

Licensing Sub-Committee

MINUTES of the OPEN section of the Licensing Sub-Committee held on Friday 15 September 2017 at 10.00 am at Ground Floor Meeting Room G02C - 160 Tooley Street, London SE1 2QH

PRESENT: Councillor Renata Hamvas (Chair)
Councillor Sunil Chopra
Councillor Sandra Rhule

OTHERS PRESENT: David Dadds, legal representative, Peckham Food and Wine
Safeer Abbas Shah, representative from Peckham Food and Wine
Ian Clements, Metropolitan Police Service
Mark Lynch, Metropolitan Police Service
Parvin Minhas, Home Office

OFFICER SUPPORT: Debra Allday, legal officer
Wesley McArthur, licensing officer
Jayne Tear, licensing officer as a responsible authority
Richard Kalu, licensing officer
Bill Masini, trading standards officer
Rodney Frederick, legal officer (observing)
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: EVERYMAN CINEMA, 1 BANK END, LONDON SE1 9BU

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

6. LICENSING ACT 2003: PECKHAM FOOD AND WINE, 176 PECKHAM HIGH STREET, LONDON, SE15 5EG - TRANSFER APPLICATION

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

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

The Metropolitan Police Service, objecting to the application, addressed the sub-committee. Members had questions for the police representative. The chair also allowed the applicant's legal representative to ask questions of the police.

Both parties were given five minutes for summing up.

The meeting adjourned at 12.15pm for the members to consider their decision.

The meeting resumed at 12.22pm and the chair read out the decision of the sub-committee.

RESOLVED:

That the licensing sub-committee, having considered the objection notice submitted by the Southwark Police Licensing Office relating to the application submitted by Safeer Abbas Shah to transfer a premises licence under the Licensing Act 2003 in respect of the premises known Peckham Food & Wine, 176 Peckham High Street, London SE15 5EG, has refused the transfer application.

Reasons

The licensing sub-committee heard from the representative for the applicant for the transfer who advised that the only basis upon which the application could be refused was is there was an exceptional reason for the application's refusal. The representative referred the sub-committee to various paragraphs to Section 182 of the Licensing Act 2003 guidance (April 2017), in particular, paragraphs 8.99 and 8.100. The applicant had a personal licence and as such could be considered a fit and proper person over the age of 18. They advised that he was of good character and had been convicted of no relevant offences. There was also no intelligence that the applicant was involved in criminal conduct. The applicant had a legitimate intention to carry on a business. The representative for the applicant stated that the licensing authority was using the police as a conduit, which contradicted Section 42 of the Licensing Act 2003. It was not unusual for someone new to purchase the business, particularly when review applications were made.

Companies House showed the change in management and shareholder details. The licensing sub-committee were urged to consider the application impartially.

The Metropolitan Police Service stated that in their opinion there were exceptional circumstances to object to the transfer of this premises licence, on the grounds of crime and disorder. The premises were subject of a review application submitted by Southwark trading standards. Companies House showed significant changes during the life of Peckham Food & Wine limited. A large number of documents were received by Companies House (for filing in electronic format) on 27 July 2017 and showed that all three directors resigned after the review was submitted by trading standards (on 19 June 2007), with all directors apparently resigning on 1 May 2017. On the same day (1 May) "SI" was re-appointed as a director that very day and resigned again on 27 July 2017. It also showed on 27 July 2017 "KI" served a notice of ceasing to be a person with significant control with effect from 1 May, indicating that from 1 May until 27 July there was no one in significant control. On 27 July the applicant was appointed as sole director. The next day, on 28 July, a new company, Ya Sir Minimarket Limited, was incorporated where the applicant was one of two directors. The other new director of this company was one of the people managing the premises on a day to day basis when the problems arose that led to the review. Furthermore, a check on the history of the company showed the applicant as being the company secretary from 30 May 2007 until his resignation on 30 April 2009.

Further still, on 10 August 2017 the transfer application was received from the applicant just one day before the review application. The review application was re-scheduled for 22 August 2017. On this date (22 August), MI was appointed as a director (backdated to 17 July 2017) and was terminated the very same day. The Metropolitan Police were of the view that this transfer application was a tactic used to circumvent the provisions and objectives of the Licensing Act 2003 in preventing the premises licence being revoked or addressed in some other way.

The applicant's representative accepted that the applicant's brother was the leaseholder to the premises, the previous licence holder and designated supervisor, KI was the applicant's wife and the two other previous directors of the company (SI and SY) were also family members.

The licensing sub-committee considered all written and oral representations before it. Section 42(6) of the Licensing Act 2003 and Section 182 of the Licensing Act 2003 guidance (April 2017) allows the police in exceptional circumstances to object to a transfer where they believe the transfer may undermine the crime prevention objective.

Paragraphs 89 and 90 of Southwark's statement of licensing policy details the concern and practice of transfer applications of premises licence being made immediately following (or in this case before) an application for a review. In such circumstances the licensing authority would expect to have sight of documented proof of transfer of the business/lawful occupancy of the premises, to the new proposed licence holder to support the contention that the business being under new management control.

Neither the applicant nor his representative provided this documentation. The applicant's representative is of the view that these paragraphs are unlawful and incompatible with the Licensing Act 2003. Paragraph 14.56 of the Section 182 guidance recommends that statements of licensing policy should provide clear indications of how the licensing authority will secure the "proper integration of its licensing policy with local crime prevention [planning, transport, tourism, equality schemes, cultural strategies and any

other plans introduced for the management of town centres and the night-time economy]. Many of these strategies are not directly related to the promotion of the licensing objectives, but, indirectly, impact upon them. The licensing sub-committee are of the view that paragraphs 89 and 90 of its policy, fall under this category. It is also reminded that whilst it is expected to have regard to the statement licensing policy for their area, it is essentially guidance and may depart from its own policy if the individual circumstances of any case merit such a decision in the interests of the promotion of the licensing objectives.

The applicant's representative made the most incriminatory comment by referring to paragraph 8.99 of the Section 182 guidance which provides: "In exceptional circumstances where the chief officer of police believes the transfer may undermine the crime prevention objective, the police may object to the transfer. The Home Office (Immigration Enforcement) may object if it considers that granting the transfer would be prejudicial to the prevention of illegal working in licensed premises. Such objections are expected to be rare and arise because the police or the Home Office (Immigration Enforcement) have evidence that the business or individuals seeking to hold the licence, or businesses or individuals linked to such persons, are involved in crime (or disorder) or employing illegal workers".

Companies House records show the movement of personnel in the business known as Peckham foods & Wine Limited as being frequent; some personnel have been appointed and resigned on the very same day. The applicant has links with the previous directors, and these persons are involved with crime and employing illegal workers. The applicant may now show as being the sole director and shareholder of the company, the history does not give confidence that it will remain in his name, particularly in view of a second company being incorporated and operating from the same premises.

The allegations contained in the review application are extremely serious history and as a matter of due diligence, the applicant would be expected to demonstrate sufficient distance from the previous poor management practices, including the removal of all previous staff, which he has failed to do. It is also noted that this same member of staff is a co-director of the second company operating from the premises, Ya Sir Minimarket Limited.

In the circumstances, this licensing sub-committee is satisfied that the evidence presented provide sufficient exceptional circumstances to reject this application and considers it necessary for the promotion of the crime prevention objective to do so.

In reaching this decision the sub-committee had regard to all the relevant considerations and the four licensing objectives in addition to the provisions of the Human Rights Act and that this decision was appropriate and proportionate in order to address the licensing objectives.

Appeal rights

The applicant may appeal against any decision:

- a) To refuse the application to transfer the premises licence
- b) To refuse the application to specify a person as premises supervisor.

Any person who submitted a relevant objection in relation to the application who desire to contend that:

- a) That the application to transfer the premises licence ought not to be granted or
- b) That the application specify a person as premises supervisor ought not to be granted

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.

The meeting adjourned at 12.25pm and reconvened at 1.15pm.

7. LICENSING ACT 2003: PECKHAM FOOD AND WINE, 176 PECKHAM HIGH STREET, LONDON SE15 5EG - REVIEW

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

The trading standards officer, the applicant for the review, addressed the sub-committee. Trading standards also called on a police officer as a witness. Members had questions for the trading standards officer.

The licensing officer representing the council as a responsible authority addressed the sub-committee. They advised that they supported the review. Member had questions for the licensing officer.

The representative from the Home Office addressed the sub-committee. Members had questions for the Home Office representative.

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

All parties were given five minutes for summing up.

The meeting adjourned at 2.47pm for the members to consider their decision.

The meeting resumed at 3.15pm and the chair read out the decision of the sub-committee.

RESOLVED:

That the council's licensing sub-committee, having considered an application made under Section 51 of the Licensing Act 2003 by the council's trading standards service for the review of the premises licence issued in respect of the premises known as Peckham Food and Wine, 176 Peckham High Road, London SE15 5EG and having had regard to all other relevant representations has decided it necessary for the promotion of the licensing objectives to revoke the licence.

Reasons

The reasons for this decision are as follows:

The licensing sub-committee heard from the trading standards officer who advised that the licence to the premises Peckham Food and Fine allows alcohol to be sold 24 hours per day, seven days per week but does require there to be a personal licence holder on the premises and on duty at all times that alcohol is supplied (condition 341). During the course of trading standards investigation into the premises, the premises licence holder and designated premises supervisor (DPS) was Kiran Israr ("KI"). The business operates under Peckham Foods and Wines Ltd when there were three female directors, KI, SY and SI. Following a complaint from a member of the public about alleged counterfeit cigarettes being bought from this premise, trading standards carried out a joint visit with the Metropolitan Police on 23 November 2016 to check compliance with the premise licence, trading standards legislation and other criminality such as employing illegal workers.

During that visit a cupboard was discovered at the back of the shop that contained a single mattress. There was a lockable door and the "cupboard" had a toilet at the back. There were no windows and the floor was bare concrete. There was a small electric heater on the floor in addition to a fan. Two men were sleeping there. One was on the mattress and one was on the floor. Both were arrested in respect of immigration matters. Behind the counter was a personal licence holder, AG. A bottle opener was behind the counter which was seized by the police as suspected at being used to open bottles of alcohol contrary to condition 125 of the premises licence. This condition is intended to stop/reduce street drinking, which is a problem in the vicinity. No training records were available for inspection in breach of condition 326 of the premises licence. During the course of this investigation, no records were ever made available to trading standards making it reasonable to assume no age verification scheme was in operation and/or no training had been given to workers.

During the course of this inspection, trading standards found 10 x "Apple" style phone chargers on sale, identified as counterfeit. No purchase invoices have been supplied to trading standards for these items. During this visit AA arrived at the shop stating that he was the manager; he gave exactly the same home address as AG.

Trading standards have been concerned for a significant time of the sale of super strength beers, lagers and ciders because of the harm they cause to those drinking them, which generally have serious alcohol addiction and the anti social behaviour and crime that often goes with it. The government has sought to use price as a way of reducing consumption and therefore drinks with an ABV of 7.5% and above attract a proportionately higher duty. Trading standards have identified this to be a problem in Southwark with retailers often offer these drinks for sale without any price being displayed, (contrary to a requirement under pricing legislation) and then sell either below the duty price or below what a legitimate cash and carry would sell it to a retailer for, which suggests retailers have obtained items from an illegal source where duty has been evaded. There was a significant quantity and variety of these drinks offered for sale at this premise but no prices were displayed. There was also a significant quantity of those drinks near to the cupboard referred to earlier. The officer therefore served a notice requiring the business to reduce traceable invoices for these drinks.

A further visit was carried out by trading standards and the police on 8 February 2017. A test purchase was made of Carlsberg Special Brew in advance of the visit. The Carlsberg Special Brew cans were not price marked. The seller ("NM"), sold the can for £1.40, being

25 pence above the duty price (duty for the year 2016-2017 was £1.15). Officers asked NM for his manager. NM immediately went to the back of the shop and locked an internal door preventing officers from gaining access. Police parked in a police vehicle immediately at the back of the shop and noted the rear door to the shop was trying to be opened. Eventually the internal door was opened and NM was identified as an illegal worker and was arrested. NM said he started at 6am and was paid £30 for an 8 hour shift, equating to less than £4.00 per hour. Checks showed he had breached a Visitor's Visa issued in 2006 and was not permitted to work and not authorised to sell alcohol – contrary to condition 101 of the premises licence.

On the premises, sleeping on the mattress in the cupboard, was one of the men arrested on 23 November 2016. It was evident there was clothing belonging to more than one person. The CCTV was not working properly. Concerning the price charged for the super strength beer, only some of the invoices have been produced. The sub-committee was invited to conclude that an unknown proportion had been acquired from illegal sources where duty had been evaded.

On 2 March 2017, trading standards visited the premise because the requested invoices had not been received. Two males were working behind the counter. AG, who produced his personal licence and one other who refused to give his details and left the shop. CCTV was still not working (breach of conditions 288 and 289). The manager, AA attended the premises, stating that he said he ran the business and had tried to email through the invoices to the officer, but had not been received as an incorrect email address had been used. These were later sent to the correct mail address, but found to be indecipherable. That email gave the senders name as "AM". AA stated that KI had very little to do with running the business. Examination of business invoices showed that a number of different individuals held accounts with cash and carry businesses.

On 5 April 2017 a further visit took place with trading standards and the police made. Another illegal worker was working in the shop. He was arrested for immigration offences. The CCTV was still not working (breach of conditions 288 and 289).

A further visit was carried out on 26 April 2017 when a test purchase of alcohol was made. AG was in the shop working behind the counter when the test purchase was made. AG again he produced his personal licence but the Police carried out an immigration check on him. It transpired that from 12 December 2013 he had been an "absconder" and was duly arrested. Amongst other things, he was not permitted to work. Once again, the CCTV was not working (breach of conditions 288 and 289). The CCTV had been switched off, but even after switching it on, the CCTV was not fully operational.

On 20 May, trading standards carried out a further visit with Immigration Officers. AG was seen walking out of the shop. The immigration officers ran after him and arrested him. He returned to the shop and denied he had been working. The CCTV was checked and it was clear he had been working that day. The other person in the shop was "YS" who was stressed by the further visit and the responsibility of visits from various enforcement agencies. Another bottle opener was found on the counter by the till (breach of condition 125) and was seized

Trading standards advised that they had no confidence whatsoever with the premises licence holder and urged the licensing sub-committee to revoke the licence.

The officer representing licensing as a responsible authority addressed the sub-committee

and stressed her concerns of the number and diversity of alleged criminal offences witnessed by trading standards officers and other enforcement agencies. The officer highlighted that several different people had been working at the premises and that there has never been any person held accountable such as the DPS or licensee available at the premises to discuss the concerns regarding breaches or license conditions or other criminal activity. Because of the extent of offending, licensing as a responsible authority concluded that they had no faith that the licensing objective being promoted and fully supported the revocation of the licence

The licensing sub-committee heard from an officer from the Home Office who confirmed that illegal workers had been encountered at the premises. As a result, a £20,000 civil penalty had been issued, initially incorrectly to AA, but this was rectified and re-issued to Peckham Food and Wine Limited. The officer confirmed that the current licence holder and DPS had made contact and a payment plan had been agreed. The office also confirmed that two of the three directors at that time had no valid leave.

The licensing sub-committee heard from the representative for the current licence holder and DPS for the premises, albeit, the transfer application had been refused which the representative said would be appealed. The history of the premises as set out by the responsible officers was accepted and rather consider the various breaches, wished to concentrate on what could be offered to promote the licensing objectives. He reminded the committee that the purpose of a revocation was not to be punitive. Whilst his client had links with the previous owner (and DPS) in addition to the directors, it did not follow that his knew what was going on in the business. He did not know the extent his wife was involved. He pair were largely estranged and she was an individual in her own right. His client had been abroad for most of the last 12 months. His client was a personal licence holder and was of good character. Training had been provided to all staff and there was now currently three personal licence holders employed, with an additional two about to undertake the course. His client was now the sole director and sole shareholder of Peckham Food and Wine Limited. It was a matter to look at activities of concern and find a resolution which is both appropriate and proportionate.

A list of proposed conditions was submitted to the sub-committee and the responsible authorities. The schedule of conditions offered was largely no more than what a responsible operator should be already do. Whilst the licence holder could not be held account for any of the wrong-doing witnessed by trading standards, a period of suspension was also offered.

This was offered, not as a punitive measure, but as a deterrent to other operators. Because a 24 hour licence was extremely generous and that the 24 hour operation allowed illegal workers to gain temporary shelter, it was suggested that the premises may think it prudent to curb its operating hours. This was refused. When questioned on the super strength beers, lagers and ciders, the premises would only consider a ban on those with an ABV of 6.5 % and also, would seek the sale of the more premium brands.

During the course of this trading standards investigation, six visits were carried out with the premises and on all occasion illegal workers have been present. The premises has operated with a total disregard to the licensing objectives in addition to the law relating to the employment of workers both in terms of those having the right to work and the poor payment made. This licensing sub-committee agree that the premises has effectively operated as a modern form of slavery with appalling sleeping conditions also being provided. By operating a 24 hour, seven days a week business, the shop front door is never closed meaning people can come and go at any time with some taking refuge. The

then licence holder and DPS has not engaged with the authorities and have shown little interest or involvement with the day to day running of the business and has allowed and/or instructed the business to be run in this illegal manner.

Whilst the current licence holder and DPS claims that he is now the sole director and shareholder, Companies House records shows the extremely regular movement of personnel in Peckham foods & Wine Limited. Some of the appointments and resignation have taken place on the same day. The licence holder has links with the previous directors, and these persons have been involved in the poor management and illegal practices at the premises of crime and employing illegal workers. He may show as being the sole director and shareholder of the company, but the history of this company does not give this licensing sub-committee confidence that it will remain in his name, particularly in view of the dormant second company being incorporated and operating from the same premises. Further, the licence holder has failed to demonstrate a sufficient distance from these previous poor management practices, including the removal of all previous staff, since it is noted that this same member of staff is a co-director of the second company operating from the premises, Ya Sir Minimarket Limited. In these circumstances, the premise licence is therefore revoked.

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

This decision is open to appeal by either:

- a) The applicant for the review
- b) The premises licence holder
- c) Any other person who made relevant representations in relation to the application

Such appeal must be commenced by notice of appeal given by the appellant to the justices' clerk for the Magistrates' Court for the area within the period of 21 days beginning with the day on which the appellant was notified by this licensing authority of the decision.

This decision does not have effect until either

- a) The end of the period for appealing against this decision; or
- b) In the event of any notice of appeal being given, until the appeal is disposed of.

The meeting ended at 3.17pm.

CHAIR:

DATED: