

Draft

Licensing Sub-Committee E – 17 November 2020 at 2pm

Remote meeting

Present,

Councillors : Councillors Plouviez, Smythe, Snell

Officers: Ms Amanda Nauth - Legal Adviser - LB Hackney
Ms Subangini Sriramana - Acting Principal Licensing Officer - LB Hackney
Mr David Tuitt - Licensing Authority - LB Hackney
Clifford Hart - Senior Governance Services Officer

Representatives:

Applicant: Mr Luke Elford - Legal Representative
Mr Dyllan
Mr Seb Glover

Responsible Authorities:

David Tuitt (Licensing Authority)

1. ELECTION OF CHAIR FOR THE DURATION OF THE PROCEEDINGS

Councillor Snell was duly elected Chair of the proceedings, following his nomination by Councillor Smythe, and seconded by Councillor Plouviez.

COUNCILLOR SNELL IN THE CHAIR

2. APOLOGIES FOR ABSENCE

There were no apologies for absence.

NOTED

3. DECLARATIONS OF INTERESTS

There were none.

4. Licensing procedure

The Chair advised all those present of the procedure to be followed at the meeting.

NOTED

5. Application for a Premises Licence – Hackney’s Garden, 210 Ponsford Street, London E9 6JU

The Chair advised that in respect of the application before the Committee members were advised that the Police had reached agreement with the applicant in terms of the Police's objections and the agreed conditions as a result of that agreement - these conditions had been circulated for members on 12 November.

NOTED

- i. The Acting Principal Licensing Officer Ms Sriramana introduced the report in respect of a new premises licence for Hackney’s Garden, 210 Ponsford Street, London E9 6JU. As confirmed by the Chair she advised that the Police had reached agreement with the applicant in terms of the Police's objections, and the agreed conditions in terms of changes to operation times as a result of that agreement - these revised conditions had been circulated to members on 12 November.
- ii. In response to clarification from the Chair as regards the agreed revised hours of operation by the Police and Licensing Authority Ms Suramana advised that the agreed revised operation of the premises was 08.00hrs - 21:30 opening Sunday through Wednesday, and ceasing trading, and closure of premises 22:00hrs, and 08.00hrs - 22:30 opening Thursday through Saturday, and ceasing trading, and closure of premises 23:00hrs.

NOTED

- iii. The applicant's legal representative Mr Luke Elford introduced himself, and advised the meeting that the application was as stated in the circulated report as outlined. Mr Elford then went on to make a number points and the following were a main summary of those:

- there was one outstanding objection from the Licensing Authority from Mr Tuitt pertaining to Licensing Policy 6 in terms of external area usage after 10.00pm
- that there were no other major issues to the application with the Police having withdrawn their original objections, and reference within the circulated supplementary papers to letters of support from both local residents and businesses
- the site of the application was to be transformed from a former car wash (expired operation) to a pleasant venue, by an extremely experienced operator, with a proven track record of success
- the proposed operation would be as categorised - an external bar with pop up food offer, with the venue having a awning/canopy covering 80% of the site (being the original covering when the car wash was in operation, and the premise enclosed on three sides by building walls, one of which being the rail track entering Hackney Central Station
 - the only approval sought outside the licensing policy was for operation of the premises for 1 hour from 10-11pm Thursday through Saturday - something which could be approved by the Licensing Authority and this would be controlled / monitored by both a noise limiter, and dispersal policy, and the additional hours were sought due to lack of objections to the proposals
- any negative issues/impact raised by local businesses or residents could be reported through a dedicated telephone contact line
- that the typography of the location was in a very busy street with heavy traffic and bounded by a main railway line, therefore the noise issue from the operation would not exacerbate the existing noise levels or have a negative impact to anyone locally given the location

iv. the Chair-and the Committee raised the following points which were responded to as indicated;

- the make of canopy/awning material, and whether this would assist in the issue of noise prevention; the applicant said that it was of corrugated iron and had been part of the original car wash operation, and that it would assist in noise containment but was not specifically for that
- the actual core hours and operation; the applicant claimed that the proposed operation times were within the licensing policy LP6 stated core hours except for the early hour operation on

Sunday mornings

- whether there had been any testing of the noise levels given that there were flats in the near vicinity to the location, and the possible funnelling effect of noise under arches which did occur in other locations in wards where similar venues operated; the applicants stated that over the summer period during the COVID situation temporary events notices (TENs) (as referred to in para 3.2 of the report) had been granted to events at the location with no objections raised during these events by any local residents or the Police, or LB Hackney Licensing and Environmental Health
- concern as to whether specific noise testing had been carried out specifically for the residential flats with open balconies etc in the near vicinity and the fact that with TENs people often did not object given the events were one off but when it was a permanent regular occurrence then the level of concern may well be considerable but residents would not then be able to object as such as the licence had been granted on the basis of no objections; the applicants stated that there had not been any specific noise testing but that there would be measures in place i.e. a noise limiter installed
- clarification was given as regards to control of noise referenced in the supplementary conditions circulated as agreed by the police, and that the licensee would be on the premises at all times and would be managing the music and that any amplified music as indicated would be subject to control via the noise limiter, and the only additional persons operating at the premises would be from the proposed food suppliers
- clarification given that there was no step access to the premises, and that the operation would be at floor level

v. The Chair thanked Members and the applicant for their questions/clarifications. The Chair asked that Mr Tuitt, as the Licensing Authority had raised an objection as one responsible authority, address the Sub-Committee.

Mr Tuitt commented to the meeting:

- his objections were as detailed in appendix B2 and supported these concerns on the basis of possible noise nuisance given the external element of the proposed operation, and the reference in the original objection to condition LP6 which had been clarified to the applicant on 30 September as a concern.

- in clarifying points raised by members - a site visit had been conducted on 7 October with the metropolitan police representatives and Mr Tuitt confirmed that the premises was in an area of other venues and street noise as advised by the applicant in their submission i.e. road traffic, the railway line with passenger and freight traffic, and the mitigation of the awning/canopy giving some level of noise reduction
- that the TENs operations during the summer period had not given rise to any complaints but reiterated the point of it being a proposed permanent fixture, and would possibly give rise to concerns of residents by that fact, in the location of Ponsford Street and Morning Lane
- though not a noise expert the process of setting the noise limiter would be based on assessing and limiting the impact on certain points in the vicinity
- was unable to give an explanation to the Police withdrawal of objections and the Police agreement to the noise limiter
- that in clarification of condition 13 and reference to 'plant and machinery' should be read as for that purpose and no other

vi. The Sub-Committee then undertook a wide ranging discussion regarding the application, and responses from the applicant and their legal representative - the main points being:

Mr Elford clarified that in response to some initial points:

- clarification given as to the noise limiter had come from the applicant and not from the Police from amplified music and that in terms of setting the level as implied by Mr Tuitt, an EHO would be invited to come to the premises to set an acceptable noise level, and the condition covering the noise limiter was a standard one
- clarification that condition 13 was in effect meaning any breach of this in terms of noise from any source at the premises could be a criminal offence

Further points raised by members:

- the issue of capacity and how the food offer would be managed given the reference to more than one supplier of food, and whether food would be cooked on site, and how the question of serving alcohol only with food would be managed,
- clarification of the entrance/exits to the venue, and the location of the bar, servery, and toilet/urinal facilities, and the requirement of

- planning consent, together with designated smoking area
- clarification of the studio/radio facility and its purpose/operation and how the music operated during the TENs events
- clarification as to whether there was a link to the adjoining venue in terms of operation
- clarification on the type of clientele the venue hoped to attract and attendees at the previous TENs events
- whether there would be issues should the capacity be restricted to 100 persons given the concerns regarding possible health and safety aspects of the venue when in operation, and whether conditions may be imposed preventing the sale of food from vans given the negative impact of such operations across the Borough
- legal clarification as regards condition 21 remaining given there being no stairs on the premises, and confirmation that this condition should remain
- legal clarification as regards the 30 minute drinking up time on bank holidays

The applicants and representative responded:

- that the health and safety/emergency /risk assessment was yet to be carried and capacity would be based on that assessment though it was envisaged that there would be a 150 person total capacity , and with seating /planters added that figure would likely reduce as a result
- in terms of food offer the applicant would invite in food suppliers but the applicant would have full control of the serving of the food, and beverage supply at all times
 - proposed to have some cooking on site. i.e. during the summer with a grill type facility but the food delivery would be food that could be served either as was or with a requirement for heating/ some cooking
- that the entrance/exit would be on Ponsford Street only and of double door width, and that the border of the venue having railings which would be boarded on the inside
- that the studio radio facility would encompass music streaming by individuals, community radio slots, and podcasts on line, and be as background music for when people were sitting at the venue, and that the structure was required to be built to facilitate this, and that the TENs events layout had been different to the proposed layout
- that the proposed venue did not link to the adjacent venue (though both were owned by the applicants) as the new venue was proposed to close at 11.00pm, and the adjacent event was a late night drinking /music establishment , and both entities were separate in operation, and had there been any proposal to link both then this would require

considerable variation, and this was not intended, nor was the proposed venue in that sense to be a beer garden for the adjacent venue

- that it was hoped to attract clientele pan Hackney /London with an offer of specific type food, varied by season and build on the reputation of the offer being of quality in the sense of the pop up food but in a restaurant setting
- there would be no sales of food from vans either on or near the premises
- clarification that smoking would be designated at the front of the premises in a defined area not under the awning/canopy to allow smoke to disperse in the open air,
- the designated escape route in the event of an emergency would be via the door shown on the plan into the adjacent venue, and also the frontage entrance was very wide which would allow for exiting
- clarification of the seating plans - no seating along the front or right hand side of the building which would allow and meet safety concerns/and exiting, and that any revisions to the area will be subject of revised plans being submitted with a variation, given that the premises will not open till March/April 2021
- that there would be no objection to a condition being added to prevent the use of van food sales on the premises
- that any conditions imposed on capacity should be subject to the outcome of a final fire and risk assessment, given that the current on site capacity was 150 and the applicant would not be happy with an imposed condition less than that until the assessment had been complete
- confirmation of a condition to be added in relation to a dispersal policy were the application to be granted.

The Chair thanked all concerned for their contributions to the discussions, and advised that the meeting would now proceed to the summing up stage of the hearing.

viii. The Chair asked for final summing up comments from each of the parties:

Responsible Authorities - Licensing Service (Mr Tuitt)

- the concerns expressed by members in relation to the noise levels of music, and overall effects of the venue together with mitigation put forward by the applicant would somewhat meet those concerns in terms of agreed conditions

- the issues of seating and capacity would be subject to a final health and safety risk assessment
- the planning consents required to be obtained for the venue would in detail cover matters pertaining to building requirements aesthetics, transport, and dispersal issues,

Applicant's representative - Mr Elford

- that concerns expressed at other venues of a similar nature should be compared with the application before the Sub-Committee
- the concerns expressed were appreciated given that the terms of the application were somewhat outside the usual scope of the Council's Licensing policies,
- that the application was from a known operator albeit not quite of this type of venue, and with modified conditions agreed already, it demonstrated it was a credible venture, and that the applicant would be happy to consider any further modifications/answer concerns

There being no further points raised by any of the parties the Chair advised that the formal meeting would now close and asked that all external parties now leave the proceedings. The Sub-Committee would then retire to consider the issues and the applicant would be advised of the decision within 5 working days.

Mr Elford thanked the Sub-Committee for its consideration.

The Chair thanked all parties for their attendance.

The formal meeting concluded at 15:03hrs

Following private deliberation it was:

RESOLVED

Application for a Premises Licence – Hackneys Garden Limited, 210 Ponsford Street, London, E8 3SD – APPROVAL

The decision of 17th November 2020

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 for a premises licence has been approved in accordance with the Council's Statement of Licensing Policy, and the proposed conditions as set out in paragraph 8.1 of the report, with the following amendments:

The opening hours and the hours for licensable activity are:

Opening Hours:

Monday to Wednesday 08:00 – 22:00 hours
Thursday to Friday 08:00 - 23:00 hours
Saturday 10:00 – 23:00 hours
Sunday 10:00 – 22:00 hours

Non-standard hours:

Until 00:00 on every Friday, Saturday, Sunday and Monday of a Bank Holiday weekend.

Supply of Alcohol (on and off the premises):

Monday to Wednesday 08:00 – 21:30 hours
Thursday to Friday 08:00 - 22:30 hours
Saturday 10:00 – 22:30 hours
Sunday 10:00 – 21:30 hours

Non-standard hours:

Until 00:00 on every Friday, Saturday, Sunday and Monday of a Bank Holiday weekend.

- Late Night Refreshment was withdrawn from the application.
- The capacity of the premises to be reassessed on the understanding that it will be no more than 150 persons at any one time.
- Condition 14 shall be deleted due to the amended hours.

And the following additional conditions

- All licensable activity will cease 30 minutes before the premises closes each day

- Mobile food units and vehicles are not permitted on the premises
- A Dispersal Policy shall be submitted to and deemed acceptable by the Licensing Authority.
- No open containers shall be taken off the premises.
- A noise limiter must be fitted to the musical amplification system set at a level determined by and to the satisfaction of an authorised officer of the Environmental Health Service. The operational panel of the noise limiter shall be secured by key or password and access shall only be to persons authorised by the Premises Licence Holder. The noise limiter shall not be altered without prior agreement of the Environmental Health Service. No additional sound generating equipment shall be used at the Premises without it being routed through the sound limiting device.
- There shall be a written dispersal policy at the premises. This policy shall be kept on the premises and produced to a police officer or other authorised officer upon request.
- All staff shall receive training on the legislation relating to the sales of alcohol to underage persons and drunken persons and shall have refresher training every 12 months. There shall be written records of such training which will be kept on the premises and produced to a police officer or other authorised officer upon request.

Reasons for the decision

The amended application has been approved, with the above amendments, as the Licensing sub-committee was satisfied that the licensing objectives would not be undermined.

The sub-committee took into consideration that Environmental Enforcement~~the~~, and the Metropolitan Police Service had withdrawn their representations, and agreed conditions with the applicant. They also considered letters of support from local residents and interested parties. It was noted that the closest neighbours to the premises are in support of the application. The Licensing Authority maintained their objection to the application due to conflict with policy LP6 for outside areas, and concerns about measures to control noise that may affect local residents.

The Metropolitan Police Service felt that the reduction in times for licensable activity and additional conditions will allay their concerns around dispersal towards transport hubs and disturbing local residents late at night.

The Licensing Authority have not received any complaints about the premises. They accepted the reduced hours on the amended application. The Licensing Authority confirmed that this will be a permanent open space fixture along Morning Lane and Ponsford Street which could result in noise nuisance, and a negative impact on local

residents. The Applicant suggested a noise limiter condition to help overcome any noise nuisance, and they offered to invite the Environmental Protection officer to set the noise limiter. The Applicant confirmed that an application for Planning Permission will be made in due course.

The sub-committee took into consideration that the premises is made up of an eighty percent (80%) covered canopy towards the front of the premises in two parts. It was noted that over the Summer period the applicant applied for a number of Temporary Event Notices. There were no complaints received from local residents or the Responsible Authorities following these events.

The applicant's legal representative confirmed that a comprehensive list of conditions had been submitted, and the applicant had put in place control measures and modifications to help operate the premises responsibly. The applicant confirmed they have had a general fire risk assessment which confirmed a capacity of 150 in total. They intended to invite a food operator to prepare and serve hot food on the premises. The food operator will not have a food truck, and it will not be a food market. The food offering will change each season. Smokers will be permitted to smoke at the front of the premises. The applicant intended to place temporary bench seating along the front of the premises. It was noted that an area will be left clear to allow patrons to come into the premises. The applicant intends to open the premises in 2021.

The sub-committee having carefully considered all the representations decided to grant the premises licence as some of their concerns were addressed. Each application is considered on its own merits. They took into consideration that alcohol would be sold ancillary to a meal which was reassuring about how the premises will be controlled and operated.

The sub-committee felt that the noise limiter gave some reassurance that the noise level will be controlled, and will limit any negative impact on the area.

The sub-committee felt that by reducing the hours on Saturday and Sunday to commence from 10:00 hours on those days, which would help to limit the hours of consumption of alcohol that will take place on weekends. The sub-committee had concerns about controlling the noise or any nuisance from 08:00 hours on Saturday and Sunday in view of the fact that entertainment is no longer regulated on premises with capacity under 500 people between 8.00am and 11.00pm if they are licensed to sell alcohol. They also took into consideration the impact of noise on local residents.

The sub-committee were satisfied that the reduced hours together with the additional conditions would mitigate any negative impact that the premises would have on the area. It was accepted that it was a difficult time for local businesses.

Having taken all of the above factors into consideration the Licensing sub-committee was satisfied, when granting the application, that the licensing objectives would be promoted.

Planning Informative

The applicant is reminded of the need to operate the premises according to any current planning permission relating to its use class, conditions and hours.

It also should be noted for the public record that the local planning authority should draw no inference or be bound by this decision with regard to any future planning application which may be made.