

Licensing Sub-Committee

MINUTES of the OPEN section of the Licensing Sub-Committee held on Monday 19 November 2018 at 10.00 am at Ground Floor Meeting Room G02C - 160 Tooley Street, London SE1 2QH

PRESENT: Councillor Renata Hamvas (Chair)
Councillor Sandra Rhule
Councillor Ian Wingfield

OTHER MEMBERS PRESENT: Councillor Richard Leeming (ward councillor)

OFFICER SUPPORT: Charles Holland, legal advisor to the sub-committee
Andrew Heron, licensing officer
Raye Moore, trading standards officer
Jayne Tear, licensing responsible authority officer
Ruth Murdock, children's social care officer
Clizia Deidda, public health officer
Graham White, Metropolitan Police Service
Lisa York, markets and street trading manager
Nicky Costin, business unit manager, environment and leisure

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: HALF MOON FOOD AND WINE, 14 HALF MOON LANE, LONDON SE24 9HU

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

The legal representative for the premises advised that two supporting representations should not have been omitted.

The legal officer advising the sub-committee advised that the sub-committee could hear from the Dulwich Society.

The trading standards officer, the applicant for the review 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 representative.

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

The public health officer addressed the sub-committee. Members had no questions for the public health officer.

The children's social care officer addressed the sub-committee. Members had questions for the children's social care officer.

The chair allowed the legal representative for the premises to ask questions of the trading standards officer.

The local residents supporting the premises addressed the sub-committee. Members had questions for the local residents.

The ward councillor supporting the premises addressed the sub-committee. Members had questions for the ward councillor.

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

All parties were given five minutes for summing up.

The meeting adjourned at 12.47pm for the members to consider their decision.

The meeting resumed at 1.54pm and the chair advised all parties of the decision.

RESOLVED:

That the council's licensing sub-committee, having considered an application made under Section 51 of the Licensing Act 2003 by trading standards for the review of the premises licence issued in respect of the premises known as Half Moon Food and Wine, 14 Half

Moon Lane, London SE24 9HU, and having had regard to all other relevant representations, has decided it is appropriate for the promotion of the licensing objectives if the following steps are taken:

- i. That the premises licence be suspended for five days.
- ii. That the following conditions be added to the premises licence:
 1. That a properly specified and fully operational CCTV recording system shall be installed, operated and maintained. The system shall incorporate cameras covering the entrance door, the retail area, the till and the exterior of the premises. It shall be capable of providing an image which is regarded as 'identification standard' of all persons entering and/or leaving the premises and of all sales. The CCTV system shall be in operation at the premises at all times when the premises are used for the provision of a licensable activity.
 2. That all CCTV recordings shall be securely stored for a minimum of 31 days. A staff member from the premises who can operate the CCTV system shall be on the premises at all times when the premises are open to the public. This staff member shall be able to show authorised officers data or footage on request. Signage indicating that a CCTV recording system is in operation shall be displayed prominently in the premises.
 3. That the only persons with any public-facing role at the premises shall be either officers or employees of the entity operating the business conducted there. An up to date written register of all such officers and employees, detailing their names, addresses, and National Insurance numbers shall be kept at the premises. The register shall be available for inspection at the premises by the police or an authorised officer of Southwark Council at all times whilst the premises is open.
 4. That any person employed at the premises shall undergo exterior training in responsible alcohol retailing within 28 days of commencing employment at the premises. Refresher training shall be undertaken by all staff at least annually. A record shall be kept detailing all training provided. The record shall be available for inspection at the premises by the police or an authorised officer of Southwark Council at all times whilst the premises is open.
 5. That a Challenge 25 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram. Prominent signage to that effect shall be maintained which is visible from the exterior of the shop and in the shop itself.
 6. That a record shall be kept detailing all refused sales of alcohol, tobacco and any other age restricted product (including proxy sales). The record shall include the date and time of the refused sale and the name of the member of staff who refused the sale. The record shall be available for inspection at the premises by the police or an authorised officer of Southwark Council at all times whilst the premises is open.

Reasons

The applicant for the review, trading standards, advised that it had brought the application in respect of the licensing objectives of the prevention of crime and disorder and the protection of children from harm. The review was triggered by two incidents of underage sales, namely the sale on 18 July 2018 of hand-rolling tobacco to a 16 year old girl and on 30 June 2018 of the provision of alcohol to the same child. The latter incident revealed that the premises had a person working there whose credentials had not been checked and who was not being paid minimum wage. Going back in time, in November 2017 a complaint about the premises had been received from the London Trading Standards website from a parent alleging that alcohol had been sold to a 15 year old boy by the premises on 4 November 2017, and that it had reputation for selling to under-age customers. As a result of this a test purchase was conducted at the premises on 14 December 2017, when a 17 year old male volunteer was able to purchase a can of Fosters lager. Mr Gangadeen, the premises licence holder was interviewed under caution about this incident on 19 December 2017 and he and the operating company accepted cautions in respect of the sale.

The applicant advised that further test purchase was conducted on 27 March 2018 using a 16 year old female volunteer, who was able to purchase tobacco from the premises. Mr Gangadeen was interviewed and again accepted a caution in respect of this sale.

The applicant stated that the end of August 2018 a complaint was received from the police making allegations of the two offences on 30 June and 18 July 2018, each involving a 16 year old girl. The CCTV showed a sale of hand-rolling tobacco on 18 July 2018. The CCTV recordings did not go back to 30 June 2018. In interview conducted on 24 October 2018 Mr Gangadeen accepted he had made the sale of hand-rolling tobacco on 18 July. In relation to the incident on 30 June, which related to the supply rather than the sale of alcohol to the same girl, the allegation was that another person working in the shop had made this supply. Mr Gangadeen did not know his full name, and did not know his address. The individual was someone he had met at a bus stop in Croydon, and he had offered him work in return for food and some clothes because he felt sorry for him. He had since disappeared and was untraceable.

The applicant advised that there was a test purchase on 28 August 2018 where a 15 year old female volunteer who attempted to tobacco was refused service.

The licensing sub-committee heard from the police as a responsible authority who fully supported the review application brought by trading standards on the basis of the licensing objectives of the prevention of crime and disorder and the protection of children from harm. The police were particularly concerned that a person was working on the premises who had been engaged without the requisite checks and who did not appear to have undergone training. It had been suggested by the premises licence holder that the business was financially operating from hand to mouth and the police were concerned there was a financial temptation for the premises to make underage sales. The police advised that the steps the licensing sub-committee should take were a matter for it.

The licensing sub-committee heard from the licensing authority in its capacity as responsible authority who supported the review application on the basis of the licensing objectives of the prevention of crime and disorder and the protection of children from harm. The licensing authority was plainly concerned about the two cautions for underage sales, but, more worryingly, the content of the interview on 24 October 2018 revealed that the premises licence holder had employed an individual without knowing his name or

address. The licensing authority had no faith in the premises licence holder to uphold the licensing objectives and was concerned that in engaging people in the manner he had done he had put children at risk. The licensing authority recommended that the licence be revoked. It was clarified through the chair that this individual had worked in the shop on more than one occasion and had served behind the till. The staff of the premises numbered 3 plus this individual.

The licensing sub-committee heard from public health as a responsible authority. Public health supported the review brought by the applicant and observed that children suffered a disproportionate risk if allowed access to tobacco products. The evidence was also that if they began to smoke young they would continue to smoke.

The licensing sub-committee heard from the children's social care team as a responsible authority. The team had concerns about the offences reflected in the two cautions and the subsequent incidents on 30 June and 18 July 2018. It was also of concern that the shop appeared to be acting in a way where there were no checks and balances in respect of staff.

Upon questioning from the representative for the premises licence holder, trading standards accepted that no witness statements, interviews of other persons or photographs had been produced in relation to the incident on 30 June 2018. It was accepted that there had been no further incidents or allegations since the passed test purchase on 28 August 2018. It was accepted that the course now attended by the premises licence holder was a good course, that possibly demonstrated a purpose and intent on the part of the premises licence holder to prevent these issues re-occurring. Trading standards accepted that in his 10 years of dealings with the premises licence holder he had been genial, polite and cooperative.

The licensing sub-committee then heard from Party 3, who spoke to their written representation on behalf of the Herne Hill Forum made in support of the premises licence holder. Party 3 referred to the premises licence holder's unblemished record prior to the incidents of concern. They suggested the matter be dealt with by way of the imposition of conditions including a Challenge 25 condition.

The licensing sub-committee then heard from a representative from The Dulwich Society who had written to the licensing authority adopting the representations of Party 3. They submitted that the allegation in relation to the incident on 30 June 2018 was unsupported by evidence. They referred to the past flood which had caused the premises to close for six months and the financial impact of that to it. They added that the Dulwich Society fully wished to see traders flourish and survive.

The licensing sub-committee then heard from Party 4, Ms, who spoke to their written representation. They stated that the premises provided a fantastic service, that the premises licence holder was patient and kind, and on occasion came to her daughter's rescue when she was being harassed at a bus stop outside the shop. They advised that the shop had slipped up with the test purchases but this was the exception rather than rule.

The licensing sub-committee then heard from Councillor Richard Leeming who spoke as to his statement dated 12 November 2018.

The licensing sub-committee then heard from the representative for the premises licence holder who spoke as to the statement of his client and to his written skeleton argument. He

gave details of the premises licence holder's background and experience, the offering provided by the premises and those of the premises' competitors, and the trust and high regard in which the premises licence holder was held by the community. He submitted that the premises licence holder suffered from the fundamental defect of being a human being who had made mistakes, and here there had been three mistakes: the two test purchases and the sale on 18 July 2018. He had not sought to hide from those events, he had accepted the cautions. He deeply regretted the errors and wished to apologise for his carelessness in allowing underage sales three times in seven months. It was submitted he should be judged on his blemish-free record over 37 years. This was a case of carelessness, not of deliberate breach such as where there had been illicit purchasing of duty-evaded. The refusals register for the premises was referred to, and it was said it had been completed through the year.

It was said by the premises licence holder's representative that there was no evidence whatsoever for the incident on 30 June 2016, and it was submitted that the licensing sub-committee should not pay attention to unsubstantiated rumour. As for the individual engaged in the shop, this was said to be a naive action on the part of the premises licence holder. The individual came in to work in the shop in the evenings and had done so for a year. Their name and telephone number had been disclosed by the premises licence holder to the police. The premises licence holder knew the street on which the individual lived but not the house number. The individual carried out tasks like stacking shelves but on the occasions when the premises licence holder ate his food in the small anteroom, he would mind the shop. It seemed very unlikely that the individual would have supplied alcohol as the premises licence holder was never more than a few feet away. The premises licence holder now very much appreciated his naivety in the arrangement, and accepted that in the future the formalities would need to be complied with.

The premises licence holder's representative added that this was the first review the premises licence holder had had to face, he had engaged lawyers, and it was a matter of worry and concern to him that he was before the licensing sub-committee. He appreciated that errors had occurred and had taken steps to put matters right. That included closing the shop for a day so that he and his staff could travel to Cambridge to undertake the British Institute of Innkeeping Awarding Body Responsible Alcohol Retailing Course. The Challenge 25 policy had been adopted with the requisite posters. Further conditions were being offered.

The licensing sub-committee addressed questions to the premises licence holder. It was accepted by the premises licence holder that he was naïve and foolish to have engaged the individual at the premises without checks and without paperwork, that the individual was not trained as such but had only been shown the "basics", and that in hindsight he should have never been allowed to work on the premises. As for the underage sales, the premises licence holder said that on one occasion he was distracted because the shop was quite busy and on other he thought that the individual in question was an adult.

The licensing sub-committee noted the closing submissions of the responsible authorities, the representors and the premises licence holder.

In coming to this decision the licensing sub-committee had regard to its statement of licensing policy, the Section 182 guidance, the principles of good regulation set out in Section 21 of the Legislative and Regulatory Reform Act 2006, and to the need to do all that it reasonably could do to prevent (a) crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment); (b) the misuse of drugs, alcohol and other substances in its area and (c) re-offending in its area. The

licensing sub-committee had regard to the public sector equality duty. Taking this as its approach, the licensing sub-committee determined the review on its individual merits.

The licensing sub-committee was naturally extremely concerned that three admitted underage sales had taken place on the premises within such a small period of time. Cautions had been accepted in relation to the first two incidents which the licensing-sub committee would not look behind. The licensing sub-committee did not place any weight on the further allegations of underage sales. The three admitted sales were of sufficient gravity of themselves to render it appropriate to take further steps to promote the licensing objectives: as the premises licence holder himself accepted in offering the conditions set out in his representative's skeleton argument.

The licensing sub-committee was equally if not more concerned by the conduct of the premises licence holder in engaging an individual to work in a public-facing role without carrying out any of the normal checks that would be carried out when engaging an employee. It was concerning that this individual was unpaid and only received benefit in kind, although the licensing sub-committee noted the premises licence holder's explanation as to the informality of the arrangement. Whilst the licensing sub-committee had its doubts that the arrangement was lawful in terms of compliance with legislation providing for the payment of minimum wage and other employment rights, these were doubts (albeit strong doubts) rather than fully particularised and established breaches. The primary concern of the licensing sub-committee in terms of the promotion of the licensing objectives was that the premises licence holder had allowed an individual about whom he did not know enough and in respect of whom he had provided either no or no adequate training to have a public-facing role in the premises.

The licensing sub-committee reminded itself that its role in hearing the review was not to punish the premises licence holder for past breaches but rather to take such specified steps as were appropriate to promote the licensing objectives going forward.

The licensing sub-committee placed weight on the representations in support received from local residents and the local councillor. It also noted and welcomed the sensible steps taken by the premises licence holder to seek out and undertake training, to upgrade the policies and procedures at the premises, and, through his representative, to offer conditions.

Whilst the licensing sub-considered that the premises licence was genuine in his assurance that the premises licence holder would not in the future engage persons in the shop on the unacceptably lax basis that he had done in the past, it considered that it was appropriate in the circumstances that this assurance be buttressed by a condition be imposed restricting public-facing roles to those were officers or employees of the entity operating the business.

It was recognised on behalf of the premises licence holder that he was looking for a further chance from the licensing sub-committee. It was thought appropriate that the operation of CCTV be conditioned upon the licence so that it is part of the premises licence holder's authorisation going forward that video records are made and maintained.

The further conditions offered by the premises licence holder were accepted with some amendments that the licensing sub-committee considered to be appropriate.

The seriousness of the matters giving rise to this review should not be underestimated.

The premises licence holder rightly accepted that the review was rightly brought. Had it not been for the proactive steps taken by the premises licence holder in response to the review, considered it appropriate to revoke the licence. However, by virtue of the steps voluntarily taken by the premises licence holder, and because of the historical nature of the issues and the extent to which they can such historical issues can be addressed going forward addressed by conditions, the licensing sub-committee decided that revocation was not appropriate in this case.

However, the seriousness of the breaches is such that the licensing sub-committee felt it appropriate that in addition to the imposition of conditions, a significant period of suspension be imposed as a means of deterring the premises licence holder from allowing the problems that gave rise to the review to happen again.

The licensing sub-committee had careful regard to the premises licence holder's financial position, and was mindful that the period of suspension, whilst being significant, should not be so long as to constitute a de facto revocation. It was also mindful of the evidence of the benefit over many years that the premises has brought to the local community. In all the circumstances, 5 days was considered to be 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.

6. REVOCATION OF TRADING LICENCE

The meeting adjourned from 2pm to 3pm to allow the legal representative for the street traders to read the agenda.

The legal representative for the street traders advised that he was seeking to defer the hearing as there had not been adequate time to read all the paperwork and to discuss the matters with the street traders.

The markets and street trading manager agreed to the item being deferred.

The meeting adjourned at 3.05pm to consider the request.

The meeting reconvened at 3.10pm. The chair advised that the item would be deferred to 12 December 2018 at 12.30pm.

RESOLVED:

That the item be deferred to the meeting on 12 December 2018 at 12.30pm.

The meeting ended at 3.15pm.

CHAIR:

DATED: