

## Licensing Sub-Committee

MINUTES of the OPEN section of the Licensing Sub-Committee held on Wednesday 4 July 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 Lorraine Lauder MBE  
Councillor Eliza Mann

**OTHER MEMBERS PRESENT:** Councillor David Noakes, ward councillor  
Councillor Sirajul Islam, observing

**OFFICER SUPPORT:** Debra Allday, legal officer  
Dorcas Mills, licensing 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: FORA, BRANDON HOUSE, 180 BOROUGH HIGH STREET, LONDON SE1 1LH**

The licensing officer presented their report. The licensing officer confirmed that all of the responsible authorities had conciliated with the applicant. 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 licensing sub-committee then heard from local residents objecting to the application. Members had questions for the local residents.

The licensing sub-committee heard from a ward councillor. Members had no questions for the ward councillor.

All parties were given five minutes for summing up.

The meeting adjourned at 12.45pm for the members to consider their decision.

The meeting resumed at 2.08pm and the chair advised all parties of the sub-committee's decision.

**RESOLVED:**

That the application made by Fora Space Limited for a premises licence to be granted under s.17 of the Licensing Act 2003 in respect of the premises known as Fora, Brandon House, 180 Borough High Street, London SE1 1LH be granted as follows:

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| Supply of alcohol (on sales)  | Ground floor, lower ground floor and fifth floor area C: <ul style="list-style-type: none"><li>• Sunday to Thursday from 11:00 to 22:30</li><li>• Friday and Saturday from 11:00 to 23:00.</li></ul> Fifth floor terrace area D: <ul style="list-style-type: none"><li>• Monday to Sunday from 11:00 to 19:00.</li></ul> |
| Recorded music (indoors and outdoors (on Fifth floor Terrace area D only) | Ground Floor/Lower Ground Floor: <ul style="list-style-type: none"><li>• Sunday to Thursday from 11:00 to 22:30</li><li>• Friday and Saturday from 11:00 to 23:00.</li></ul>   |
| Operating hours   | Ground floor, lower ground floor and fifth floor area C: <ul style="list-style-type: none"><li>• Sunday to Thursday from 11:00 to 23:00</li><li>• Friday and Saturday from 11:00 to 23:30.</li></ul>   |

|  |   |
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|  | <p>Fifth floor terrace area D:</p> <ul style="list-style-type: none"> <li>Monday to Sunday from 11:00 to 19:00 .</li> </ul> |
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### 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 form, conditions conciliated with the responsible authorities during conciliation and the following conditions imposed by the licensing sub-committee:

1. That the plan shall be amended to include the location of the designated smoking area.
2. That quarterly meetings shall take place with the residents of Brandon House.
3. That a direct telephone number for the manager at the premises shall be publicly available at all times the premises is open. This telephone number is to be made available to residents and businesses in the vicinity.
4. That external waste handling, collections, deliveries and the cleaning of external areas shall not take place between the hours of 22:00 and 07:00.
5. That bottles shall not be disposed of between 20:00 and 07:00 the following day.

### Reasons

The reasons for the decision are as follows:

The licensing sub-committee heard from the representative for the applicant who advised that the applicant was offering premium office space which included approximately 350 to 400 individual work spaces which would allow newly set up companies to utilise all their office facilities and needs. Membership would be on a one month rolling basis. There would be a concierge service and access above the ground floor would be key card and guests would need to be signed in. Planning permission was originally obtained in 2011, permitting 96-residential and 10,000m<sup>2</sup> work space. They advised that the planning permission had considerable restrictions and the construction of the building reflected the planning permission; but members were reminded the sub-committee that planning issues were not matters that should be considered by the members. In any event, the licensing application seeks no more than the planning permission. On the ground floor would be a high end restaurant with a Scandinavian style menu.

An amended operating schedule had been submitted (dated 2 July 2018) and the applicant now only included the sale of alcohol and recorded music. No other licensable activity was sought and a considerable number of concessions have been made for the benefit of the residents.

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They advised that Fora has a sister premises in Islington and contrary to the documents submitted by the residents concerning this premises, this related to a variation application which was granted and the complaints were misfounded.

The licensing sub-committee noted that all the responsible authorities had conciliated and agreed conditions.

The licensing sub-committee heard from party 4 who was also representing party 10. Party 4 invited the sub-committee to reject the application. Concern was raised that the licensing application was contradictory to the planning permission granted. Granting the licence to the premises would mean that some residents' balconies and apartments would be less than 15 meters from an open air entertainment venue rather than a work space, which residents had thought the premises would be. Noise created on Fora Space's terraces, fueled by alcohol and entertainment would echo and amplify across the inner courtyard of Brandon House and effect residents' quiet enjoyment.

Within the last seven days people had been seen on the terrace drinking alcohol and amplified music being played, despite no licence being granted and no temporary events notice being in place. It was felt that further negotiations were required between the parties.

The licensing sub-committee heard from party 3 who was also representing parties 8, 19 and 28. Party 3 also invited the sub-committee to reject the application in its entirety. They advised that the premises were located within one metre of residential homes. It was claimed that the premises would encroach on residents' rights to quiet enjoyment of their homes. One of the party's bedrooms was directly above Fora and the speakers in Fora were directly below their bed. Serious concern of being kept awake at night with noise and bass travelling through the walls late at night was expressed. Staff from the premises already smoke directly underneath residents' balconies and the unwanted fumes could be smelt within the residential homes. A video which was to demonstrate the level of noise that could be heard from the premises was shown to the sub-committee. However, the sub-committee could not attach much weight to it, as the sound was difficult to quantify. Further time for the parties to negotiate a mutually acceptable suite of conditions was needed, to include sound proofing works and an acoustic report to be produced by the premises specifying that no sound from the premises would be heard in residential properties.

The licensing sub-committee heard from party 48 who objected to the application in that the regular live concerts and other events held in the church would be significantly disturbed by the operation of Fora and undermine the church's widely used oasis of creativity and public space, which in turn would deprive local residents and groups of a suitable space for their activities. Concern was also raised on the impact the premises would have on the local residents that the premises would be a new source of significant noise which would add further environmental stress.

The licensing sub-committee heard from party 40 who referred to a petition signed by a number of other local residents. Party 40 also invited the sub-committee to reject the application. They informed the sub-committee that the premises were located within one metre of residential homes and would create unwanted noise and expose residents to drunken behaviour and loud noise, which would also encroach on their rights to quiet enjoyment. The applicant had only offered to close one of the two terraces, and if the licence were granted, residents would continue to be disrupted by the noise from the second terrace. Furthermore, noise proofing works needed to be carried out.

The licensing sub-committee then heard from the ward councillor who advised that the premises is located in the Borough and Bankside cumulative impact zone, where there is a presumption against granting new premises licences. Having heard the objections from the local residents, the ward councillor wholly supported them. If people could be heard during the day prior to the opening of the restaurant (party 3), the transfer of sound into residents homes would be significant and the amenity would be impacted in a negative way. Regarding the terrace, access to the first terrace should be reduced to 18.00 and the applicant had failed to detail how they proposed managing the second terrace.

The residents have made reference to the point that the proposed operation would be a breach of their right to quiet enjoyment; the meaning of which appears to have been misunderstood. The right of quiet enjoyment provides the residents and leaseholders of Brandon House the right of possession of their home with the entitlement to enjoy the lawful use and benefit of the property free from the freeholder's (Crest Nicholson) interference. It does not mean that the property has to be quiet; it means that the residents of Brandon House must be able to live in the property without disturbance from Crest Nicholson or anyone acting on their behalf. On this basis, there has been no breach of the residents' quiet enjoyment of their homes. There is also no suggestion that there has been a statutory noise nuisance, or complaint to Southwark's noise team. The environmental protection team, as a responsible authority, had agreed conditions with the applicant, which included (but not limited to) the provision of a maintained sound limiting device to ensure entertainment noise is not audible inside any near by noise sensitive premises.

There was also discussion about the management of the second terrace. This terrace does not form part of the licence application and this sub-committee can not licence it. In any event, under the Live Music Act 2012, entertainment became deregulated which permits live unamplified music between 08:00 and 23:00 and live and recorded amplified music between 08:00 and 23:00 at on licensed premises (such as Fora) provided the audience does not exceed 500 people. The same obviously applies to the first terrace, but a condition has been agreed that the terrace on the fifth floor would be in use after 19:00. It was also agreed (by condition) that there would be not licensed entertainment in the outside area, including the terrace. Further still, the applicant gave an assurance that they would not play any live entertainment. This licensing sub-committee is satisfied that any further restriction(s) relating to noise would be disproportionate.

Party 4 suggested that the applicant was in breach of licensing law in that individuals were seen consuming alcohol. The sub-committee does not accept this suggestion. Only the sale of alcohol is a licensable activity. The consumption of alcohol is not.

The licensing sub-committee accepts that the fumes from smoke can disturb non-smokers. It is for this reason, a condition has been attached for the applicant to amend their plan to identify the smoking area. The applicant also gave an assurance that they would direct residents/patrons and staff to that designated smoking area.

Party 4 raised the issue of planning permission. Paragraph 14.64 of the Home Office revised guidance issued under section 182 of the Licensing Act 2003 (April 2018) provides that the planning and licensing regimes involve consideration of different (albeit related) matters. However, licensing committees are not bound by decisions made by a planning committee, and vice versa. This licensing sub-committee can not therefore take into account planning considerations.

The licensing sub-committee recognise the residents' concern of potential noise and nuisance from the premises. However, with the compromises made by the applicant in the application, the suite of conditions added to the licence and the assurances given by the applicant, it is felt that the style of operation proposed would not be out of keeping for this area. The residents are reminded that should there be a breach of the conditions or statutory nuisance witnessed they have the right to bring the licence in for review.

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 persons 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 ended at 2.12 pm.

**CHAIR:**

**DATED:**