

## Licensing Sub-Committee

MINUTES of the OPEN section of the Licensing Sub-Committee held on Tuesday 8 August 2017 at 10.00 am at Ground Floor Meeting Room G02C - 160 Tooley Street, London SE1 2QH

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**PRESENT:** Councillor Adele Morris (in the chair)  
Councillor Sunil Chopra  
Councillor David Hubber

**OTHERS PRESENT:** Richard Williams, legal representative, Dulwich Picture Gallery  
Andrew MacDonald, applicant, Dulwich Picture gallery  
Ellie Manwell, applicant, Dulwich Picture Gallery  
Bhaskaran Sivakumar, applicant, Bridge Walk Food and Wine  
P. Thittala, legal representative, Bridge Walk Food and Wine  
Mr Kapadia, legal representative, Bridge Walk Food and Wine

**OFFICER SUPPORT:** Debra Allday, legal officer  
Dorcas Mills, licensing officer  
Bill Masini, trading standards officer  
Andrew Weir, constitutional officer

### 1. ELECTION OF CHAIR

It was noted that in the absence of the chair, Councillor Adele Morris would chair the meeting in her capacity as the vice-chair of the licensing committee.

### 2. APOLOGIES

There were none.

### 3. CONFIRMATION OF VOTING MEMBERS

The members present were confirmed as the voting members.

### 4. NOTIFICATION OF ANY ITEMS OF BUSINESS WHICH THE CHAIR DEEMS URGENT

There were none.

**5. DISCLOSURE OF INTERESTS AND DISPENSATIONS**

Councillor Sunil Chopra advised that he had attended events at the Dulwich Picture House in an official capacity when he was the Mayor of Southwark.

**6. LICENSING ACT 2003: DULWICH PICTURE GALLERY, GALLERY ROAD, LONDON SE21 7AD**

The licensing officer presented their report. Members had questions for the licensing officer.

The applicants and their legal representative addressed the sub-committee. Members had questions for the applicants and their legal representative.

The applicant had five minutes for summing up.

The meeting went into closed session at 10.40am.

The meeting resumed at 10.43am and the chair advised the applicant of the decision.

**RESOLVED:**

That the application made by Dulwich Picture Gallery Limited, for a time limited premises licence (1 September 2017 to 8 October 2017), to be granted under the Licensing Act 2003 in respect of the premises known as Dulwich Picture Gallery, Gallery Road, London SE21 7AD is granted as follows:

| <b>Licensable activity</b>   | <b>Hours</b>   |
|--|--|
| The supply of alcohol (for consumption on premises)                      | 1 September to 8 October 2017<br>Monday 12:00 to 21:00<br>Tuesday and Wednesday 12:00 to 22:00<br>Thursday to Saturday 12:00 to 23:00<br>Sunday 12:00 to 22:00 |
| The provision of regulated entertainment in the form of films (indoors): | 1 September to 8 October 2017<br>Friday and Saturday 18:00 to 23:00<br>Sunday 18:00 to 22:00   |
| Operating hours  | 1 September to 8 October 2017<br>Monday 08:00 to 21:00<br>Tuesday and Wednesday 08:00 to 22:00<br>Thursday to Saturday 08:00 to 23:00<br>Sunday 10:00 to 22:00 |

## **Conditions**

The operation of the premises under the licence shall be subject to relevant mandatory conditions and conditions derived from the operation schedule highlighted in Section M of the application form.

## **Reasons**

The reasons for the decision are as follows:

The applicant advised that this application was for a new time limited premises licence for the pavilion which was in the grounds of Dulwich Picture Gallery. In April 2017, Southwark's planning department had granted permission for the pavilion until mid-October 2017, when the structure needs to be removed. The premises wished to utilise the pavilion's usage until this time. It had been an oversight that the original time limited application did not extend until 8 October, and this application rectified the position.

The current application mirrors the existing time limited licence and will run from 1 September to 8 October 2017. This application will effectively extend the current licence, but has removed the additional regulated entertainment for live and recorded music and altered the designated premises supervisor.

It was accepted that there had been complaints from local residents about noise nuisance that had occurred on 10 June 2017 but this was with regard to a temporary event notice and the use of a marquee in the meadow. There had been no complaints of the operation of the licence and in any event, there had been significant consultation with the local residents.

The licensing sub-committee noted the representations from two local residents who were not in attendance at the meeting, but raised complaints of noise issues with the current time limited licence and who feared that granting this application would extend that nuisance.

The licensing sub-committee were satisfied that the noise complaints were confined to a temporary event notice, not the time limited licence. In any event, two subsequent temporary events had proceeded with no objection notice being served by the environmental protection team, nor did they submit a representation to this application. Since the incident on 10 June and the residents representation of 10 and 11 July 2017, there had been further consultation with the local residents and the premises believed that the concerns raised had been resolved amicably. This time limited licence would extend the use of the pavilion by a further five weeks and it's usage would very much be weather dependent. In the circumstances, it would be appropriate and proportionate to grant this application.

## **Appeal rights**

The applicant may appeal against any decision:

- a) To impose conditions on the licence
- b) To exclude a licensable activity or refuse to specify a person as premises supervisor.

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

- a) The licence ought not to be been granted; or
- b) That on granting the licence, the licensing authority ought to have imposed different or additional conditions to the licence, or ought to have modified them in a different way

may appeal against the decision.

Any appeal must be made to the Magistrates' Court for the area in which the premises are situated. Any appeal must be commenced by notice of appeal given by the appellant to the justices' clerk 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.

**7. LICENSING ACT 2003: BRIDGE WALK FOOD AND WINE, 3 LONDON BRIDGE WALK, LONDON SE1 2SX**

The licensing officer presented their report. Members had questions for the licensing officer.

The applicant and their legal representatives addressed the sub-committee. Members had questions for the applicant and their legal representatives.

The trading standards officer addressed the sub-committee. Members had questions for the trading standards officer.

The Metropolitan Police Service representative addressed the sub-committee. Members had questions for the police.

All parties were given five minutes for summing up.

The meeting went into closed session at 12.02pm.

The meeting resumed at 12.39pm and the chair advised all parties of the decision.

**RESOLVED:**

That the application made by Bhaskaran Sivakumar for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Bridge Walk Food and Wine, 3 London Bridge Walk, London SE1 2SX be refused.

**Reasons**

The reasons for the decision are as follows:

The licensing sub-committee heard from the representative for the applicant who advised that there had previously been a premises licence issued in 2011, but the company name that the premises licence was in, namely, Bridge Walk Food and Wine Limited dissolved in 2012. No one informed the licensing authority and the business had since been transferred to different owners on two occasions, firstly in 2013 and again, in October 2016 to the applicant. When the applicant bought the business in 2016, his solicitors failed to advise him of the need to transfer the premises licence. For this, there was a negligence claim being

pursued by the applicant against his then solicitors. The representative advised that the applicant was not culpable of events pre-October 2016.

Because the licensing authority had not issued the licence renewal letter to the current owners, the applicant only became aware of the lack of licence when trading standards inspected the premises in March 2017. As soon as the applicant became aware there was no premises licence in place, he stopped selling alcohol with the exception of applying for three temporary event notices ("TENs"). The business was wholly dependent on the sale of alcohol and he had incurred considerable loss because of the lack of licence.

Since October 2016 the applicant had used his best endeavours. He made two of the three staff members redundant and inherited a single member of staff, but was not aware that the member of staff was an illegal worker. As of March 2017, the applicant was taking active steps in vetting his employees.

The licensing sub-committee heard from the trading standards officer who advised that because the premise is situated within the Borough and Bankside cumulative impact zone there is a presumption to refuse the licence, unless the licensing authority is satisfied the premises will not have an adverse effect on the licensing objectives. They advised the sub-committee that they could not be satisfied that this would be the case, nor could it be confident with the overall management of the premises.

Trading standards visited the premises twice in April 2017 firstly, in response a complaint that tobacco was being offered for sale and on display contrary to The Tobacco Advertising and Promotion Display (England) Regulations 2010, which resulted in them being issued with advice and a warning. It was on this occasion that it transpired that the premises had been operating without a licence since July 2012 and notwithstanding the applicant neither attempted to transfer the licence, or apply for a premises licence in his own name. This is a basic, yet serious criminal offence under the Act. A visit on 19 April 2017 by trading standards and the police found alcohol not being sold. The member of staff present, who had previously sold alcohol, not only did not have a personal licence (a condition on the 2011 premises licence), but also the member of staff and only person working in the shop, was an illegal worker who was wanted by the UK Border Force because he was an absconder and had overstayed. He was subsequently arrested.

The licensing sub-committee heard from the Metropolitan Police Service who objected to the grant of a stating that it would be prejudicial to the prevention of illegal working and immigration crime and also referred to the 19 April 2017 visit to the premises.

The licensing sub-committee noted the representation from the public health authority which had been withdrawn after conciliating that no beers, lagers, ciders or similar alcohols to be sold in cans with an Alcohol By Volume (ABV) in excess of 6.5% or in bottles larger than 750ml with an ABV in excess of 6.5% and the premises closed at 23:00 hours, which the applicant agreed to.

This licensing sub-committee are astounded that these premises has operated without a licence for just short of five years and find it quite unbelievable that the applicant assumed that the premises licence simply transferred into his name, without application, signature or receipt of a new licence. Whilst the applicant is not accountable for the lack of licence for the period from 2012 to October 2016, the premises licence that was displayed in the premises clearly states the name of the designated premises supervisor, and this does not specify the applicant. These very simple checks would have been explained during the

personal licence course, which the applicant stated he attended approximately one to one and a half years ago.

The applicant has also demonstrated no due diligence in the management of the business. The applicant allowed alcohol to be sold without a premises licence being in place, but if he had read the 2011 premises licence, which the applicant claimed he relied on read:

**“100.** No supply of alcohol may be made under the Premises Licence –

- a. At a time when there is no Designated Premises Supervisor in respect of the Premises Licence; or
- b. At a time when the Designated Premises Supervisor does not hold a Personal Licence or his Personal Licence is suspended.

**101.** Every supply of alcohol under the Premises Licence must be made, or authorised by, a person who holds a Personal Licence”.

The member of staff was not a DPS, nor a personal licence holder. He was however, an illegal worker. When questioned about this, the applicant stated he *‘didn’t know’* this as he had been employed by the previous owner. Further questions were asked about the employee during which it emerged that he had no employment contract but worked 15 hours per week, was not paid the minimum wage, did not receive a payslip, paid in cash and was not registered PAYE or for national insurance. This, the sub-committee found was unacceptable, and further evidence of the applicant’s poor management of the premises.

The licensing sub-committee were directed to the case East Lindsay District Council –v- Hanif (trading as Zara’s Restaurant and Takeaway) [2016] EWCH 1265 (Admin) where the sub-committee were satisfied that when the premises licence holder did not take the appropriate checks of staff members with immigration issues and allowed staff to continue without making those appropriate checks, this was a justification to revoke a premises licence. The same must be true in respect of issuing a premises licence.

Finally, the Section.182 Licensing Act 2003 guidance (issued April 2017) paragraph 8.40 provides that where a cumulative impact policy applies in an area, and in this case, Borough and Bankside, applicants are expected to demonstrate an understanding of how the policy impacts on their application; any measures they will take to mitigate the impact; and why they consider the application should be an exception to the policy and expected to include positive proposals in their application on how they will manage any potential risks. This, the applicant failed to do in either the application, or his oral presentation.

It is for these reasons, this licensing sub-committee refused this premises licence.

In reaching this decision the sub-committee had regard to all the relevant considerations and the four licensing objectives and considered that this decision was appropriate and proportionate.

### **Appeal rights**

The applicant may appeal against any decision:

- a) To impose conditions on the licence.
- b) To exclude a licensable activity or refuse to specify a person as premises supervisor.

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

- a) The licence ought not to be granted; or
- b) That on granting the licence, the licensing authority ought to have imposed different or additional conditions to the licence, or ought to have modified them in a different way

may appeal against the decision.

Any appeal must be made to the Magistrates' Court for the area in which the premises are situated. Any appeal must be commenced by notice of appeal given by the appellant to the justices' clerk 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.

**8. LICENSING ACT 2003: LICENSING ACT 2003: HAWKES, 92 DRUID STREET, LONDON SE1 2HQ**

It was noted that this item had been conciliated prior to the meeting.

The meeting ended at 12.40 pm

**CHAIR:**

**DATED:**