

Licensing Sub-Committee

MINUTES of the OPEN section of the Licensing Sub-Committee held on Thursday 4 June 2020 at 10.00 am at Online/Virtual: please contact andrew.weir@southwark.gov.uk for a link to the meeting and the instructions for joining the online meeting

PRESENT: Councillor Renata Hamvas (Chair)
Councillor Sunny Lambe
Councillor Charlie Smith

OTHER MEMBERS PRESENT: Councillor Richard Livingstone (ward councillor)

OFFICER SUPPORT: Debra Allday, legal officer
Gary ward, legal officer
Jennifer Phillips, legal officer (observing)
Ray Moore, trading standards officer
Wesley McArthur, licensing officer
Richard Kalu, licensing officer
Jayne tear, licensing responsible authority officer
Charlie Jerrom, licensing responsible authority officer
Roy Fox, environmental protection officer
Gavin Blackburn, planning enforcement officer
P.C. Ian Clements, Metropolitan Police Service
Andrew Weir, constitutional officer

1. APOLOGIES

This was a virtual licensing sub-committee meeting. The chair apologised for the late start to the meeting, due to technical problems.

The chair explained to the participants and observers how the virtual meeting would run. Everyone then introduced themselves.

There were no apologies for absence.

2. CONFIRMATION OF VOTING MEMBERS

The voting members were confirmed verbally, one at a time.

3. NOTIFICATION OF ANY ITEMS OF BUSINESS WHICH THE CHAIR DEEMS URGENT

There were none.

4. DISCLOSURE OF INTERESTS AND DISPENSATIONS

In relation to item 5, the chair advised that she had previously witnessed the premises operating without a licence when she had passed by. The chair advised that this would not prejudice her decision in any way.

5. LONDON LOCAL AUTHORITIES ACT 1991: SABRINA BEAUTY SALON, 151 RYE LANE, LONDON SE15 4TL

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

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

The trading standards officer and the licensing responsible authority officer had questions for the applicant and their representative, which the chair allowed the officers to ask.

The meeting adjourned at 12.24pm for a comfort break and reconvened at 12.32pm.

The licensing responsible authority officer addressed the sub-committee. Members had questions for the licensing officer.

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

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

All parties were given five minutes for summing up.

The meeting adjourned at 1.00pm for the sub-committee to consider its decision.

The meeting reconvened at 1.42pm and the chair advised all parties of the decision.

RESOLVED:

That the licence in respect of the premises known as Sabrina Beauty Salon, 151 Rye Lane, London SE15 4TL be refused.

Reasons

The licensing sub-committee heard from the applicant and her representative who advised that she has made an application to provide nail extensions, manicures and pedicure treatments at the premises. The applicant submitted additional information at the hearing, namely (i) "right to work" documents for five operatives and (ii) a Shop Management Agreement, as entered into by the applicant with the landlord, dated 07 February 2020.

The applicant's representative responded to the objections to the grant of a new special treatment licence as submitted by Southwark Council licensing, Southwark Council trading standards and the Metropolitan Police Service, as responsible authorities.

The applicant's representative stated that the application for a special treatment licence had been lodged on 12 February 2020. The applicant was not involved in the running of the business before the date of that agreement and should not be held accountable for anything that occurred at the premises before that date. The special treatments licence was previously held by Mr. Amanuel Fissehaye.

The applicant's representative advised that the applicant is a person of good character and a fit and proper person to hold a licence. The applicant is a practising nurse at a NHS hospital. The applicant proposes to operate with five qualified practitioners who all have the right to work in the United Kingdom. Three are British citizens and the others have provided right to work documents. The previous owner will not have anything to do with the running of the premises. The applicant would be prepared to give an undertaking or accept a condition on the licence to this effect.

The applicant's relationship with the previous operator is nothing more than landlord and tenant under the agreed shop management agreement. Although the applicant would be working at the hospital she would visit the premises two or three times each week to check on the business. The applicant would monitor receipts to check if the correct products were being used and would also be responsible for health and safety. When she is not there she will delegate responsibility to the supervisor. The applicant has no previous experience of working or running a beauty treatment salon but is used to working in a structured organisation at the NHS and has attended many health and safety courses whilst working at the hospital.

The applicant explained that she is the manager but not a director or the owner of the company. The sub-committee questioned whether she would have effective control over the shop. The applicant stated that she would be in charge of running the business. The applicant accepted that Mr. Fissehaye is still the owner of the business and is the sole director of Sabrina Beauty Salon Ltd.

The applicant said the operatives working at the salon would be self employed and pay rent to work there at around £100 to £200 per week. The sub-committee noted that the applicant has to pay £1,500 per week to the landlord in rent.

The sub-committee asked the applicant about her relationship with the landlord. The applicant confirmed the landlord is her ex-husband and is the father of her daughter. The premises are named after their daughter. The sub-committee asked the applicant if she had public liability and employer's liability insurance in place. The applicant stated that insurance had been taken out but that she did not know the name of the insurers.

The licensing sub-committee heard from the licensing authority representative who

concluded that the special treatments licence should be refused based on the London Local Authorities Act 1991, Section 8, paragraphs:

- Section 8 (c) the persons concerned/intended to be concerned in the conduct/management of premises used for special treatment could be reasonably regarded as not being fit and proper persons to hold such a licence.
- Section 8 (e) the premises have been/are being improperly conducted.

The licensing authority representative believed that Mr. Fissehaye will still be involved in the running of the business and that the applicant had not demonstrated that she will be a fit and proper person.

The representative for Southwark Council trading standards confirmed that the written reasons for the objections made to the application still remained.

The licensing sub-committee heard from the Metropolitan Police Service who advised that premises were not being operated properly by Mr. Fissehaye. It appears, to the Metropolitan Police Service, that the applicant is a manager being employed by her ex-husband, who was in charge of the business when offences were committed, and there has been no material change in the operation of the premises other than a new name being put forward as the licence holder.

In summing up the applicant' representative confirmed that that the applicant's relationship with Mr. Fissehaye was over. They also advised that the previous operator had now gone. They informed the sub-committee that the applicant would come in as a breath of fresh air and would bring with her, a wealth of health and safety experience. It was stated that the applicant had no previous convictions.

The licensing sub-committee having read and heard all of the evidence had no confidence that the applicant could be regarded as a fit and proper person to hold such a licence.

The licensing sub-committee was not satisfied that the applicant had demonstrated sufficient knowledge or understanding of how the premises needed to be managed. The applicant had not considered the business model carefully, with regard to the rents being paid by the operatives and the amount needed to cover the rent payable to the landlord. The applicant was also unsure about the insurance that was needed to be taken out.

The applicant's representative did not dispute that the premises had been improperly managed by Mr. Fissehaye. The licensing sub-committee concluded the applicant did not have sufficient experience to manage these premises having regard to the recent problems and offences.

Mr. Fissehaye is the previous operator and is still the owner of the premises. The applicant would not be able to run the business without his involvement. There is also a strong family connection which could not be ignored. Mr. Fissehaye has not gone, as asserted by the applicant and her representative.

The licensing sub-committee noted that the shop management agreement was only for six months and could be terminated by applicant giving three months notice of termination (clause 5.2). The licensing sub-committee also noted that the applicant did not have the benefit of a lease (clause 14.1). The licensing sub-committee was concerned that when

the shop management agreement contract expires on the 6th August 2020, or is terminated, Mr. Fissehaye could resume being fully in charge of the premises.

The licensing sub-committee found that the objections were upheld.

The licensing sub-committee found that it was appropriate and proportionate to refuse the licence.

Appeal rights

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: EMPIRE LOUNGE, 777 OLD KENT ROAD, LONDON SE15 1NZ

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

The meeting adjourned at 2.15pm to allow the licensing responsible authority officer time to read the dispersal policy for the premises. The meeting reconvened at 2.24pm.

The applicant's legal representative addressed the sub-committee. The legal representative advised that the applicant was on the telephone with him in order to give instructions. Members had questions for the applicant and their legal representative.

The planning enforcement officer addressed the sub-committee. Members had questions for the planning enforcement officer. The applicant's legal representative also had questions for the planning enforcement officer.

The ward councillor objecting to the application addressed the sub-committee. Members had questions for the ward councillor. The applicant's legal representative also had questions for the ward councillor.

The environmental protection officer addressed the sub-committee. Members had questions for the environmental protection officer. The legal representative for the premises also had questions for the environmental protection officer.

The meeting adjourned for a comfort break at 4.00pm. The meeting reconvened at 4.15pm.

Concern was raised about the style of questioning of one of the members of the sub-committee. The councillor made a point of personal explanation and explained that they had attended the premises as a customer on approximately two occasions, but did not have a personal relationship with the applicant in any way. They further added that they would consider everything in a fair and unbiased way, as they had done with every other application that they had previously deliberated on, in their role as a member of the licensing sub-committee. All parties accepted the councillor's representations and everyone, including the applicant and their representative had no objection to the councillor remaining on the licensing sub-committee panel of members for the hearing.

The Metropolitan Police Service representative addressed the sub-committee. Members

had questions for the police.

The licensing responsible authority officer addressed the sub-committee. Members had questions for the licensing responsible authority officer. The legal representative for the applicant also had questions for the licensing responsible authority officer.

All parties were given five minutes for summing up.

Before the meeting adjourned, all parties agreed that they would be happy to receive the written decision by email, rather than waiting for a verbal decision on the day.

The meeting adjourned at 5.10pm for the sub-committee to consider its decision.

The meeting reconvened at 5.45pm.

RESOLVED:

That the application made by George Nwachukwu for a premises licence to be granted under Section 17 Licensing Act 2003 in respect of the premises known as the Empire Lounge, Unit 2, 777 Old Kent Road, London SE15 1NZ be refused.

Reasons

The licensing sub-committee heard from the applicant's representative who advised that the application was essentially to extend hours. The applicant had been very seriously financially affected by the mandatory closure of The Empire Lounge and as a result of the implementation of The Health Protection (Coronavirus, Business Closure) (England) Regulations 2020; it would be necessary to extend the premises operating hours to aid the recovery of the business.

The applicant's representative expressed his surprised by the number of representations received opposing the application. They advised that they felt that there was no rational explanation as to how the applicant was being treated. No residents had submitted representations and historically, it was the residents that made complaints of noise nuisance. The very small number of noise complaints could now only be treated as private nuisance complaints and therefore did not undermine the prevention of public nuisance licensing objective. The noise complaints that resulted in the review of the licence in 2017 were vexatious. This was proved by the fact that the licensing sub-committee took no action other than to require the applicant to implement a dispersal policy.

The applicant's representative further stated that since the review application in October 2017 there had been only three complaints of noise nuisance which, the representative said was de minimus.

Concerning the objection made by the planning service, the sub-committee were reminded by the applicant's representative that planning was a separate regime to licensing and was therefore an irrelevant consideration.

The representative stated that the police had failed to establish that the premises had accounted for any crime and disorder and therefore their representation could be dismissed.

The applicant's representative also contended that the area was now largely an industrial area and that there were premises in the area and across the road that had operating hours of up to 03:00.

The licensing sub-committee heard from the council's planning enforcement officer who objected to the application on the grounds of prevention of crime and disorder. They advised that the premises are subject to a planning condition restricting in its hours of operation to 23:00. The hours are restricted to protect the amenity of adjoining residents. The officer advised that this planning condition had not been adhered to and a planning enforcement notice was in place to ensure compliance. Breaching the requirements of the planning enforcement notice is a criminal offence under Section 179 of the Town & Country Planning Act 1990.

The planning enforcement officer informed the sub-committee that the applicant applied to alter the terms of the planning condition to extend operating hours and was refused on by the Planning Inspector on 15 December 2016. A further application was made to change the operating hour to 01:00, but this was refused by the council. The refusal was then appealed and on 22 May 2019 and the Planning Inspector upheld the council's decision to refuse planning permission. A similar decision had been made by an independent planning inspector on 15 December 2016. An extension of the operating hours was considered to harm residential amenity. The sub-committee were also advised that the planning status of the premises is now well settled and there was no prospect of there being any change to the planning position.

The licensing sub-committee then heard from the environmental protection officer who objected to the application on the grounds of prevention of public nuisance. They advised that complaints of noise nuisance have been made in respect of the premises since it has operated as Empire Lounge. Numerous breaches of licence conditions have been also been witnessed by council officers. In addition, the premises have been observed operating outside of the hours permitted by the premises licence issued in respect of the premises. They were of the opinion that opening until 02:30 hours on Friday and Saturday evenings and playing recorded music until 02:00 on those nights would almost definitely lead to further public nuisance and other disturbance to local residents.

The officer from the Metropolitan Police Service objected to the application and referred to the applicant's planning applications to extend the premises' hours of operation, which had been refused. The extension to licensing hours would be in conflict with planning permission and could result in the applicant being prosecuted for breach of planning legislation, thus undermining the prevention of crime and disorder licensing objective. The officer also referred to the premises operating in breach of its licence conditions on numerous occasions, in addition to complaints of noise nuisance made by local residents caused by the premises' patrons. A grant of the application would have a negative impact on local residents and also lead to an increase in public nuisance and crime and disorder in the area.

The officer representing licensing as a responsible authority informed the sub-committee that, in accordance with Southwark's statement of licensing policy, the premises are located in a residential area and the recommended closing time for the sale of alcohol is 23:00 daily. They further added that the licensing policy also recommends that nightclubs are not suitable in such residential areas. They advised that the premises already holds a premises licence (number 859547), where the closing times are already in excess of those considered appropriate for the area. The premises has also operated in breach of its licence conditions and complaints have been received from local residents in the past

concerning the premises operation. A further extension of operating hours would impact negatively on local residents.

A local ward councillor also made representations objecting to the application and referred to the prior operation of the premises which has led to alleged noise nuisance, crime and disorder and anti-social behaviour in the local area.

Concern was raised about the style of questioning of one of the members of the sub-committee. The councillor made a point of personal explanation and explained that they had attended the premises as a customer on approximately two occasions, but did not have a personal relationship with the applicant in any way. They further added that they would consider everything in a fair and unbiased way, as they had done with every other application that they had previously deliberated on, in their role as a member of the licensing sub-committee. All parties accepted the councillor's representations and everyone, including the applicant and their representative had no objection to the councillor remaining on the licensing sub-committee panel of members for the hearing.

This matter last came before the licensing sub-committee in 2017, firstly on 6 September 2017 in respect of a variation application and again on 2 October 2017 in respect of a review application. The variation application essentially sought to amend the premises' terminal hour(s) from Sunday to Friday 23:30 and Saturday 00:30 (the following day) to Sunday to Thursday 01:00 hours (the following day) and Friday, Saturday and Bank Holidays 03:30 hours (the following day). That application was granted, albeit with reduced terminal hour(s) of Sunday to Thursday 00:00 and Friday, Saturdays and bank holidays to 01:00. The sub-committee granted these reduced hours due to the complaints of noise nuisance in addition to the planning permission and planning enforcement notice stipulating a terminal hour of 23:00. The sub-committee modified the premises licence at the review hearing on 2 October 2017 by adding the condition requiring the premises to have an agreed dispersal policy.

Since this time, the licensing sub-committee noted complaints of noise nuisance and that the premises were being operated in breach of licensing conditions on numerous occasions including on:

- 27 January 2018: Breach of condition 352 (requiring that a minimum of 2 SIA registered door supervisors shall be on duty from 22:00 until the premises are shut on Friday and Saturday); condition 843 (visibly display that entry shall not be permitted to patrons who use Sylvan Road to either park, drop off or collect by private or hackney carriage vehicles); condition 288 (relating to CCTV) and condition 293 (relating to training records). As a result of the licence condition breaches a Section 19 Closure Notice was issued.
- 16 February 2018: Breach of condition 352. A Section 19 Closure Notice was issued as a result.
- 11 August 2018: The premises was found to be operating beyond its permitted terminal operating hour, alcohol was being served, and a DJ was playing loud recorded music contrary to there being no recorded music on the licence.
- 14 December 2019: The premises was operating beyond its permitted terminal operating hour and serving alcohol.
- 8 March 2020: Breach of condition 288.

This licensing application was submitted on 6 April 2020 and this sub-committee would expect in the lead up to such an application, it would have operated impeccably. That is not the case here. Due to the location of the premises, the sub-committee felt that additional evidence that they could manage later opening in this location such as with temporary event notices would have been useful. Again, this has not happened. This application sought extended hours with no additional control measures from those already in existence. The applicant has therefore failed to demonstrate how they could provide licensable activities outside the recommended hours in the Southwark Statement Of Licensing Policy, while mitigating against any additional crime, disorder and public nuisance that the hours may attract, as highlighted in paragraph 165 (of the policy).

The applicant's contention that the premises were located in an industrial area was dismissed. The other premises with operating hours until 03:00 were historical, prior to the Southwark statement of licensing policy being amended to include recommended opening hours. Furthermore, the map included in the agenda papers (page 174) was out of date as a new residential development had now been erected. In addition, a council housing estate (the Tustin Estate) was in the vicinity and would likely be affected by the applicant's operation. The sub-committee concluded that the applicant had failed to address how patrons could disperse at a later hour without disturbing residents, particularly if they came by car, as the only place to park is close by on Sylvan Grove.

The licensing sub-committee recognised that licensing and planning are two separate regimes. There is also no legal basis for this sub-committee to refuse this application solely because the applicant does not have planning permission. Allowing a limited extension to the operating hours in the variation application of 6 September 2017 has demonstrated that licensing considerations have not been bound by planning considerations or the planning permission currently in place. The planning permission has been revisited by the applicant and it noted that Planning Inspector refused to extend the operating hours beyond the 23:00 hours sought due to the loss of residential amenity.

The applicant already has operating hours beyond those recommended in the Southwark statement of licensing policy. It now seeks a further extension until 00:00 (Sunday to Thursday) and 02:30 Friday, Saturday and bank holidays). This is a significant extension. Any grant of the extended hours would result in a Section 179 Town and Country Planning Act 1990 prosecution, if the applicant operated with these extended hours, which in turn would undermine the prevention of crime and disorder licensing objective. In the circumstances, the licensing sub-committee expects the applicant to obtain planning permission in advance of this licensing application and rely on paragraph 105, Southwark Statement Of Licensing Policy in support of this.

On this basis, 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
- 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 5.45pm.

CHAIR:

DATED: