

Licensing Sub-Committee

MINUTES of the OPEN section of the Licensing Sub-Committee held on Thursday 10 October 2019 at 10.00 am at Room G06 - 160 Tooley Street, London SE1 2QH

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

OFFICER SUPPORT: Nick Ham, legal advisor to the sub-committee
Wesley McArthur, licensing officer
Dorcas Mills, licensing officer
Richard Earis, environmental protection officer
Jayne Tear, licensing responsible authority 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: 10 UNION STREET, 10-18 UNION STREET, LONDON SE1 1SZ

The licensing officer presented their report. It was noted that the police and the

environmental protection team had conciliated with the applicant. Members had questions for the licensing officer.

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

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

Both parties were given five minutes for summing up.

The meeting adjourned at 11.34am for the sub-committee to consider its decision.

The meeting reconvened at 12.15 pm and the chair advised all parties of the decision.

RESOLVED:

That the application by The Royal College of Obstetricians and Gynaecologists for a premises licence in respect of the premises known as 10 Union Street, 10-18 Union Street, London SE1 1SZ be granted pursuant to section 18(4)(a) of the Licensing Act 2003 as follows:

Supply of alcohol for consumption on the premises	Sunday to Thursday - 11.00 to 00.00 Friday and Saturday - 11.00 to 01.00
Provision of regulated entertainment	Sunday to Thursday – 11.00 to 00.00 Friday and Saturday – 11.00 to 01.00
Provision of late night refreshment	Sunday to Thursday – 23.00 to 00.00 Friday and Saturday – 23.00 to 01.00
Operating hours of the premises	Sunday to Thursday – 08.00 to 00.30 Friday and Saturday – 08.00 to 01.30

Conditions

The operation of the premises under the licence shall be subject to relevant mandatory conditions, the conditions set out in the amended operating schedule and the following additional condition regarding the dispersal policy requested by the licensing authority and agreed by the sub-committee:

- 1) That the written dispersal policy shall be kept at the premises with the licence and made available for inspection by authorised council officers or the police. All relevant staff shall be trained in the implementation of the dispersal policy.

Reasons

The reasons for the decision are as follows:

This was an application by The Royal College of Obstetricians and Gynaecologists

pursuant to section 17 of the Licensing Act 2003 for a premises licence in respect of the premises known as 10 Union Street, 10-18 Union Street, London SE1 1SZ.

Written representations in respect of the application had been received from the Metropolitan Police Service and the environmental protection team as responsible authorities, however these were withdrawn prior to the hearing.

The licensing sub-committee heard from the applicant's representative, who emphasised that the applicant is a reputable charitable organization which has been operating similar licensed premises in Westminster for a number of years without any problems arising. He pointed out that the premises are to be used primarily for educational purposes and events, not as a bar or restaurant. Although the maximum capacity referred to in the application was over 968, in practice numbers would be well below this. At the existing premises in Westminster, the greatest number on any one occasion was around 400, though most college dinners numbered between 100 and 200.

As to the council's cumulative impact policy, he argued firstly that it did not apply because the premises did not fall within the class of premises caught by paragraph 143 of the policy. Secondly, he argued that even if the policy did apply, the premises should be exempted by virtue of paragraph 153 of the policy, in that they were not 'alcohol led', constituted an existing business operation being relocated while maintaining the same style of operation and a suite of conditions was proposed that would ensure that the premises operated in an appropriate manner. As to the licensing hours set out in paragraph 168 of the policy, it was not appropriate to impose hours that would apply to pubs, wine bars and other drinking establishments. Instead, the hours applicable to event spaces were more suitable for these premises. The police had rightly said in their representation that the premises were akin to a members' club and the hours applied for were therefore suitable.

The licensing sub-committee heard from the representative of the licensing authority, who indicated that the applicant had addressed many of the issues and questions raised in her written representations. However, the key issue was licensing hours. The premises were not analogous to a members' club – this was not an application for a club premises certificate and different considerations applied. Nor was it appropriate to exempt the premises on a 'relocation' basis under paragraph 153 of the policy. Paragraph 154 made it clear that the fact that an applicant operates a similar style of business elsewhere (such as within another local authority area) without complaint is not relevant to the impact of new premises. The hours applicable to pubs, wine bars and drinking establishments were more appropriate in this case. She ultimately proposed that if the licence was to be granted the terminal hours for licensable activities should be restricted to 23.30 from Sunday to Thursday and 01.00 on Friday and Saturday. She would also want an additional condition relating to the dispersal of patrons from the premises. There was no objection to this condition from the applicant.

The licensing sub-committee considered that the cumulative impact policy did apply to these premises, but also considered that it would be justified in departing from the policy in the individual circumstances of the case and was satisfied that the grant of the application would not impact further on the relevant licensing objectives.

The licensing sub-committee took account of the unique nature of the applicant and its activities, and the comprehensive suite of conditions proposed. Further, given that 90% of the applicant's members are women, the licensing sub-committee considered the application to be an exceptional one having regard to the Equalities Act 2010. The licensing sub-committee also noted that the applicant undertook to minimise the use of

single-use plastics in its operations.

The sub-committee therefore decided to grant the premises licence pursuant to section 18(4)(a) of the Licensing Act 2003 and considered it necessary for the promotion of the licensing objectives to impose the conditions 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 desires to contend that:

- a) The licence ought not to have been granted; or
- b) 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: THE BRUNEL, 47 SWAN ROAD, LONDON SE16 4JN

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

The environmental protection team officer, the applicant for the review addressed the sub-committee. Members had questions for the environmental protection officer.

The licensing officer as a responsible authority, supporting the review, addressed the sub-committee. Members had questions for the licensing officer.

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

All parties were given five minutes for summing up.

The meeting adjourned at 1.27pm for the sub-committee to consider its decision.

The meeting reconvened at 2.50pm and the chair advised all parties of the decision.

RESOLVED:

That following an application by the environmental protection team for a review of the premises licence in respect of The Brunel, 47 Swan Road, London SE16 4JN, the conditions of the licence shall be modified pursuant to section 52(4)(a) of the Licensing Act 2003 as follows:

Conditions

Condition 309 shall be removed from the premises licence.

Condition 841 shall be amended as follows: "The beer garden must not be used on any day after 23:00, save for persons temporarily leaving the premises to smoke. No drinks shall be allowed outside of the premises after 23.00".

The following conditions shall be added to the premises licence:

- 1) That there shall be at least one SIA approved door supervisor employed at the premises between 21.00 hours and closing time on Fridays and Saturdays, and on any other days that the premises are open beyond 01.00.
- 2) That the door supervisor shall sign an attendance log declaring an understanding of the licence conditions. This log shall be retained for inspection by a police officer or an authorised officer of the council for a period of 6 months.
- 3) That the door supervisor shall ensure that the doors to the street shall remain closed whilst on duty save for immediate access or egress.
- 4) That a sound limiting device shall be installed, set and maintained, to control maximum levels of amplified sound inside the premises so as to ensure entertainment noise from the premises does not cause a public nuisance in the vicinity of the premises.
- 5) That all audio and musical equipment used in the premises, permitted under the Licensing Act 2003 or the Live Music Act 2012, shall be played through the installed sound limiting device at all times.
- 6) That any additional amplification equipment imported on to the premises by third parties, permitted under the Licensing Act 2003 or the Live Music Act 2012, shall be connected to and use the installed sound limited device/circuit at all times.

Reasons

The reasons for the decision are as follows:

This was an application pursuant to section 51 of the Licensing Act 2003 made by the Environmental Protection Team as a responsible authority for a review of the premises licence in respect of the premises known as The Brunel, 47 Swan Road, London SE16 4JN.

The licensing sub-committee heard from the applicant for the review. He referred to the documented series of complaints of noise from the premises, including a statutory noise nuisance witnessed on 14 July 2019 which resulted in an abatement notice that is under

appeal in separate proceedings. Despite positive engagement on the part of the licence holders, there had been further complaints in recent days, though these fell short of statutory nuisance. The complaints essentially related to loud music, often in conjunction with doors to the premises being left open and permitting noise to escape.

A number of the complaints related to noise occurring before 23.00. The problem was that, as a result of section 177A(2) of the Licensing Act 2003, the conditions on the licence relating to the playing of music, karaoke and such like are no longer enforceable before 23.00. In order to solve the problem of noise before that time, it would be necessary to alter the relevant conditions so as to include a statement that section 177A does not apply to them, by virtue of section 177A(3). Further, a number of additional conditions relating to sound equipment should be added to the licence and one unworkable condition removed. In essence, what the applicant was asking for was a reasonable set of enforcement tools to deal with the noise problem. The licence holder's proposal of door supervision was a good additional control, but not sufficient in itself.

The licensing sub-committee also heard from the representative of the licensing authority, who fully supported the application. Although not every complaint amounted to a statutory nuisance, there was a problem of noise escaping from the premises and the disapplication of section 177A of the Act would assist. A condition relating to door supervisors was a good one, but the licensing team supported the other amendments to the licence sought by the applicant.

The licensing sub-committee also took account of written representations from two other persons who did not attend the hearing.

The licensing sub-committee heard from the representative of the licence holder. He pointed out that his client had only taken over the premises in March 2018 and that the vast majority of complaints predated their involvement. The licence holder was not complacent about the situation and was taking action. A meeting in August with responsible authorities had resulted in an action plan. Since then, there had been no further complaints until early October. The recent complaint about karaoke could not be right as there had been no karaoke at the premises that evening and, had there been, it would not have gone on for only 45 minutes.

He stressed that any action taken by the licensing authority as a result of the review must be evidence-based and proportionate. Further, the best practicable means should be adopted to solve any problem. What the applicant was seeking went beyond what was necessary to address the issues. By issuing the abatement notice and seeking a review, the environmental protection team were taking a step too far and attempting 'double enforcement'. In his submission, the best and most effective solution to the problem would be to add a condition to the premises licence relating to door supervision. This would best ensure that doors were kept closed and the behaviour of customers was monitored.

The licensing sub-committee found that the licensing objective of the prevention of public nuisance was engaged as a result of noise emanating from the premises at times prior to 23.00.

The licensing sub-committee did not however consider it necessary in this case to disapply section 177A of the Licensing Act 2003 to any of the conditions on the licence.

Instead, the sub-committee decided that it would be sufficient to promote the licensing objectives in this case to modify the conditions of the premises licence pursuant to section

52(4)(a) of the Licensing Act 2003 as set out above.

The licensing sub-committee noted that the licence holder undertook to minimise the use of single-use plastics in its operation, for example by the use of paper straws and reusable plastic glasses.

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

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 chief executive 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 meeting ended at 3.10pm.

CHAIR:

DATED: