

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE C

TUESDAY, 22 MARCH 2022 at 7:00pm

- Councillors Present:** Cllr James Peters in the Chair
Cllr Susan Fajana-Thomas and Cllr Penny Wrout
- Officers in Attendance:** Amanda Nauth, Licensing and Corporate Lawyer
Subangini Sriramana, Acting Principal Licensing Officer
Natalie Williams, Governance Officer
- Also in Attendance:** Off Broadway
Mr Neal Hunwick – (Applicant) Metropolitan Police, Hackney Licensing Unit
Mr Gareth Hughes – Applicant’s Solicitor
Mr Selby – Licensee

1 Election of Chair

1.1 Cllr James Peters was elected as Chair.

2 Declarations of Interest - Members to declare as appropriate

2.1 There were no declarations of interests.

3 Apologies for Absence

3.1 There were no apologies for absence.

4 Minutes of the Previous Meeting

4.1 There were no minutes for consideration.

5 Licensing Sub-Committee Hearing Procedure

5.1 The Chair explained the hearing procedure to all present.

6 Licensing Sub-Committee Hearings General Information

6.1 The Chair highlighted the hearing procedure to all present.

The Chair decided to vary the order of business and take agenda item 8 before agenda item 7.

8 Application for a Review of Premises Licence: Off Broadway, 63-65 Broadway Market E8 4PH

It was noted by all present that the same panel had considered the application at a meeting on 25 January 2022. The Sub-Committee requested that the licensee, Licensing Authority, Metropolitan Police and local residents engage in mediation to agree on conditions of the licence.

All present noted the supplementary information which had been circulated prior to the hearing.

The Sub-Committee noted the report of the Licensing Service as circulated in the agenda pack.

It was clarified that the circulated conditions had been agreed with the licensee but had not been agreed in their entirety by the police. Since the last hearing, the licensee had not made any attempts to contact local residents to agree conditions or a way forward.

The Licensing Authority made submissions and raised concerns relating to the Designated Premises Supervisor. The Sub-Committee was informed that there was no record of an application from Mr Selby and a notice of resignation had not been received from the previous DPS.

The Sub-Committee was informed that there was no appropriate planning permission in place for the lower part of the premises to operate outside of the hours of 1000-1600 and the wine bar area to operate beyond 2300. In 2011 temporary permission was granted for the premises to operate until 0000 however this ceased in March 2012.

The Licensing Authority raised concerns related to the licensees' ability to comply with licensing and planning regulations and it was suggested that if the Sub-Committee was mindful not to revoke the licence, the terminal hour should align with planning permission.

The Metropolitan Police-Licensing Unit made submissions. It was outlined that the circulated conditions had not been agreed in full. The following amendments to conditions were requested: the removal of vertical drinking outside of the premises, outside drinking to cease at 2200 and limited to 6-8 seated patrons, the removal of off-sales and a limit of four smokers outside the premises at any one time.

Mr Gareth Hughes, the licensees legal representative and Mr Selby, the licensee made submissions, The Sub-Committee was informed that the named Designated Premises Supervisor (DPS) was Mr Byron Knight. An application had been made on Mr Selby's behalf in February 2021 which had not been received by the Council. A new application had since been submitted. Mr Selby confirmed that Mr Knight was no longer employed by him and had not been since December 2020.

The licensee's legal representative confirmed that the licensee had unbeknowningly been operating under the temporary planning permission

granted in 2011 for the past 10 years and noted that the Planning Authority had not submitted a representation or commenced any enforcement action.

The Licensing Officer confirmed a DPS application from Mr Selby was received on 17 March 2022. The Licensing Service had subsequently been in communication with him advising that the application was invalid due to not having received a consent form. Mr Selby had also been advised to produce proof of payment for his previous application.

The Sub-Committee noted the written representations from 'Other Persons' which had been circulated prior to the meeting.

