

Licensing Sub-Committee

MINUTES of the OPEN section of the Licensing Sub-Committee held on Monday 6 March 2017 at 1.00 pm at Ground Floor Meeting Room G02B - 160 Tooley Street, London SE1 2QH

PRESENT: Councillor Renata Hamvas (Chair)
Councillor Sunil Chopra
Councillor Sunny Lambe

OTHERS PRESENT: Jane Mitchell-Reilly, applicant for the review
Michael Smith, premises licence holder, CLF Art Café
Saija Kamarainen, premises licence holder, CLF Art Café
David Dadds, legal representative, CLF Art Café
Alex Wilson, premises freeholder, CLF Art Café

OFFICER SUPPORT: Debra Allday, legal officer
David Franklin, licensing officer
Paul Newman, environmental protection officer
Jayne Tear, licensing officer as a responsible authority
Gavin Blackburn, planning enforcement officer
Carolyn Sharpe, public health officer
Andrew Weir, constitutional officer

1. APOLOGIES

There were none.

2. CONFIRMATION OF VOTING MEMBERS

The members present were confirmed as the voting members.

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

There were none.

4. DISCLOSURE OF INTERESTS AND DISPENSATIONS

There were none.

5. LICENSING ACT 2003: THE CLF ART CAFÉ, UNIT A1, A2, & A3, AG1, BASEMENT A, THE BUSSEY BUILDING, COPELAND PARK, 133 COPELAND ROAD, LONDON SE15 3SN

This was a reconvened meeting from 13 December 2016.

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

The environmental protection officer presented their report, as requested by the sub-committee at the time of the adjournment on 13 December 2016. Members had questions for the environmental protection officer.

The licensing officer representing the council as a responsible authority addressed the sub-committee. Members had questions for the licensing officer.

The planning enforcement officer addressed the sub-committee. Members had questions for the planning enforcement officer.

The public health authority officer addressed the sub-committee. Members had questions for the public health authority officer.

The meeting adjourned at 2.34pm to allow the licensing officer time to check the conditions of the licence, as a result of a query raised by the licensing officer representing the council as a responsible authority. The meeting reconvened at 2.48pm.

The legal representative for the premises and the licensee addressed the sub-committee. Members had questions for the legal representative and the licensee.

All parties were given five minutes for summing up.

The meeting went into closed session at 4.27pm.

The meeting resumed at 5.00pm. The chair did not read out the decision of the sub-committee as none of the parties were present.

RESOLVED:

That the council's licensing sub-committee, having considered and application by an other person for a review of the premises under Section 51 of the Licensing Act 2003 in respect of the premises known as The CLF Art Café, Unit A1, A2, & A3, AG1, Basement A, The Bussey Building, Copeland Park, 133 Copeland Road, London SE15 3SN and having had regard to all other relevant representations has decided that they are satisfied that the grounds are not consistent with the licensing objectives and have decided the following:

- To reject this premises licence review application under section 51(4)(a).

Reasons

This was a reconvened hearing from 13 December 2016.

The applicant for the review had advised the sub-committee on at the meeting on 13 December 2016 that the review application had been made in respect of the prevention of public nuisance licensing objective. The premises are situated close to a built up residential housing complex. The applicant complained that the premises are a nuisance due to constant noise pollution caused by drunken very noisy customers. This noise caused by the drunken and noisy customers is elevated on Saturday and Sunday morning when the premises runs as a night club until 06:00. The noise nuisance impinges upon both the applicant's and her family's lives and stated that it was a breach of her Article 8 human rights ("Respect for private and family life). The noise pollution until 6am was excessive, having to endure the noise from music and customers screaming and shouting in a narrow pathway right next door to the their bedroom goes on until 06:00 or 07:00 meaning that it was impossible to open windows or patios doors at home during the summer months. The applicant sought a review of the premises opening times because calls to the council's noise and nuisance team have not addressed the problem.

The environmental protection team (EPT) officer addressed the sub-committee supporting the review application based on the prevention of public nuisance licensing objective and the premises had failed to demonstrate that they would not have an cumulative impact The premises were located in the Peckham cumulative impact policy (CIP) and suggested that due to the complaints, where both advice and warnings (when statutory noise nuisance was witnessed) had been given, the premises licence should be brought in line with Southwark's statement of licensing policy. Southwark's statement of licensing policy provided that nightclubs with sui generis planning permission can operate Friday and Saturday to 03:00, Monday to Thursday until 01:00 and Sundays until 00:00. The premises does not have sui generis planning and in the circumstances the hours permitted for regulated entertainment should be reduced and that regulated entertainment is not permitted after 22:00 unless various planning conditions have been discharged.

Following the direction from the licensing sub-committee on 13 December 2016 the officer from EPT undertook a subjective assessment of crowd control and entertainment noise from the premises on 17 December (between 00:30-01:10). With the balcony door open, crowd noise was clearly audible and disturbing. Music was also clearly audible in the applicant's flat, although not at a level to be classed as a statutory noise nuisance. With the balcony door closed, the music noise was only faint and intermittently audible, shouting from the court yard was still audible. A visit of the premises and its equipment took place on 22 February 2017 and readings of the sound limiters were taken. The applicant advised the EPT officer that if that if the limiter settings were at this level, she would not complain.

The licensing sub-committee heard from licensing as a responsible authority who representation largely concerned the outside courtyard area and referred to incidents from the night time economy team (NTE) visits when officers witnessed extremely large numbers of patrons in the courtyard, on occasions, being in excess of 100 persons. They advised that the premises have evolved into a night club and the conditions recommended by the EPT would go some way to address the noise from the outside area.

The planning enforcement officer addressed the sub-committee and referred to planning permission being granted in respect of the premises and that the premises had operated successfully with no complaints since 2009 when the first planning application was

approved. The officer also advised that whilst the acceptability of an entertainment use at this location has been established, to operate as intended and not cause harm to amenity the conditions placed on the planning permission need to be discharged. Any noise from the entertainment use of the premises could be controlled by the recommended conditions made by the EPT officer.

The public health directorate officer addressed the sub-committee supporting the application for review and expressed concern over the events alleged to have taken place and concern that a local resident claims to have been disturbed by the premises, which would have a negative impact on the resident's health. The officer also supported the conditions recommended by the EPT officer.

The licensee of the premises and their representative addressed the sub-committee. They advised that the review application had been brought under the prevention of public nuisance licensing objective. However, the applicant's complaint amounted to a private nuisance, not a public one. The review was based on one complainant, no statutory nuisance had been witnessed and the recorded complaints were sporadic. Referring to the night time economy (NTE) team log, they noted that there had been three noise complaints in 2011, one complaint in 2014 and five complaints in 2015 and on this basis, the application had to fail. Despite complaints coming from only one individual, the licence holder had carried out considerable works to address the complaint(s). An acoustic barrier was installed in 2015 and the licence holder believed that this addressed the outside courtyard noise issues; the number of complaints recorded in the NTE log suggested that this was the case. Furthermore, additional sound insulation has been installed successfully reducing noise break-out.

Under Section 182 of the Licensing Act 2003 guidance paragraph 2.14 it is a matter for the licensing authority and its responsible authorities, through representations, to consider what constitutes a public nuisance and what is appropriate (and proportionate) to prevent it in terms of conditions attached to specific premises licences. In promoting this licensing objective, it is a matter for the licensing authority and its responsible authorities to focus on the effect the licensable activities have on persons living (and working) in vicinity of the premises. The Licensing Act 2003 does not narrowly define "public nuisance", but it is defined in other legislation and this sub-committee is bound by its common law meaning. The representative for the licence holder referred the committee to AG –v- P.Y A Quarries Ltd [CA 1957 No. 667] in which it was held that any nuisance materially affected the reasonable comfort of life of a class of Her Majesty's subject was a public nuisance; that the sphere of the nuisance might be described generally as "the neighbourhood", but the question whether the local community within the sphere comprised a sufficient number of persons to constitute a class of the public was a question of fact in every case.

The question of public nuisance was also raised in Hope and Glory Public House Ltd, R (on the application of) v City of Westminster Magistrates' Court [2009] EWHC 1996 (Admin) (21 July 2009) in which it was held that "...I do not read Denning LJ's words as meaning that the effect of the public nuisance must be very indiscriminate or very widespread. It simply needs to be sufficiently widespread and sufficiently indiscriminate to amount to something more than private nuisance."

In this case, since 2012, based on the NTE log, there has been one complainant, being the applicant of the review. The sub-committee heard that since 2012 there had been a total of nine complaints, made by the applicant. Statutory noise nuisance was witnessed in 2012 (albeit refuted by the licence holder), when a warning letter was issued.

Paragraph 9.42 of the revised Guidance issued under |Section 182 of the Licensing Act

2003 (March 2015), provides that “*The authority’s determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve*”. The sub-committee found that there was insufficient evidence on persistent, on-going serious nuisance. It appears the applicant had very limited contact with either the licensing or the noise nuisance team detailing her complaints and for them to assess, at the earliest possible time whether a statutory nuisance existed and or how best that nuisance should be abated; diary records detailing the daily or weekly impact on the applicant; There was insufficient evidence to show that other residents either in the same block as the applicant or in the vicinity have any concerns of the management of the premises.

During the course of the EPT testing the sound limiter, the applicant indicated that the levels set were acceptable. The outstanding complaint(s) concerns the outside area. The premises has an accommodation limit of 1050 and the NTE log records that “...There was anywhere from 500 youths in Rye Lane trying to access the premises” (9 November 2012), “Big queues outside...30-40 people trying to get in” (31 May 2014), “Courtyard is packed with people, must be at least 60-80 people outside” (6 July 2014), “..there are 60 people outside and they are unruly” (14 February 2015), “Hundreds of people outside in the smoking area and the space outside Rye Wax” (8 November 2015). It is therefore difficult to believe no other local residents complained about such incidents.

Whilst the sub-committee is unable to make a finding against the premises and thereafter modify the licence with conditions, it is troubled at the potential nuisance created by the premises. The licence holder is therefore encouraged to address the concerns relating to the outside courtyard by way of :

- i. Prohibiting the courtyard area and alleyway for use except for access to and egress from the premises and removing the gazebo structure and tables and chairs should be removed from these areas, and not replaced.
- ii. Patrons not to be allowed to wait or congregate in the courtyard or Bussey Alley to the south of the Bussey building.
- iii. A designated smoking area should be created at the eastern end of Bussey Alley near the two disabled parking spaces dedicated for use by CLF Art Cafe, and smoking should not be allowed in the courtyard or alleyway.
- iv. No drinks, or empty drinking vessels or drinking containers should be allowed out of the building.

These steps are recommendations to assist the licence holder.

Finally, the licensing sub-committee request that there is open dialogue with the applicant (and/or other residents/complainants) and licence holder in resolving noise complaints.

Appeal rights

This decision is not subject to appeal rights under the Licensing Act 2003.

Meeting ended at 5.01 pm

CHAIR:

DATED: