

Licensing Sub-Committee

MINUTES of the OPEN section of the Licensing Sub-Committee held on Monday 28 January 2019 at 10.00 am at Ground Floor Meeting Room G02C - 160 Tooley Street, London SE1 2QH

PRESENT: Councillor Renata Hamvas (Chair)
Councillor Sirajul Islam
Councillor Ian Wingfield

OFFICER SUPPORT: Debra Allday, legal officer
Rebecca Millardship, legal officer
Andrew Heron, licensing officer
Wesley McArthur, licensing officer
Jayne Tear, licensing responsible authority
Ray Moore, trading standards officer
P.C. Ian Clements, Metropolitan Police Service
Andre 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: RADNOR PROPERTIES LTD, 160 - 162 RYE LANE, PECKHAM, LONDON SE15 4NB

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 applicant and their legal representative were given five minutes for summing up.

The meeting adjourned at 10.35am for the sub-committee to consider its decision.

The meeting reconvened at 10.38am and the chair advised all parties of the decision.

RESOLVED:

That the application made by Radnor Properties Ltd for a premises licence to be granted under Section 17 of the Licensing Act 2003 in respect of the premises known as Radnor Properties Ltd be granted as follows:

Recorded music

- Sunday to Thursday from 23:00 to 23:30
- Friday and Saturday from 23:00 to 00:30 the following day

Late night refreshment

- Sunday to Thursday from 23:00 to 23:30
- Friday and Saturday from 23:00 to 00:30 the following day

Sale of alcohol to be consumed on the premises

- Sunday to Thursday from 11:00 to 23:30
- Friday and Saturday from 11:00 to 00:30 the following day

Opening hours

- Sunday to Thursday from 08:00 to 00:00 (midnight)
- Friday and Saturday from 08:00 to 01:00 the following day.

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 and the conditions agreed with the police during the conciliation process.

Reasons

The reasons for the decision are as follows:

The Sub-Committee heard from the licensing officer who was able to provide a copy of correspondence that had been sent out to each of the individuals who had submitted

representations.

In their submissions to the sub-committee, the Applicant was able to provide further information to support the application, specifically setting out the experience of the applicant, but most pertinently the operators of the restaurant. It was explained that both operators had personal licences and had experience running a number of premises previously.

As the representations put forward by the responsible authorities were conciliated before the meeting, the applicant focused their submissions on addressing the concerns raised by the local residents. Whilst none of the residents were in attendance, the written representations were directly addressed. It was noted that four representations raised concerns relating to crime and disorder that may arise from excessive alcohol consumption, public nuisance caused by waste and noise that may arise from the operation of a premises with a licence and protection of children from harm. It was also noted that a further two representations were in support of the application.

In addressing the raised concerns, the applicant first made it clear that the premises would be a restaurant, this was reinforced by the fact that the suite of conditions limiting its use to that of a restaurant, most pertinently that any alcohol would only be supplied ancillary to a main meal. This was further reinforced by the fact that there will only be seated table service and as such, many of the representations put forward in the written representations that objected to a bar or night club would not actually apply.

The applicant explained that the restaurant would celebrate the culture of Peckham and would serve a fusion of English, African and Caribbean food. They would make use of locally sourced products and would support the local people by making the basement available for local community events.

It was explained to the sub-committee by the representative for the applicant, that this application was exempt from the Peckham cumulative impact area as this does not apply to restaurants. It was also explained that the application was for hours recommended within the licensing policy for restaurants within a town centre.

The sub-committee had regard to the submission that the applicant had a vested interest to ensure that any concerns raised by the local residents were allayed as they would be the customers. The sub-committee were of the view that the applicant had made concerted efforts to make contact with the residents and were furthermore reassured by their undertaking to provide a contact number for any concerns that may arise by the running of the premises. In considering the licensing policy and the conciliated conditions the sub-committee felt that any concerns that they may have had regarding the licensing objectives had been allayed and granted the application.

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.

6. LICENSING ACT 2003: DENMARK EXPRESS, 74 DENMARK HILL, LONDON SE5 8RZ

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

The applicant addressed the sub-committee. Members had questions for the applicant.

The trading standards officer addressed the sub-committee. Members had questions for the trading standards officer.

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

The Metropolitan Police Service representative addressed the sub-committee. Members had questions for the police.

All parties were given five minutes for summing up.

The meeting adjourned at 1.10pm for the members to consider their decision.

The meeting resumed at 1.45pm and the chair advised all parties of the decision.

RESOLVED

That the application made by Hunish Sembhi for a premises licence to be granted under Section 17 of the Licensing Act 2003 in respect of the premises known as Denmark Express, 74 Denmark Hill, London SE5 8RZ be refused.

Reasons

The reasons for the decision are as follows:

The licensing sub-committee heard from the applicant who advised that negotiations with the previous licence holder commenced in September 2018 and as yet, no lease or tenancy had been finalised. The applicant did not expect to sign a lease for at least a month. Regardless, the keys to the premises had been handed to the applicant and £10,000 had already been paid to the previous licensee. The applicant also advised that responsible authorities failed to consult with her during the consultation period. This is despite correspondence with the responsible authorities objections having been sent to her. The applicant was also aware that the previous premises had been revoked and invited the licensing sub-committee not to penalise her for the failings of the previous licensee. The sub-committee were also advised that the council's licensing unit did not advise that the premises was located in a saturation zone.

The licensing sub-committee heard from the council's trading standards team who provided details concerning the premises previous extremely poor operating history which resulted in the premises licence being revoked. Since the revocation of the licence, insufficient evidence had been provided to demonstrate a change in the management of the business. The premises are also situated in the Camberwell cumulative impact policy (CIP) zone and the applicant had failed to rebut the presumption to refuse the application.

The licensing sub-committee heard from licensing as a responsible officer who advised that the premises was situated in the Camberwell cumulative impact policy zone which applies to nightclubs, pubs and bars, off-licences, supermarkets, convenience stores and similar premises. Under the CIP there is a rebuttable presumption that new premises licences that are likely to add to the existing cumulative impact will normally be refused or subject to limitations. It was a matter for the applicant to demonstrate that if the application were granted, the premises would not contribute to the negative local cumulative impact on any one or more of the licensing objective. This, the applicant had failed to do.

The licensing sub-committee heard from the representative from the Metropolitan Police Service who stated that there was very little of an operating schedule in the application with no precise and/or enforceable control measures. Reference was also made of the premises being located in the Camberwell CIP and the licensing sub-committee was invited to refuse the application as a result.

The licensing sub-committee noted the representations from the environmental protection team and public health, both of whom recommended that the application be refused.

Having considered the application carefully. The licensing sub-committee noted that the premises had a significant history of non-compliance resulting in the premises licence being revoked. Whilst each application considered should be on its own merits and the applicant was not accountable for the previous operator failings, the sub-committee were directed to paragraphs 89 and 90 of Southwark's statement of licensing policy which provides:

"89. This authority is concerned over the frequently observed practice of an application for a transfer of a premises licence being made immediately following an application for a review of that same licence being lodged.

90. Where, such applications are made, this authority will require 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 is now under new management control”.

Contrary to Southwark’s statement of licensing policy, definitive evidence was not provided showing a change in management.

The premises are located in the Camberwell CIP and the applicant failed to rebut the presumption to refuse the application. The applicant informed the sub-committee that the council’s licensing unit failed to advise that the premises fell in a CIP, making it apparent that the applicant had failed to give any consideration of Southwark’s statement of policy. The sub-committee were referred to R (on the application of Westminster City Council) -v- Middlesex Crown Court [2002] EWHC 1104 in which HHJ Baker adjudicated:

“Notwithstanding the applicant being a fit and proper person and the premises would be well run a licence could be refused on the sole ground that the area was already saturated with licence premises....and the cumulative effect of the existing premises was impacting adversely on the area to an unacceptable level”.

In the circumstances since the premises is located in the Camberwell CIP, this application is refused.

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
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7. LICENSING ACT 2003: SHELL SOUTHWARK PARK ROAD, 297 - 307 SOUTHWARK PARK ROAD, LONDON SE16 2JN

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

The meeting ended at 1.50pm.

CHAIR:

DATED: