

DRAFT MINUTES OF THE MEETING OF LICENSING SUB COMMITTEE D

THURSDAY 11TH NOVEMBER 2021 AT 2PM

THIS MEETING WAS LIVE STREAMED AND CAN BE VIEWED AT:

<https://youtu.be/fRY-vKqLDFs>

Councillors Present:

**Cllr Peter Snell (Chair)
Cllr Brian Bell and Cllr Emma Plouviez**

Officers in Attendance:

**Peter Gray - Governance Services Officer
Amanda Nauth - Licensing and Corporate Lawyer
Suba Sriramana - Acting Principal Licensing Officer**

Also in Attendance:

Summary Review - 163 and 165 Mare Street

Applicant:

**Police Authority- PC Sian Giles and
PC Nick Gerry
Guy Ladenburg - Barrister
Tracy J Wisbey - Solicitor
Nathalie Charles - Solicitor**

Premises Licence Holder/Representatives:

**Yasar Yildiz - Premises Licence Holder
Sarah Clover - Barrister
Helen Ward - Solicitor
Felix Faulkner - Solicitor**

Responsible Authority:

**Environmental Protection - George Wokorach
Licensing Authority - David Tuitt**

Other Person:

William Davies

1. Appointment of the Chair

1.1 Councillor Peter Snell was duly elected to Chair the meeting.

2. Apologies for Absence

2.1 There were no apologies for absence.

3. Declarations of Interest

3.1 There were no declarations of interest.

4. Licensing Sub-Committee Hearing Procedure

4.1 The hearing procedure as set out in the agenda pack was explained to all participants.

5. Application for Expedited/Summary Review of Premises Licence: The Dolphin 165 Mare Street, London, E8 4AH

5.1 Barrister representatives made representations for an extended speaking time in order to present a fair overview of the review application. The Chair agreed, given the nature of the review case, to offer flexibility in regard to speaking times at the Sub-Committee. Guy Landenburg clarified that the Police wished only for the CCTV evidence to be considered in private as this may prejudice a criminal investigation. The Sub-Committee agreed to this application and that the footage be considered after the summing-up stage with both Counsel viewing the footage and having the opportunity to comment on the footage, if required.

5.2 Sarah Clover submitted that she had not been notified that William Davis, Other Person, was going to speak at the hearing and asked if a regulation 8 notice had been issued.

5.3 William Davis confirmed that he was a resident of Bayford Street.

5.4 The Business Regulation Team Leader confirmed that William Davis had returned the regulation 8 notice on 3 November 2021 in accordance with the Hearings Regulations.

5.5 The Chair confirmed that the two previous licences and the current premises licence were before the Sub-Committee. Clarification on any difference in circumstances would be sought from Counsel.

5.6 The Principal Licensing Officer introduced the three applications before the Sub-Committee. The Metropolitan Police had applied for summary reviews of the premises licence granted for the premises known as:

- The Dolphin, 165 Mare Street E8 4AH (104306).
- The Dolphin, 165 Mare Street, E8 4AH (Licence No: LBH-PRE-T-0669).
- The Dolphin, 165 Mare Street, E8 4AH (Licence No: LBH-PRE-T-0669).

This followed an incident of serious crime and disorder that occurred in the early hours of 15 October 2021. There had also been a failure to comply with conditions imposed on the licence. Representations had been received from the Police and Environmental Protection.

5.7 Guy Landenburg made submissions in support of the application, highlighting the following:

- PC Gile's Statement;
- A series of closure notices had been issued;
- Non-compliance in 2019. 4 visits to the premises in April and 4 in May 2019;
- There had been a series of closure notices requiring the premises owner to resolve breaches;
- Recurring themes of failing to abide by conditions;
- Loud music emanating from the premises;
- Insufficient security staff at the premises;
- The Scanner was not used at the premises;
- No proper training regime for staff;
- Lack of familiarity about the conditions on the premises licence on the part of the premises owner;
- Numerous breaches of COVID-19 rules at the premises;
- The premises was closed for a period following Covid Regulations. However, when the premises were reopened the Licence holder did not take the failures brought to his attention seriously;
- The pattern of disregard for the conditions on the licence had continued into 2021;
- A warning letter had been issued against the premises;
- Meetings had been held between the Police Authority, the Licensing Authority and the Premises Licence holder to discuss issues at the premises;
- A long history of non-compliance led to the standard review being submitted at the start of October 2021;
- An incident of grievous bodily harm had occurred at the premises on 15 October 2021. The Ambulance Service had contacted the police, although this was the responsibility of the premises licence holder who did not do this;
- The victim had not been properly attended to before the police arrived with no SIA presence at the venue;
- No attempt to detain the suspect;
- There was a sexual assault at the premises on 22 September 2021 - not notified to the police by the premises owner;
- Incident of actual bodily harm on 5 November 2021- not notified to the police by the premise owner;
- Licensing objectives not been upheld by poor management at the premises;
- The only option available was to revoke the licence;

5.8 Sarah Clover made submissions to the Sub-Committee on behalf of the premises licence owner, highlighting the following:

- In regard to the incident on 15 October 2021, staff at the premises had contacted the Police;
- The staff at the premises had identified the perpetrator;
- The premises owner had held the licence since 2003 without serious episodes occurring;
- The premises catered for regulars and locals;
- The sexual assault was unsubstantiated;
- The other assault case was unresolved;
- It was unfair to assert that there was a pattern of disregard over 2 ½ years;
- The premises had not been trading because of COVID-19 lockdown for in excess of a year;
- Yasar Yilhiz agreed to step down as DPS in July 2021 with this transferred to his wife;
- The noise abatement notice was challenged;
- The premise was capable of abating the noise issues;
- The premises was situated in a vibrant area of the Borough;
- There had been no resident complaints since 2003;
- In 2019 recorded music was added to the licence - The Environmental Health objection at that time was withdrawn;
- The premises offered a lot of employment opportunities;
- The Dolphin Bar was a well established premises in the area;
- Local economy was part of the Sub-Committee's consideration;
- The licence owner was having marital problems with divorce proceedings ongoing;
- The licence holder jointly owned and held the premises licence with his wife It was noted that she was not present at the hearing.

5.9 The Chair asked for clarification in regard to whether the perpetrator had been identified.

5.10 Sarah Clover confirmed that her instruction was that staff knew who the the perpetrator was and had given those details to the Police.

5.11 The Senior Environmental Protection Officer made submissions on behalf of Environmental Protection, highlighting the following:

- The receipt of noise complaints at the premises since 2019;
- On duty on 4 September and witnessed very loud music at the premises;
- Premises owner agreed to commission an acoustic consultant;

5.12 Sarah Clover submitted that the evidence given on behalf of Environmental Protection had not previously been disclosed. Details of complaints had been requested but not received.

5.13 The Senior Environmental Protection Officer confirmed that this evidence had not been disclosed. The Chair advised that he should refer only to specific incidents reported in advance of the hearing. George Wokorach highlighted:

- A number of visits to the premises with loud noise emanating;

- The Owner was in a position to lower the noise at the premises;
- 5.14 The Senior Environmental Protection Officer referred to the fact that noise abatement notice can be serviced based on likely occurrence.
- 5.15 The Licensing Lawyer confirmed that the Defence Lawyer had the right to details of the complaints in order that she could respond to them.
- 5.16 William Davis (Other Person) highlighted the following:
- Loud noise emanating from the premises at late hours, interfering with sleep;
 - Waste behind the property;
- 5.17 Councillor Bell asked for clarification in relation to the request for reduced operating hours.
- 5.18 William Davis confirmed that during the week the request was for 11:00pm or earlier and at the weekend 12:00pm.
- 5.19 The Chair drew the Sub-Committees' attention to the conditions relating to waste.
- 5.20 In response to a question from the Chair, Guy Landenburg confirmed that the Police attended the venue in response to a request from the London Ambulance Service in relation to the incident involving grievous bodily harm. As regards the incident involving sexual assault, the suspect had been taken from the premises by the door supervisors. He confirmed that the Police had not been called by the premises manager on either of these occasions. PC Giles confirmed that she had requested additional CCTV footage in relation to the sexual assault. There had been no responses to the request for CCTV footage. In relation to the grievous bodily harm, the request to attend the premises had been received from the Ambulance Service at 02:04.
- 5.21 Councillor Bell asked for clarification on the preparation of an action plan by the Licence holder following discussions with the Police and why a licence was not on display in 2021.
- 5.22 Sarah Clover stated that Yasar Yildiz's statement outlined that he regretted that he had not progressed the action plan. This was a result of an ongoing acrimonious divorce. Yasar Yildiz confirmed this fact and that a decision in regard to ownership of the premises would be decided soon. Sarah Clover confirmed that the missed action plan related to 2020. She submitted that oversight was not a risk to the public. Further, Yasar Yildiz had relied heavily on his manager who was now deceased. She submitted that the premises could trade compliantly and confirmed that Yasar Yildiz accepted the transgressions he had made. She further submitted that the licence could be suspended until the remedial steps were implemented.
- 5.23 Councillor Gilbert Smyth asked for clarification on the following:
- Whether the identification of the suspect was known;

- Was the premises part of the Hackney nights accreditation scheme and whether it had taken part in pub watch and safety for women schemes;
- How did the victim's statement match the CCTV footage;
- Why was the victim's statement provided on 21st October, a considerable time after the incident;
- In relation to condition 32, he asked for confirmation on whether the noise limiter device was working to officer satisfaction and whether there was an opinion on background music after 23:00;

5.24 Guy Landenburg stated that a suspect had not yet been confirmed. Mismatches between the CCTV and the victim's statement would be explored in any criminal proceedings. He confirmed that it was not unusual for victims in such a case to give a statement at a later date.

5.25 Sarah Clover confirmed that Yasar Yilhiz was a member of 'Pubwatch'. Safety for women could be incorporated into the staff training. She submitted that there was no dispute in relation to what had happened to the victim but the timings were contradictory in the Police statements. Further, the Police had not contacted the staff at the premises regarding the incorrect telephone number provided. She confirmed that noise limiters were used at the premises

5.26 PC Giles stated police staff resources were limited. Yasar Yilhiz had attended a Pubwatch meeting on one occasion in June 2021. She confirmed that it was not unusual for there to be a delay in the preparation of the witness statements.

5.27 Helen Ward - Solicitor confirmed that Yasar Yilhiz could check on details of the online provider. She confirmed that the premises licence was changed in 2019, allowing recorded music at the premises to the extended hours. The extent of the concerns of residents had not been brought to the premises owner's attention.

5.28 The Senior Environmental Protection Officer confirmed that no records were available in relation to the case because of the cyber attack on Hackney Council. He confirmed that if the noise limiter was in place there would not have been noise issues for residents. He confirmed that Environmental Health did not set the sound limiter.

5.29 Sarah Clover made submissions in closing, highlighting the following:

- That there was an element of ambiguity in regard to the incident on 15 October 2021;
- Much had been done by the premises staff to identify the suspect;
- That there was limited police resources;
- Lengthy history of trading at the premises;
- Problems with management and the team at the premises;
- When remedial steps are taken the premises will revert to compliant trading.

5.30 William Davis reiterated in closing that residents wanted a reduction in noise from the premises.

5.31 Guy Landenburg made submissions in closing, highlighting the following:

- Multiple breaches of conditions demonstrating the premises owner's unfitness to promote the licensing objectives;
- The premises owner had multiple opportunities to take remedial steps;
- No action had been taken in relation to undertakings made to the Sub-Committee in 2019;
- Weak management at the premises;
- No firm action plan for improvement at the premises;
- Yasar Yilhiz was not present at the hearing;
- That the licence should be revoked;
- The police consider that a suspension would not solve shortcomings at the premises;

5.32 The Chair asked if there were particular circumstances in relation to the other two applications that would require further consideration. The parties submitted that there were no such particular circumstances. Sarah Clover highlighted that there was a joint licensee who was not before the Sub-Committee. Suba Sriramana confirmed that the joint licensee had been contacted in regard to the premises licence.

5.33 The CCTV evidence was considered in private.

5.34 The Sub-Committee went into private session to decide on the applications.

5.35 The Chair announced the decision of the Sub-Committee in public, in regard to the three applications.

5.36 The Licensing Sub-Committee decided that revocation of the premises licence was appropriate, and a necessary course of action, given the repeated failures to comply with the terms and conditions of the premises licence, and the serious incident that occurred on 15th October 2021 which has been taken very seriously. The Sub-Committee also considered the other options available to it, as detailed in the report. The Sub-Committee was satisfied that none of these options would adequately address the likelihood of crime and disorder re-occurring. They felt that the licensing objectives would continue to be undermined.

5.37 The Sub-Committee heard submissions on interim steps to be taken.

5.38 Guy Landeburg submitted that the interim suspension was in place and that the suspension should continue as this was an inevitable consequence of the Sub-Committee's decision.

5.39 Sarah Clover submitted that the licence holders should be given the opportunity to appeal the decision and to prove themselves pending the appeal. She submitted that there was not a risk to the public and that if the interim suspension remained in place the business would be closed down. She submitted that the Sub-Committee could impose a suspension for a shorter period of time to allow the premises holder to liaise with the Police in regard to any action to be taken for the premises to trade until the appeal.

- 5.40 The Chair stressed that the Sub-Committee had made the decision to revoke the licence because it considered that there was a risk of ongoing harm and that the management could not be trusted. Councillor Smyth concurred with this view. Councillor Bell stated that he had not heard any arguments that would stop the interim steps remaining in place.
- 5.41 The Chair confirmed that the written confirmation of the decision of the Sub-Committee would be circulated the following day.
- 5.42 Guy Landenburg submitted that in light of the decision of the sub-committee the standard review submitted before 15 October 2021 did not now need to proceed.

Decision

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

- Prevention of crime and disorder
- Public Safety
- Prevention of Public Nuisance
- The Protection of Children from Harm

(i) Decision on the Expedited Summary Review:

This is a decision on the three premises licences issued in respect of the Dolphin, Wine Bar and Restaurant, 163 and 165 Mare Street, Hackney, London E8 4AH.

The Licensing Sub-Committee after carefully considering the evidence presented to them at the Summary Review by the Metropolitan Police Service and their representative, the Licence holder and their representative, Environmental Protection and Other Persons (local residents) decided to **revoke** the following 3 premises licences. The reasons for this decision are set out below:

- 1. The Dolphin, 165 Mare Street, Hackney, London E8 4AH - Licence No: LBH-PRE-T-0669**
- 2. The Dolphin, 163 Mare Street, Hackney, London E8 4AH - Licence No: 104306**
- 3. Dolphin Wine Bar and Restaurant, 163 Mare Street, Hackney, London E8 4AH – Licence No: LBH-PRE-T-0906**

It was agreed by the Metropolitan Police Service that the standard review applications submitted to the Licensing Authority before 15th October 2021 have

been dispensed with, and withdrawn.

(ii) Decision on Interim steps for the Dolphin, Wine Bar and Restaurant, 163 and 165 Mare Street, Hackney, London E8 4AH:

After hearing the representations from both the Metropolitan Police Service's representative, and the Licence holder's representative, the Licensing Sub-Committee decided that the interim steps issued on 15th October 2021 shall continue pending any appeal. Given that they did not have confidence in Mr Yildiz's ability as the Licence holder to uphold the licensing objectives, they were not persuaded there were any grounds to suspend the interim steps. They took into consideration the police's ongoing concerns about crime and public safety.

The Reasons for the Decisions: Expedited Summary Review and Interim Steps:

The Licensing Sub-Committee felt after carefully considering the application from the Metropolitan Police Service ("the police") and hearing submissions from their representative, and the representations from the Licence holder, Mr Yasar Yildiz and their representative, and the supporting evidence presented to them decided that revocation of the premises licence was appropriate, and a necessary course of action, given the repeated failures to comply with the terms and conditions of the premises licence, and the serious incident that occurred on 15th October 2021 which has been taken very seriously.

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 crime and disorder re-occurring. They felt that the licensing objectives would continue to be undermined.

The Sub-Committee carefully considered the evidence relating to the serious incident that led to the Summary Review being called by the Metropolitan Police Service. The sub-committee noted that the Licence holder had held the licence for 18 years. However, since 2019 to date the Licence holder demonstrated a pattern of disregard for the conditions on the licence, and the licensing regime which was a concern.

The Sub-Committee took into account that there was no action plan in place to improve the operation of premises even though the police had meetings with the Licence holder raising their concerns.

The Sub-Committee heard that the premises were closed for a period following Covid Regulations. However, when the premises were reopened the Licence holder did not take the failures brought to his attention seriously which is a concern. The sub-committee felt that the Licence holder did not engage with the police to overcome their concerns.

The Sub-Committee took into consideration that the Licence holder, Mr Yildiz allowed the following breaches of the licence to occur, which undermined the licensing objectives:

- i) non-compliance with several conditions on the licence including Issues with the scanner not operating properly, and no training regime in place; #
- ii) failing to comply with licensing and Covid-19 regulations and breaches of statutory notices served on the premises,
- iii) failure to comply with warning letters sent which outlined the consequences if they did not comply,
- iv) failure to report the serious incident that took place on 15.10.21, and evidence that the scene of the incident had been cleaned up before the police arrived.
- v) On 26.09.21, a sexual assault took place at the premises that was reported to the police after the event,
- vi) On 05.09.21, an assault was reported at the premises. The police were not informed by the licence holder.

The Sub-Committee was concerned that despite a serious incident, evidenced by video footage, that was viewed by the sub-committee, no appropriate follow up action was taken by the Licence holder or the management of the premises.

The Sub-Committee felt these breaches of the licence, and the incident that took place are completely unacceptable. The sub-committee has very serious concerns about the ability of the Licence holder, Mr Yildiz to uphold the licensing objectives particularly his ability to ensure public safety. The sub-committee recognised that this was poor judgement on the part of the Licence holder. The Licence holder has a duty to promote the four licensing objectives at all times.

While it was noted that the Licence holder had gone through a difficult period personally the failures to comply with the conditions on the licence and to ensure public safety is not acceptable.

The Sub-Committee heard that prior to the recent incident on 15 October 2021 the police had made an application to the Licensing Authority for a standard review following breaches of the conditions of the premises licence. The Licence holder had a track record of non-compliance in spite of working with the police and the Licensing Authority over a period of time and issues relating to the premises being brought to their attention.

The Sub-Committee had concerns that the licence holder was not taking his duties as licence holder seriously and had no control over what occurred at the premises.

The Sub-Committee did not hear in evidence from the licence holder anything that addressed their concerns about the history and serious incident that occurred at the premises, and they were not provided with any plans to improve the management and operation of the premises.

The Sub-Committee took into account that the licence holder jointly owned and held the premises licence with his wife, Nuvit Yildiz and they are currently going through a

divorce.

It was noted that Nuvit Yildiz was not present at the hearing. The sub-committee heard that Nuvit Yildiz had been sent a notification letter about the review hearing that was sent to the premises, and they heard that there were no other contact details for Nuvit Yildiz.

The Sub-Committee took into consideration that both Licence holders were jointly and severally liable for the operation of the premises, however, it was noted that the Licence holder did not provide contact details for Nuvit Yildiz and the licence holder did not ask for an adjournment. The sub-committee were satisfied that it was appropriate to proceed with making their decision on this Summary Review taking into consideration the section 182 Guidance on reviews arising in connection with crime, and that decisions are made for the benefit of the wider community.

The Sub-Committee when making their decision took into consideration the evidence presented by the Metropolitan Police Service. The evidence relating to this serious incident, together with the breaches of the conditions of the licence, caused the Sub-Committee to have no confidence in the Licence holder, and the current management of the premises. The Sub-Committee felt they were not capable of upholding or promoting the licensing objectives given the issues raised. In addition the Sub-Committee had no confidence that the Licence holder will comply with conditions on the licence given their history of non-compliance with the licence conditions.

6. Temporary Event Notices

6.1 There were no Temporary Event Notices.

End of Meeting.

Duration of Meeting: 2-5pm

Chairperson: Councillor Peter Snell

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