

## Licensing Sub-Committee

MINUTES of the OPEN section of the Licensing Sub-Committee held on Thursday 10 May 2018 at 10.00 am at Ground Floor Meeting Room G02A - 160 Tooley Street, London SE1 2QH

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**PRESENT:** Councillor Renata Hamvas (Chair)  
Councillor Dora Dixon-Fyle MBE  
Councillor Kath Whittam

**OTHER MEMBERS PRESENT:** Councillor David Noakes

**OFFICER SUPPORT:** Debra Allday, legal officer  
Helena Crossley, legal officer  
Andrew heron, licensing officer  
Dorcas Mills, licensing officer  
Ray Moore, trading standards 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: VAPIANO, 2 POTTERS FIELDS, LONDON SE1 2SG**

It was noted that this item had been conciliated.

**6. LICENSING ACT 2003: KFC, GROUND FLOOR, 128 BOROUGH HIGH STREET, LONDON SE1 1LB**

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.

An other person objecting to the application addressed the sub-committee. Members had questions for the other person.

The ward councillor objecting to the application. Members had questions for the ward councillor.

All parties were given five minutes for summing up.

The meeting adjourned at 12.16pm for the members to consider their decision.

The meeting resumed at 12.37pm and the chair advised all parties of the sub-committee's decision.

**RESOLVED:**

That the application by F T Foods Limited for a premises licence issued under the Licensing Act 2003 in respect of the premises known as KFC, Ground Floor, 128 Borough High Street, London SE1 1LB be granted as follows:

<b>Licensable Activities</b>	<b>Days</b>	<b>Hours</b>
Late Night Refreshment (indoors and outdoors)	Sunday to Thursday Friday and Saturday	23:00 to 00:00 23:00 to 01:00
Operating Hours	Sunday to Thursday Friday and Saturday	10:00 – 00:00 10:00 – 01:00

**Conditions**

The operation of the premises under the licence shall be subject to relevant mandatory conditions, any conditions derived from the operating schedule in Section M of the application for and the following conditions imposed by the licensing sub-committee:

1. That deliveries to the premises only occur between 8:00 and 21:00, Monday to Saturday and that there be no deliveries on Sunday.
2. That signage will be clearly displayed requesting the patrons to respect the neighbours and leave the premises quietly.

3. That the doors used to access the premises will remain closed after 22:00 save for ingress or egress.
4. That an SIA registered member of door staff be present on Friday and Saturday from 22:15 to 01:15.
5. That at least four litter picks be carried out between opening and closing

The committee also makes the following recommendation to the applicant: That the chairs are lifted and not dragged to prevent a noise disturbances to upstairs neighbours and that the nosing on the chairs are maintained regularly for the same reason.

### **Reasons**

The reasons for the decision are as follows:

The licensing sub-committee heard from the legal representative for the applicant. He stated that the premises were already open and trading and that the premises had formerly been a bar operating until 3am. The restaurant is what is known as a small box restaurant. He stated that as the restaurant would be a KFC franchise it would be operating to national, if not international standards of operating. He stated that the proposed opening times are in line with Southwark's statement of licensing policy (paragraph 153). He also stated that the application is in line with the planning permission granted for the premises, although planning is not a material consideration for the licensing committee.

The legal representative also drew the committee's attention to the fact that they had worked with the police and included a provision for CCTV in their operating schedule. The concerns of the residents and local councillor were then addressed and the legal representative put forward several conditions which the committee might consider imposing on the licence to mitigate any concerns raised by the objectors. He also accepted that previously there had been issues at the premises but these had now been resolved, for example there was now an additional bin to help prevent waste overflow, and a cardboard policy.

There are issues with a shared area which provides access to the back of the premises and bike shed for the residents. The applicant's representative advised that they were in contact with the landlord to fix these issues (ie poor surface on the ground causing flooding). They also stated that this area was not technically within the demise of their lease, and was shared with the residents. The committee questioned the applicant on a variety of issues including how CCTV footage could be accessed, the current delivery and litter pick schedules, who had day to day management of the store, how the sound of chairs dragging on the floor could be prevented and training of staff in this regard.

The sub-committee then heard from an objector. Their objection is marked 'party 2' in the agenda pack. The local resident reiterated many of the points raised in his written objection. He stated that the premises opening beyond what he considers sleeping hours was unacceptable. He was concerned that the later opening times would lead to more violence on the High Street and encourage people to congregate outside the block of flats he lives in.

The objector began to discuss issues relating to other licensable premises in the area.

However, the chair explained that the committee could only consider issues that engage the four licensing objectives that related to the specific premises, and could not consider what happened as a result of other premises. She also stated that the committee could not consider hypothetical issues that may arise, and could only consider issues that had been caused by the premises in question.

The objector then moved on to issues around noise. He stated that the noise of the chairs being moved in the premises after closing time disturbs him and his partner's sleep. He also raised the issue of the waste cause by premises being disposed of properly and that rodents had been seen in his building up to floor four which had not happened before. He then called his partner as witness. His partner explained that she had been diagnosed with health conditions which were perpetuated or brought on by lack of sleep. She stated that the activities at the premises, i.e. the dragging of chairs after closing, disturbed her sleep. The committee asked if the improvements that had been made recently, for example deliveries being made later in the morning and not on Sundays had improved their experience. They stated it had but the noise from actually bring the deliveries in, ie the trolley the goods were moved on was still very loud. They could not confirm that any violence had been cause directly as a result of the premises.

The committee then heard from Councillor Noakes. Councillor Noakes raised similar points to those of party 2. He stated that fast food naturally attracts post drinking crowds which can be noisy from 22:00 onward, and could sometimes become violent. He asked the committee if they could decrease the opening hours to 22:00 and Chair explained the committee did not have that power. He stated he had been ward councillor for 12 years and had seen an increase in complaints from residents regarding noise and violence from premises in his ward.

He stated that if the committee was minded to grant the application he would like to see conditions placed on the licence, like those suggested by the legal representative for the applicant, and would encourage SIA registered staff from 23:00. The committee asked if he had received complaints regarding the KFC premises specifically to date and he confirmed he had not.

In closing, the Councillor and objector had nothing further to add. The legal representative for the applicant drew the committee's attention to the fact that there had been no objections raised by responsible authorities such as EPT and the Police.

He also stated that the objection from residents and Councillor were the first that the applicant had heard of the issues and that in future if there are issues, they are willing to work with local residents, but they have to know about them first. He stated that the hours were not unreasonable and that conditions could overcome the concerns of residents.

The sub-committee considered each of the representations, both written and oral, and agreed to conditions as set out above.

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 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.

The meeting then adjourned at 12.40pm for lunch. The meeting then reconvened at 1.15pm.

## **7. LICENSING ACT 2003: FOOD AND WINE, 4 CAMBERWELL CHURCH STREET, LONDON SE5 8QU - TRANSFER APPLICATION**

The licensing officer presented their report. They explained that trading standards would be called as a witness for the police. Members had questions for the licensing officer.

The applicant's legal representative addressed the sub-committee. They advised that the applicant was not able to attend the meeting but was happy to proceed in their absence.

The representative for the police and the trading standards officer, as a witness for the police, addressed the sub-committee. Members had questions for the police and the trading standards officer.

Both parties were given five minutes for summing up.

The meeting adjourned at 2.24pm for the members to consider their decision.

The meeting resumed at 2.28pm and the chair advised all parties of the sub-committee's decision.

### **RESOLVED:**

That the licensing sub-committee, having considered the objection notice submitted by the Southwark Police Licensing Office relating to the application submitted by Somasundram Ariyaratnam to transfer a premises licence under section 42 of the Licensing Act 2003 in respect of the premises known Food & Wine, 4 Camberwell Church Street, London SE5

8UQ, has refused the transfer application.

## **Reasons**

The reasons for the decision are as follows:

The licensing sub-committee heard from the Metropolitan Police Service representative who objected to the transfer application. The officer advised that the premises had been subject to an application for the review of the premises licence which had been submitted by Southwark's trading standards team. Following the review hearing and considering all the facts, the licensing sub-committee decided it was appropriate and proportionate to revoke the premises licence. This decision was the subject of an appeal by the premises licence holders, due to heard at Camberwell Green Magistrates' Court on 29 June 2018. On the 19 March 2018 the applicant had submitted the transfer application to take immediate effect.

The representative for the police called an officer from trading standards as a witness. The trading standards officer outlined the details of the review application that resulted in the revocation of the licence. The officer also stated that on 27 March 2018, officers conducted a test purchase at the premises. The person in charge of the shop at the time made an underage sale of cigarette's without challenging the young person. Enquiries were made with the person in charge at the time as to the identity of the current premises licence holder, who stated that it was her husband and produced an unsigned management agreement to the same effect. On 6 April 2018, trading standards officers attended again and the applicant was present and stated that it was his intention to purchase the business.

Furthermore, during the course of investigations, trading standards officers seized the premises training records and identified the details of two individuals that were involved in another premises which has also had its premises licence revoked.

The licensing sub-committee then heard from the applicant's representative, who advised that her client was unable to attend as he was required to run the shop. The representative stated that the transfer application was genuine and that she had been contracted by the applicant in December 2017. Since January 2018 the applicant had been working at the premises, without pay, to ascertain whether it was an economically viable business. Ultimately, the applicant wanted to run the premises a family business.

The reason why the applicant was not identified as the owner of the business on 27 March was because until he was sure that he wanted to but the business, he did not want to upset the dynamics of the business, until necessary. All the misdemeanours and non-compliance was under the previous premises licence holders watch, and the applicant should not be denied the transfer because of it.

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 of a licence when the police believe the transfer may undermine the crime prevention objective. The premises licence was revoked following a trading standards review on 15 June 2017, when the licensing sub-committee found a catalogue of breached licence conditions, a number of criminal offences committed and an illegal worker working for the previous licence holder.

The licensing sub-committee were guided to paragraphs 89 and 90 of the Southwark's

statement of licensing policy and the practice of transfer applications being submitted immediately following an application for a review. Where, such applications are made, the transfer applicant's are expected and required to provide documentary proof of transfer of the business and lawful occupancy of the premises to support the contention that the business is under new management control. No such documentation was provided by either the applicant or his representative.

The licensing sub-committee also have concerns of continued breaches of licence in addition, staff known to be involved in the management of other similar style premises that had its premises licence revoked. Given the very serious history at the premises, as a matter of due diligence, the applicant would be expected to ensure the legitimacy of stock, to ensure that all transfer of the business/lawful occupation documentation was complete and demonstration of sufficient distance from the previous poor management practices, including the removal of all previous staff.

This licensing sub-committee is satisfied that the evidence presented provides 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 and considered that this decision was appropriate and proportionate.

### **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 been granted or
- b) That the application specify a person as premises supervisor ought not to be been granted

may appeal against the decision.

The meeting ended at 2.30pm.

**CHAIR:**

**DATED:**