off sales of alcohol sold with a substantial meal that would not compromise the licensing objectives.

Having taken all of the above factors into consideration the sub-committee were satisfied, when granting the variation of this premises licence, that the licensing objectives would continue to be promoted.

Public Informative

The applicant is reminded of the need to regularise the use of the external areas of the premises and the layout with the Licensing Service in accordance with the conditions on the licence, and to keep the Licensing Service informed of any changes proposed to the licence and the premises layout.

6 Variation of Premises Licence: The Stag's Head, 55 Orsman Road, Hackney, London, N1 5RA

6.1 Subangini Sriraman, Principal Licensing Officer outlined the variation application seeking to extend the operation hours for the rear garden on Fridays and Saturdays from 23.00 hours to midnight and remove condition 25 until after lockdown. She advised that the Police and Licensing representations remained.

6.2 Mr Hyka the applicant outlined the application and highlighted that the pandemic had devastated businesses in the hospitality sector. His sales had declined by 60% since re-opening business and all his bookings had been cancelled since the introduction of the six persons restriction. He was seeking to extend the opening hours of the rear garden to encourage customers to remain on the premises longer and keep the business afloat. The extra business was intended to reduce the number of staff being made redundant. He had introduced noise-reducing measures from 2013 and as a result noise complaints had fallen to almost zero.

6.4 Councillor Bell sought clarification about the opening hours. Mr Hyka stated that the opening hours would remain unchanged and that he was seeking to extend the closing hour of the rear garden from 23.00 hours until midnight during the pandemic.

6.5 PC Ryan outlined the police's objection to the application on the grounds of the prevention of crime and disorder and prevention of public nuisance. The premises are located in a residential street with properties overlooking the rear garden. Police officers had visited the premises on 18 July 2020 as part of its local patrol and witnessed a DJ playing loud music above conversation level in the rear garden. Despite the applicant asking the DJ to turn down the volume, the music continued to be played above background level. It was explained that the music should be played at background level to allow a face to face conversation at normal speech level to be held, which would prevent people shouting or coming too close together and spreading the infection. The police felt they could not support the application to extend the closing hour of the garden until midnight as this would cause disturbance to local residents and the government had not set a specific date for ending Covid 19 restrictions.

6.6 Mr Tuitt, Licensing, outlined their objection to the application on the grounds of the prevention of public nuisance. The garden was in close proximity to residential units and the proposed closing hour could negatively impact on public nuisance as customers used the garden later at night.

6.7 In response to questions from the Chair seeking further clarification relating to the application, PC Ryan confirmed that she had received an email from the applicant and apologised for not responding prior to the meeting. Mr Tuitt confirmed that Licensing Services had not received any noise complaints relating to the premises since 2013, however, he could not confirm if Environmental Protection had received any complaints. Mr Tuitt confirmed that the Council had a policy covering external areas and outdoor activity that had been agreed in 2018. The outdoor activity was restricted to 08.00 to 22.00 hours unless mitigating measures were in place.

6.8 Due to technical issues Councillor Bell left the meeting at 15.00 hours and returned at 15.05 hours. The meeting was suspended in his absence to ensure Councillor Bell was present throughout the presentations and discussions.

6.9 The Chair enquired about the incident on 18 July 2020 and the length of time being sought for the use of the garden. Mr Hyka clarified that the event held had been a regular event that ceased at 22.00 hours and that he believed that the issue had been resolved that night. The DJ had been excited and played the music at a louder level than normal but had turned down the music level when requested by the police. This DJ had now been banned from the premises. Mr Hyka stated that he was seeking to use the rear garden until midnight during the pandemic and that his staff would monitor the garden.

6.10 Councillor Bell queried whether the loud music played by the DJ could be considered as background music and that the incident in July had been a breach of the current licencing conditions. Mr Hyka stated that his licence permitted DJs to play background music in the rear garden. Ms Nauth clarified that music played by DJs would not be deemed background music under licensing and therefore the incident would be considered a breach of the noise nuisance conditions on the existing licence.

6.11 Councillor Plouviez asked how social distancing restrictions were being implemented and the measures in place to ensure this incident did not reoccur. Mr Hyka replied that the premises capacity was 50 persons and that on average 25 people visited per day with fewer people inside the venue. Staff monitored and ensured that customers complied with Covid-19 restrictions and the premises also set tables 2 metres apart, sanitisers were placed inside and outside the premises and signs were placed reminding customers to socially distance and wash hands. Staffs were also wearing visors and recording customers details. The applicant assured the Sub-Committee that the DJ playing loud music would never be hired again.

6.12 Mr Hyka confirmed that the food offering on the premises had been reduced as the kitchen now opened 3 days a week due to financial issues.

6.13 The Chair sought the Police and Licensing's views on the period of licence. PC Ryan indicated that she did not support extending the hours of the garden and did not have a view on the time period. Mr Tuitt emphasised that he was sympathetic to the applicant's situation but the proposal would undermine the promotion of the licensing objectives, and that the period should not exceed the emergency period as defined within legislation.

6.14 Mr Hyka summed up that the pub had been an important part of the local community for over 150 years and they wanted it to survive and also retain their staff.

6.15 In response to a query from the applicant, the Chair requested that Licensing Services provide Mr Hyka with information relating to background music level. The Council Business network also provided information to businesses during the pandemic.

6.16 The Sub-Committee noted that condition 25 would need to be amended if the application was granted.

6.17 The Chair thanked all parties for attending the hearing.

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 a 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 Responsible Authorities (the Licensing Authority and the Metropolitan Police Service) believed that granting the application is likely to result in the four licensing objectives being undermined.

The sub-committee took into consideration the representations made by the Licensing Authority and the Metropolitan Police Service regarding their concerns, and that they did not support the opening of the garden of the premises until midnight on Friday and Saturday due to the impact it will have on the local residents in the area.

The sub-committee were concerned about the non-compliance with the licence holder's current noise nuisance conditions on their premises licence following, an incident that was witnessed by the Metropolitan Police Service on Saturday 18th July 2020, when loud music was played at the rear of the premises that is available to patrons until 23:00 hours. The music was played by a DJ so loud that a conversation could not be had outside. The level of this loud music witnessed by the Police was not background music which is a condition on the premises licence. This incident is a breach of the conditions of the existing licence which the sub-committee take very seriously given that the premises is located on a residential street that will affect local residents late at night.

Due to the current social distancing requirements it is necessary for background music to be played to enable patrons to speak to each other at a normal speech level to prevent them having to shout at each other, which would create more disturbance to local residents close by or having to come too close together and risk spreading infection. It was unclear what procedures the licence holder had in place to prevent this incident re-occurring to protect patrons, local residents and to prevent further breaches of the existing premises licence.

The sub-committee sympathise with the applicant's circumstances, and the impact on the premises due to the current social distancing restrictions during the pandemic. However, the applicant has not been able to demonstrate adequate exceptional circumstances, to justify the application being approved. It was also noted that the applicant currently has a reduced food offering. The sub-committee cannot consider the issue of financial "need" in determining any licence application.

The sub-committee took into consideration when refusing this application that each case is considered on its merits. The sub-committee believed 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.

7 Temporary Event Notices - Standing Item

7.1 There were no temporary event notices.

Duration of the meeting: 2.00- 3.30pm

Signed

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Chair of Committee

Contact:

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