The Sub-Committee heard from Louise Brewood, Nick Bridges and Racheal Bowditch (called as witnesses), Oliver Tomkins and Ryan Grocock, all of who requested that the premises licence be revoked. The local residents informed the Sub-Committee that they had been in contact with Mr Knight the named DPS and raised concerns that a person who was no longer employed by the licensee or who had access to the premises would be the named DPS. Further concerns were also raised which related to breach of planning permission, trading beyond 2300, the ongoing failure to address noise nuisance complaints and an unwillingness to engage with local residents. The local residents confirmed that they did not believe the licensee was a suitable licence holder and did not have any confidence in his ability to comply with regulations. However, they requested that should the Sub-Committee be minded not to revoke the licence, off-sales and outside drinking be prohibited.

The Sub-Committee expressed disappointment that the licensee had failed to engage with local residents following the request at the last hearing and also expressed concern relating to the lack of clarity regarding the DPS.

The licensee confirmed that his tables and chairs licence had been renewed earlier that day. He also refuted claims that he had received any noise nuisance complaints. He acknowledged that there had been a delay in the first DPS application following the termination of Mr Knight's employment. Mr Selby stated that it was his understanding that the Licensing Authority would make contact with local residents as he did not have their contact details.

In the closing statements, the Metropolitan Police stated that the licensee had not presented sufficient evidence to allay concerns. It was requested that should the Sub-Committee be minded not to revoke the licence, no vertical outside drinking should be permitted. The 'Other Persons' did not feel that the amended conditions allayed their concerns and retained their request for the licence to be revoked, as they did not feel that Mr Selby was a responsible licence holder and did not feel confident in his abilities to be compliant.

The licensee's legal representative requested the Sub-Committee take into consideration the context of the pandemic, lock down and ambiguity in the proceeding legislation and regulations, which he stated led to the confusion relating to the DPS. It was highlighted that representation had not been received from Environmental or Planning Authorities and there had been significant written support of the licensee and his establishment.

RESOLVED: The licensing sub-committee, in considering this decision from the information presented to them within the report and at the hearing today and having regard to the promotion of the licensing objectives:

- the prevention of crime and disorder;
- public safety;
- prevention of public nuisance; and
- the protection of children from harm,

that the premises licence for Off Broadway, 63-65 Broadway Market be revoked.

The Reasons for the decision:

The Licensing Sub-Committee carefully considered the application for a review of the premises licence from the Licensing Authority supported by the Metropolitan Police Service (“the police”), and 93 Other Persons (local residents). They also carefully considered the representations from the licence holder’s representative and the licence holder, and the supporting evidence presented by them. The Sub-Committee decided that revocation of the premises licence was an appropriate and necessary course of action, given the repeated failures to comply with the terms and conditions of the premises licence.

The Sub-Committee also considered the other options available to them, as detailed in the report. They were satisfied that none of these would adequately address the likelihood of public nuisance reoccurring. They felt that revocation of the licence was necessary to prevent the licensing objectives being undermined in the future.

The Sub-Committee considered the evidence that led to the review being called by the Licensing Authority. They took into consideration the following specific evidence:

1. The Sub-Committee had no confidence that the licence holder would make the necessary changes to improve the operation of the premises so that it would not have a negative impact on the local residents that live near to the premises.
2. The local residents made representations to the effect that, if the Sub Committee was not minded to revoke the licence, it should prohibit off sales, outside drinking and vertical drinking, all of which led to complaints about noise nuisance, albeit residents were not satisfied that such additional conditions would either address their concerns or be complied with. The Sub-Committee heard from local residents that over 25 complaints of noise nuisance and other complaints about the premises had been made to the Licensing Authority. It was noted that a large number of the local residents had lived in the area for 40 years and continue to have disturbed sleep late at night due to the noise coming from the premises.
3. The Sub-Committee heard evidence from local residents that alcohol has been sold outside permitted hours under Planning Permission.

4. The licence holder was not in agreement with the original, proposed conditions discussed with the police and the Licensing Authority.
5. The Sub-Committee were disappointed that the licence holder did not take the opportunity presented by the meeting's adjournment to negotiate or mediate with local residents to overcome and address their concerns about the premises. This was the purpose of the adjournment. It was clear to the Sub-Committee that the licence holder showed no consideration about how the noise nuisance affected local residents.
6. The Sub-Committee took into account that the licence holder did not engage with local residents, despite claiming to have offered mediation, and was not proactive in trying to resolve the recent noise nuisance. The Sub-Committee took into consideration that the local residents did not have sight of the draft conditions to comment on until just before the resumption of the Licensing Sub-Committee hearing on 22 March. This gave the local residents no time to properly consider and comment on the draft conditions, as the parties had agreed when adjourning the hearing on 25 January. This demonstrated a lamentable lack of commitment to working with residents and the Responsible Authorities to find an agreed resolution.
7. The Sub-Committee heard from local residents that there continued to be recent complaints of noise nuisance in February from the premises to which the licence holder did not respond.
8. The local residents had told the Sub-Committee that they are exhausted with the licence holder failing to comply with the conditions on their licence, and they have no confidence that the licence holder would comply with the new draft conditions.
9. The Sub-Committee heard from local residents that the premises had various planning issues that needed to be resolved including applying for Planning Permission for permitted hours to operate the premises which has been outstanding for some time. The Sub-Committee noted that the licence holder was informed on 11 June 2015 that it was not compliant with its planning consent. Although there were no representations from the Planning Service in relation to the planning issues, the Sub-Committee felt the licence holder could have avoided this, however, there was no attempt previously by the licence holder to resolve the situation.
10. The Sub-Committee heard evidence that the premises had been operating without the required Designated Premises Supervisor (DPS) since 2020 which is a requirement to operate the premises. The Sub-Committee heard from the Licensing Authority that the licence holder had not submitted an application for a new Designated Premises Supervisor until very recently. The Licensing Authority received an invalid application to change the DPS on 17 March 2022. The Licensing Authority requested further information for the licence holder to provide his consent to act as the DPS (a necessary component of a valid DPS application). The Sub-Committee heard from the police that as an experienced licence holder he should have known the process and procedures to apply for a new DPS.

11. The impact that the premises are having on local residents due to the public nuisance issues is evident from the numerous complaints which the Licensing Authority has received from local residents.
12. The Sub-Committee took into consideration that the extent of these issues is symptomatic of the way in which the premises are managed.
13. The Sub-Committee felt that the way the premises were operating was unacceptable and could not continue. There were very serious concerns about the ability of the licence holder to uphold the licensing objectives following these repeated failings. The premises lacked good management, adequate supervision, and responsible staff.
14. The Sub-Committee took into consideration that 93 representations received from and on behalf of local residents in support of the review application. The Sub-Committee also heard that local residents experienced noise disturbance from patrons leaving the premises.

The Sub-Committee when making their decision took into consideration the lack of confidence in the licence holder and the management of the premises. The Sub-Committee was not confident, given the serious issues raised in relation to public nuisance, that the current management in charge of the premises and the licence holder are capable of upholding or promoting the licensing objectives.

Your right to appeal

If you are aggrieved by any term, condition or restriction attached to this decision, you have the right to appeal to Thames Magistrates at Thames Magistrates Court, 58 Bow Road, London E3 4DJ within 21 days from the date you receive the written decision.

7 Application for a Personal Licence

RESOLVED: That the Press and Public be excluded from the meeting during the consideration of agenda item 6 due to the disclosure of exempt information as defined under paragraph 1, Part 1 , Schedule 12A of the Local Government Act 1972.

10 Temporary Event Notices - Standing Item

There were no Temporary Event Notices for consideration.

Duration of the meeting: 7:00-9:20pm

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