

## Licensing Sub-Committee

MINUTES of the OPEN section of the Licensing Sub-Committee held on Tuesday 27 March 2018 at 10.00 am at Ground Floor Meeting Room G02C - 160 Tooley Street, London SE1 2QH

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**PRESENT:** Councillor Renata Hamvas (Chair)  
Councillor Sunny Lambe  
Councillor Maria Linforth-Hall (reserve member in attendance)

**OTHERS PRESENT:** Jane Allen, applicant, Elephant Park  
Alan Thomas, legal representative, Elephant Park  
Jason Swan, sound consultant, Elephant Park  
G. MacCarthy, licensee, Sir Robert Peel  
P. Lonergan, Sir Robert Peel  
Angus Gloag, legal representative, Sir Robert Peel  
P.C. Graham White, Metropolitan Police Service  
P.C. Mark Lynch, Metropolitan Police Service

**OFFICER SUPPORT:** Charles Forest, legal advisor for the sub-committee  
Ken Andrews, environmental protection team officer  
Jayne Tear, licensing officer as a responsible authority  
Andrew Heron, licensing officer  
Andrew Weir, constitutional officer

### 1. APOLOGIES

Apologies were received from Councillor Bill Williams. Councillor Maria Linforth-Hall attended as the reserve member.

### 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

Councillor Sunny Lambe advised that he had a non pecuniary interest. He advised that he had dealt with Anthony Gold Solicitors, the solicitors representing the applicant, within the last twelve months.

#### 5. LICENSING ACT 2003: ELEPHANT PARK, ELEPHANT ROAD, LONDON SE17 1UB

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

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

The environmental protection officer addressed the sub-committee. Members had questions for the environmental protection officer.

Both parties were given five minutes for summing up.

The meeting adjourned at 11.45am for the members to consider their decision.

The meeting resumed at 12.20am..

The chair advised all parties of the sub-committee's decision.

#### **RESOLVED:**

That the application made by Elephant Park Estate Management Company Limited for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Elephant Park, Elephant Road, London SE17 1UB is granted as follows:

|   |   |
|---|---|
| The provision of regulated entertainment in the form of films (both indoors and outdoors)   | Monday to Sunday from 09:00 to 22:30            |
| The provision of regulated entertainment in the form of live and recorded music, plays, performances of dance and anything of a similar description (both indoors and outdoors) | Monday to Sunday from 09:00 to 22:30            |
| Opening Hours   | Monday to Sunday from 07:30 to 00:00 (midnight) |

#### **Conditions**

1. That the maximum capacity of the premises shall not exceed 1500 persons (not including staff and performers)

2. That for each event where licensable activities are taking place, a risk assessment shall be undertaken to assess the need for:
  - a) SIA registered door supervisors;
  - b) a noise impact assessment;
  - c) Emergency evacuation procedures.
3. That litter shall be collected and removed from the site as soon as practicably possible after all events
4. That the licensee shall ensure that external operators providing licensable activities at the premises are issued with an agreement for use of the premises, or part thereof. This agreement shall include the conditions attached to the premises licence.
5. That where the number of persons predicted to attend the event (excluding security, staff, performers and employees) exceeds 499, unless otherwise agreed with the Environmental Health Team, the licence holder shall produce:
  - a) A Noise Management Action Plan detailing control measures for anything associated with the event for example (but not necessarily limited to) amplified sound levels at source and the facades of residential properties likely to be affected, stage erection / dismantling times, generator locations and operating levels / times, vehicle movements for each event / function;
  - b) The Noise Management Action Plan shall be implemented and adhered to prior to and during the event
6. That the event organiser or security representatives thereof shall make regular patrols at no less than hourly intervals around the perimeter of the premises when regulated entertainment is taking place. Noise levels shall be adjusted to ensure local residents are not disturbed by excessive noise break out.
7. That all stewards and SIA registered door supervisors must be readily identifiable when working at the venue.
8. That when SIA registered door supervisors or security staff are to be employed, they will be employed in a minimum ratio of 1 per 250 customers.
9. That notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
10. That no sound emanating from regulated entertainment shall be audible a metre from the façade of the nearest noise sensitive premises between 2300 and 0700 hours.
11. That an incident record shall be maintained by the park management company that details incidents that occur in or in the immediate vicinity of the premises. This shall include any incidents of disorder, seizures of drugs or offensive weapons, any faults in the CCTV system, and ejections from the premises as a minimum.
12. That the incident record shall be kept on the premises and be available for inspection by the police or an authorised officer of the Licensing Authority at all

times the premises is open.

13. That a telephone number for the premises, or a responsible member of staff on duty, shall be displayed so that it is visible from the public highway for members of the public to lodge complaints.
14. That deliveries and collections (including refuse and / or recycling collections) associated with the premises shall be arranged between the hours of 08:00 to 22:00 only. Empty bottles and non-degradable refuse shall remain in the premises at the end of trading hours and will not be taken out to the refuse point between the hours of 22:00 and 08:00.
15. That the licence holder shall take all reasonable steps to ensure that there is no unauthorised advertising of events to be held at the premises.

### **Reasons**

The reasons for this decision are that the licensing sub-committee are satisfied that the proposed conditions promote the licensing objectives.

In relation to the prevention of public nuisance, the sub-committee were satisfied that due to the nature of the most of the events as described by the applicant, the conditions would ensure acceptable levels of noise. When considering the other licensing objectives, the committee felt that the conditions relating to risk assessment, security and safety would ensure that the park was safe for attendees. The committee were mindful that at any time people are free to bring alcohol onto the site because it is a public park.

The licensing sub-committee heard from the representative for the applicant who advised that the purpose of park was to run free and largely low-key and community based events. The applicant under temporary event notices had previously laid on many similar events at the park where no noise complaints were made by anyone including nearby residents. The Applicant relied on an expert noise assessment report which stated that the maximum level of noise would be expected to be 75db 5 metres from the stage. The licensing sub-committee also watched a short video provided by the applicant which showed events likely to take place at the park under the licence and the expected noise they would cause. The applicant took the licensing sub-committee through a number of the proposed conditions which were said to promote the licensing objectives.

The licensing sub-committee heard from the environmental protection team officer, who had made representations in respect of the application. They informed the sub-committee that the park was located in a sensitive residential area and doubted whether the licensed activities could realistically, or at least enjoyably, be undertaken within the noise limits contained within the expert noise assessment. They also stated that the noise from the people at these events will add to that being caused by the licensed activities and also the duration of the noise should be borne in mind.

The licensing sub-committee considered all of the oral and written representations before it.

It also had regard to all relevant considerations (including local and national policy), the four licensing objectives and was mindful that the decision must be appropriate, proportionate, and justified on the evidence before it.

## **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.

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

It was noted that this item had been withdrawn by the applicant.

### **7. LICENSING ACT 2003: SIR ROBERT PEEL, 7 LANGDALE CLOSE, LONDON SE17 3UF**

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

The Metropolitan Police representative addressed the sub-committee. Members had questions for the police. The police requested that the meeting go into closed session to show the sub-committee still from the CCTV and witness statements.

It was moved, seconded and

#### **RESOLVED:**

That the public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in category 7 of paragraph 10.4 of the Access to Information Procedure Rules of the Southwark Constitution.

All parties other than the police were excluded from the meeting from 1.1.48pm to 2.15pm while the sub-committee viewed the CCTV stills and read the witness statements.

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

The licensing sub-committee noted the written representation from the public health authority.

The licensing sub-committee heard from the representatives for the premises. Members had questions for the representatives for the premises.

All parties were given five minutes for summing up.

The meeting adjourned at 3.39pm for the members to consider their decision.

The meeting resumed at 4.35pm and the chair advised all parties of the sub-committee's decision.

The chair then invites all parties for their submissions regarding interim steps.

The meeting adjourned at 4.40pm for members to consider their decision in relation to the interim steps.

The meeting reconvened at 4.45pm and the chair advised all parties that the interim steps would remain.

#### **RESOLVED:**

That the council's licensing sub-committee, having had regard to the application by the Metropolitan Police for a review of the premises licence in respect of the premises known as Sir Robert Peel, 7 Langdale Close, London SE17 3UF and also 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 the severity of the incident on 25 February 2018 and the related flagrant breaches of the premises licence and the law earlier that evening and at the time of the incident.

On 25 February 2018 a customer was fatally stabbed in the pub. This took place during a period when the pub was serving alcohol two and a half hours after permitted hours (by a member of the bar staff who was also smoking behind the bar and handing out ashtrays to customers) and on an evening when regulated entertainment had continued after permitted hours. Mr MacCarthy (the Licence Holder and DPS/ex DPS) disputed none of these allegations, indeed they were all captured on the pub's CCTV. It is quite possible that the stabbing would not have occurred had the pub been complying with its licence because none of the individuals would have been in the pub drinking alcohol.

The licensing sub-committee heard from the Metropolitan Police Service representative (PC White, who was also joined by PC Lynch and PC Ducker), the applicant for the review, who advised that in the early hours of Sunday 25 February 2018 there was a serious incident in the premises whereby a customer was fatally stabbed by a someone who had earlier that night also been a customer drinking at the pub. This stabbing took place during an evening when breaches of the licence and breaches of the law were

taking place including serving alcohol and provision of entertainment beyond permitted hours, and smoking in doors by staff. Had these breaches of the licence not taken place it is quite possible that the stabbing would not have taken place because those individuals would not have been in the pub drinking alcohol.

The Metropolitan Police requested a closed session excluding the public (including Mr MacCarthy, Miss Lonergan and their counsel) for some of its evidence on the grounds that to submit it to the licensing sub-committee publically would undermine the investigation of two serious crimes. The summary nature of this review meant that police investigations were still underway at the time of the hearing. Mr MacCarthy was given the opportunity make representations resisting exclusion of the public and, through his counsel, he stated that the sub-committee should be mindful of any evidence that could be disclosed which would not in fact undermine the investigation of those crimes.

The licensing sub-committee decided to hear some of the hearing in closed session. This was done only in respect of part the police's evidence and, having seen that evidence, the sub-committee arranged to be disclosed to the Licence Holder those parts of the evidence which need not be protected (including 7 CCTV 'stills' showing breaches of the premises licence and law: serving alcohol and running regulated entertainment after licensed hours, smoking in doors etc.). The sub-committee had regard to the Licence Holders human and fundamental rights including Article 6 ECHR. It resolved that any interference with Article 6 ECHR was necessary in the interests of justice (including public order and the investigation/prevention of crimes) and proportionate because the closed session applied to as little of the evidence before them as possible.

The Metropolitan Police requested that the licensing sub-committee consider revoking the licence.

The licensing sub-committee heard from licensing as a responsible authority who advised that they supported the revocation of the licence on similar grounds: inadequate and opaque management where it had been and was still difficult to know who was accountable for what, especially when things went wrong which they had in the past. Licensing did not have faith in the management of Mr MacCarthy going forward if the licence were not revoked.

The licensing sub-committee noted the written representation from the public health authority supporting the review.

The licensing sub-committee heard from both Mr MacCarthy and Miss Lonergan, directly and through their counsel, who stated that Mr MacCarthy had been in charge and/or managing licensed premises for around 20-25 years and had done so for much of that time without incident. He admitted that he had taken his eye off the ball in respect of this pub and was wrong to place his trust in people such as Mr Clancy who it was clear had had some kind of management or responsibility of the pub for the last few years. He stated that contrary to the particularly violent episode on 25 February 2018 the pub is actually largely a family pub which has a great deal of daytime trade from older people.

He said that he will take back control of the pub going forward to ensure there will be no further breaches of the licence and will have control until someone else, preferably Miss Lonergan, can take over the lease which expired in September 2017. He accepted the management structure was opaque from the outside but going forward he assured the sub-committee that he would be in control.

Miss Lonergan stated she had invested £20,000 of her own money in the pub. She also stated that she was going make arrangements for her and Mr MacCarthy to be able to view CCTV from the pub on their mobile phones to improve security. A Reduction in the licensed hours for selling alcohol was also offered.

Notwithstanding the representations made by Mr MacCarthy and Miss Lonergan, the sub-committee had no faith that the licensing objectives would be promoted by the continued management of Mr MacCarthy or any other persons who have been involved hitherto or any other person who Mr MacCarthy might appoint in the future.

In neglecting the premises for the past four years MacCarthy had shown himself to be an irresponsible and neglectful licence holder and DPS. Indeed even he conceded that he had made real errors and taken his “eye off the ball”, as did Miss Lonergan. There were a number of uncertainties and contradictions given when Miss Lonergan and Mr MacCarthy attempted to explain who and how the pub had been managed during the past 4 years (including on the night in question). Moreover they described the hearing as an ‘eye opener’ because neither was aware of the extent of the problems. Whoever was ultimately responsible during that period, he or she was neither the licence holder nor the DPS and their mismanagement reflected poorly on Mr MacCarthy. The sub-committee were not convinced that Mr MacCarthy would take a proper and active role in managing the premises.

The licensing sub-committee also took into account the breaches of the licence between 2014-2017 which included playing music and selling alcohol after licensed hours.

It should be noted that the licensing sub-committee would have arrived at the same decision irrespective of the limited amount of evidence shown in closed session and not subsequently disclosed to the public.

In reaching this decision the sub-committee had regard to all the relevant considerations including national and local licensing policy, its obligations under s.17 Crime and Disorder Act 1998, all oral and written representations, and the four licensing objectives. The sub-committee was mindful of the need to reach a decision which was necessary, proportionate and justified on the evidence before them.

### **Interim steps**

On 2 March 2018 the following interim steps were applied by the sub-committee in order to promote the licensing objectives:

- a) the suspension of the premises licence; and
- b) the removal of the designated premises supervisor.

There is no evidence that those interim steps were not complied with since their imposition.

At the hearing on 27 March 2018 the licensing sub-committee reviewed those interim steps.

The Metropolitan Police and licensing authority invited the sub-committee to keep the interim steps in place.

The premises licence holder stated that to do so would cause significant financial



prejudice and would seriously threaten his ability to bring an appeal against the decision to revoke the premises licence. No corroborating financial evidence was provided.

The sub-committee decided that the interim steps should both remain in place because the licensing objectives (particularly the prevention of crime and disorder and the promotion of public safety) would not be promoted if the premises commenced trading once again, especially with Mr MacCarthy as DPS. The very real prospect of further breaches of the licence, potentially with similarly dramatic consequences as those which occurred on 25 February 2018, outweighed the financial prejudice which would likely be caused by the maintenance of the interim steps.

Again the licensing sub-committee was mindful of the need to reach a decision which was necessary, proportionate and justified on the evidence before them.

### **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
- b) In the event of any notice of appeal being given, until the appeal is disposed of.

The interim steps decision is open to appeal by:

- a) The chief officer of police for the police area in which the premises is situated; or
- b) The holder of the premises licence

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.

The meeting ended at 4.50 pm.

**CHAIR:**

**DATED:**