

Licensing Sub-Committee

MINUTES of the OPEN section of the Licensing Sub-Committee held on Thursday 30 August 2012 at 10.00 am at Ground Floor Meeting Room G02B - 160 Tooley Street, London SE1 2QH

PRESENT: Councillor Jeff Hook (Chair)
Councillor Dora Dixon-Fyle
Councillor Althea Smith

**OTHER S
PRESENT:** Councillor Jonathan Mitchell, ward councillor
Maria Daniels, local resident
Daniel Reynolds, local resident
Rupert Jefferies, local resident
Larry Osborne, local resident
Petra Boyd, local resident
Ed Mortimer, local resident
Michael Nelson, local resident
Dan Hills, applicant
Dan Luber, applicant
Graham Hopkins, applicant's representative
Linda Potter, applicant

**OFFICER
SUPPORT:** David Paabo, legal officer
Dorcas Mills, licensing officer
Alan Blissett, environmental protection officer
Andrew Weir, constitutional officer

1. APOLOGIES

Apologies were received from Councillor Sunil Chopra.

2. CONFIRMATION OF VOTING MEMBERS

The three members present were confirmed as voting members. In the absence of the chair, Councillor Jeff Hook, the vice chair of the licensing committee, chaired the sub-committee.

3. NOTIFICATION OF ANY ITEMS OF BUSINESS WHICH THE CHAIR DEEMS URGENT

It was noted that there was a supplemental agenda.

Local residents also requested that they be allowed to distribute a petition. The applicant's representative objected to this petition due to lateness. The council's legal advisor agreed with the objection, and also noted that some names on the petition had not made a representation in the statutory period. Therefore, the sub-committee decided not to accept the petition.

4. DISCLOSURE OF INTERESTS AND DISPENSATIONS

There were none.

5. LICENSING ACT 2003 - GREAT EXHIBITION P.H, 193 CRYSTAL PALACE ROAD, LONDON SE22 9JL

The licensing officer presented her report. Members had no questions for the licensing officer.

The applicant addressed the sub-committee. Members had questions for the applicant. With the permission of the chair, local residents, had questions for the applicant. The ward councillor also had questions for the applicant.

The environmental protection officer addressed the sub-committee. Members had no questions for the environmental protection officer.

Local residents addressed the sub-committee. Members had questions for the residents.

The ward councillor addressed the sub-committee. Members had no questions for the ward councillor.

All parties were given five minutes to sum up.

The sub-committee went into closed session at 11.55am. The meeting resumed at 12.05pm.

RESOLVED:

That the application Zelgrain Ltd for a variation of a premises licence issued under the Licensing Act 2003 in respect of Great Exhibition, 193 Crystal Palace Road, London SE22 be partially granted as set out below:

- That no modifications be made to the current permitted opening hours and licensable activities.

Conditions

In addition to the decision as above, the following conditions will apply:

1. That the use of the Gin Yard area of the premises by patrons shall cease at 9.00pm on each night.
2. That no licensed entertainment activities shall take place in the Gin Yard at any time.
3. That existing condition 315 be modified to refer only to the front external area closing at 10.30pm.

In addition the following conditions shall be removed from the licence:

- Conditions 109, 110, 127, 163, 167, 168, 177 and 178.

Reasons

This was an application to vary the premises licence for the Great Exhibition, a public house on the junction of Crystal Palace Road and Underhill Road.

The variation application originally sought to extend the opening hours and the hours for licensable activities, to remove purported unnecessary conditions and to regularise the use of the external area known as the Gin Yard. Following 48 objections by local residents, and a conciliation hearing, the applicant modified the application to no longer seek further opening hours and further hours for licensable activities. Therefore, this hearing was held to determine the remaining issues to the application.

At the commencement of the hearing the sub-committee addressed a legal issue, namely whether the Gin Yard, which is already being used, has been used in breach of the existing licence conditions. In particular the suggestion was made by residents that the Gin Yard did not have licensing for the consumption of alcohol. The applicant's representative submitted that consumption is not a licensable activity and therefore there has been no breach of the licence. The legal advisor agreed with this submission, and added that the plan to the premises identified the perimeter of the premises and this supported the validity of consumption of alcohol in the Gin Yard.

A second legal issue arose following the commencement of the hearing, namely that a petition of approximately forty persons, some of which had made representations, was sought to be presented by the resident objectors. The applicant's representative objected to this petition due to lateness. The legal advisor agreed with the objection, and also noted that some names on the petition had not made representation in the statutory period. Therefore, the sub-committee decided not to accept the petition and did not rely on it in making its determination.

A third legal issue arose, namely the status of the environmental protection objection. The applicant's representative asserted that as the objection had been withdrawn the email of Ms Sarah Newman dated 21 August 2012 was not admissible. The legal advisor doubted the validity of this assertion, because the recommendations in the email were made following the applicant no longer seeking extended hours and a proper construction of the

email suggests that Ms Newman wanted the suggestions to be taken into account and would not have withdrawn the objection if made aware that the applicant would object to the suggestions in the email. In any event, in making this determination, the sub-committee did not consider it necessary to rely on Ms Newman's suggestions, and instead made its determination based on the representations made by residents. In addition, the sub-committee did not rely on the comments made by Mr Alan Blissett from the environmental protection team, even though the applicant did not object to that evidence.

The sub-committee heard from the applicant and its representatives, who stressed that they wanted to operate the premises in a proper manner and not upset local residents. The sub-committee noted that the current operators have managed the premises since September 2011, and on that basis the sub-committee did not take into account issues in relation to noise nuisance before that time. The applicant notes that the manager of the pub lives on the premises and desires the premises to be family friendly. The sub-committee noted that the company owning the premises licence operates 50 other premises.

The sub-committee heard from three residents who live in the immediate vicinity of the premises. The totality of this evidence was that extreme noise is arising from patrons using the newly established Gin Yard. It was clear from the forceful nature of the submissions made by these residents that the use of the Gin Yard is causing considerable discomfort to themselves, their families and other residents in the vicinity. This evidence was supported by the ward councillor, who also made a representation on his own behalf, and spoke on behalf of the local residents who were in serious opposition to the use of the Gin Yard at all. It was clear to the sub-committee from the evidence given today by residents, and the 48 written objections, that the residents would prefer the Gin Yard not to be used at all. It was asserted that the nature of the premises has changed with the introduction of the Gin Yard, with the shift of patrons to that area, and the sub-committee accepted that this has occurred and notes that the area is a highly residential area.

The sub-committee has given close consideration to prohibiting the use of the Gin Yard for the consumption of alcohol. At present, the area can be used until the closing of the premises. The sub-committee notes the applicant's proposal to close the Gin Yard at 9.30pm Sunday to Thursday and 10.30pm on Friday and Saturday. The sub-committee considers that the very close proximity of the Gin Yard to a large number of residential properties requires a stricter closing time in order to address the licensing objective of the prevention of public nuisance. Therefore, in accordance with its powers under Section 35 of the Licensing Act, the sub-committee has decided that the use of the Gin Yard by patrons shall cease at 9.00pm on each night.

In addition, the sub-committee noted that some of the representations made by residents concerned noise nuisance arising from the front of the premises. This was further emphasised by one of the residents who spoke at today's hearing. The sub-committee was concerned that the existing condition that the front external area close to drinking patrons at 11.30pm was causing significant noise nuisance, and noted that some of the representations stated that crime and disorder were arising at the front of the premises. Therefore, in accordance with Section 35, the sub-committee has decided to modify the condition by reducing the time to 10.30pm by which the front drinking area must be closed to drinking patrons. Therefore the existing condition 315 is modified to refer only to the front external area closing at 10.30pm.

The sub-committee has decided to remove conditions 109, 110, 127, 163, 167, 168, 177 and 178, at the request of the applicant, as these conditions are no longer necessary on the licence, being either redundant or dealt with by other suitable legislation.

For the sake of certainty, no licensed entertainment activities shall take place in the Gin Yard at any time.

In conclusion, the sub-committee considers this determination to be the most appropriate, proportionate and necessary way of addressing the licensing objectives, in particular the prevention of public nuisance.

Appeal rights

The applicant may appeal against any decision to modify the conditions of the licence; and

any person who made relevant representations in relation to the application who desire to contend that:

- a) the variation ought not to have been made; or
- b) that, when varying the licence, the Licensing Authority ought not to have modified the conditions of the licence, or ought to have modified them in a different way

may appeal against the decision.

Any appeal must be made to the magistrate court for the petty sessions area in which the premises are situated. Any appeal must be commenced by notice of appeal given by the appellant to the justices' chief executive for the magistrates court within the period of 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against.

The meeting ended at 1.50pm.

CHAIR:

DATED: