

## Licensing Sub-Committee

MINUTES of the OPEN section of the Licensing Sub-Committee held on Thursday 17 September 2020 at 10.00 am at Online/Virtual: please contact [andrew.weir@southwark.gov.uk](mailto:andrew.weir@southwark.gov.uk) for a link to the meeting and the instructions for joining the online meeting

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**PRESENT:** Councillor Renata Hamvas (Chair)  
Councillor Margy Newens  
Councillor Charlie Smith

**OFFICER SUPPORT:** Debra Allday, legal officer  
Charlotte Precious, legal officer (observing)  
Toyin Calfos, legal officer (observing)  
Andrew Heron, licensing officer  
David Franklin, licensing responsible authority officer  
Ray Moore, trading standards officer  
P.C. Graham White, Metropolitan Police Service  
P.C. Keith Dempster, Metropolitan Police Service  
P.C. Kim O'Mohoney, Metropolitan Police Service  
Andrew Weir, constitutional officer

### 1. APOLOGIES

This was a virtual licensing sub-committee meeting.

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

There were no apologies for absence.

### 1. 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**

The chair accepted the following item as late and urgent:

- Licensing Act 2003: Transfer and Variation of Designated Premises Supervisor Applications – Foodlink, 98-100 Wyndham Road, London SE5 0UB.

The chair advised that the sub-committee would vary the order of business to hear item 6 first.

**4. DISCLOSURE OF INTERESTS AND DISPENSATIONS**

There were none.

**5. LICENSING ACT 2003: FOODLINK, 98-100 WYNDHAM ROAD, LONDON SE5 0UB**

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

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

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

The licensing responsible authority officer addressed the sub-committee. Members had no questions for the licensing responsible authority officer.

The premises licence holder addressed the sub-committee. Members had questions for the premises licence holder.

All parties were given up to five minutes for summing up.

The meeting adjourned at 1.10pm for the sub-committee to consider its decision.

The meeting reconvened at 1.40pm 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 Metropolitan Police Service for the review of the premises licence issued in respect of Foodlink, 98-100 Wyndham

Road, London SE5 0BU having had regard to all relevant representations has decided to revoke the premise licence.

## **Reasons**

The licensing sub-committee heard from the representative for the Metropolitan Police Service Police, the applicant to the review who advised that on 3 July 2020, police executed two search warrant at Foodlink, 98-100 Wyndham road and 108 Wyndham road, London SE5. The licence holder and designated premises supervisor, Sohail Khan, was in the premises behind the counter with two other people employed at the premises which included the DPS who was asked to come out from behind the serving counter so that he and the serving counter area could searched. Mr Khan immediately became aggressive and obstructive, refusing to come out to be searched shouting at officers “don’t touch me” and trying to pull away from them to make a phone call on his mobile phone having already been told he was not allowed to make any calls. When he was asked his name he replied, “You know what, I ain’t going to answer no questions”.

Police searching the private basement storage area found twelve wraps of what is believed to a cocaine and heroin mix, which was subsequently tested and found to contain cocaine and opiates. Under the counter, the searching officer found a hammer and a large bread knife, which appeared to be kept there to use as weapons.

The full premises licence and summary were not made available and breaches were found in relation licence conditions: 342 (staff training concerning the supply of intoxicating liquor), 843 (staff training concerning alcohol and cigarettes not to be purchased from customers and or a door to door sales person), 340 (CCTV be installed both inside and out and a recording kept for 31 days).

On 9 July 2020, officers from licensing and night time economy team, in the company of Southwark’s trading standards team, carried out another licensing inspection. Again, officers found a number of breaches of the licence relating to licence conditions: 101 (alcohol supplied under the premises licence to be made or authorised by a personal licence holder), 336 (personal licence holder to be on the premises at all times intoxicating liquor supplied), 342 (recognised training for all staff supplying intoxicating liquor), 345 (refusals book), 341 (implementation of recognised proof of age scheme), 344 (under 21s ID), 488 (age verification scheme), 847 (Challenge 25 policy), and 340 (CCTV).

Police attended the premises again on 15 July 2020 to collect the CCTV previously requested but were advised the CCTV was not working for the period requested, being a further breach of the licence.

Of the four licensing inspections at the premises previously, weapons have been found three times under the counter and on two occasions no personal licence holder was present. On all visits a number of breaches of the licence have been found.

The licensing sub-committee was also advised that in October 2014 the premises licence was subject to a Section 53A expedited review, under the previous management, after a serious assault took place whilst the premises were operating in breach of the licence. Sohail Khan was the freehold owner of the premises at that time.

Mr Khan owns a number of properties, which have been subject to both council and police enforcement action, due to poor management, and breaches of the licences. His father (who also has links to the premises at) is the owner of another property on Wyndham Road, which had a warrant executed on the same day as Foodlink on 3 July 2020 and believed to be used as a brothel with links to human trafficking; but advertising as a massage parlour. This police investigation is ongoing.

Sohail Khan was also convicted for breaching an enforcement notice for the concerning the unlawful conversion of 98-100 Wyndham Road from a public house to a shop and six flats without planning permission, at 98A Wyndham Road, contrary to Section 179(2) of the Town and Country Planning Act 1990. As a result of that conviction, he was also made the subject of a confiscation order for the sum the criminal benefit of £25,175.00 for the rent he continued to receive from the properties, in breach of the enforcement notice. The confiscation order was made in the sum of £18,000 on 18 May 2019.

The licensing sub-committee then heard from the officer from trading standards who advised that he supported the police's review of the premises licence having had eight years of dealings with both the premises and the premises licence holder, Sohail Khan and the premises licence holder's father, Yaqoob Khan.

The officer went on to explain that the current license was issued on 24 September 2019 with Sohail Khan as the premises license holder and the designated premises license Holder. It was Trading Standard's belief that Yaqoob Khan was the real controlling mind behind the business.

The premises were previously a public house that closed down and became a shop. The land registry showed that Mr Sohail Khan was the current owner of the premises and has been since 2012. Sohail Khan's father previously had control of the business before selling it to his son. His father was also has the long lease on the premises at Wyndham Road. Prior to the premises licence being transferred to the Sohail Khan in 2019 the previous licence holder was convicted in 2016 under Regulation 19(1) Food Safety & Hygiene (England) Regulations 2013, concerning illicit alcohol (duty diverted vodka) without any traceable invoices. They were also found to have been in breach of their premises licence under Section 136 of the Licensing Act 2003 (not using the serving hatch at the time of the stabbing and fight in the premises in 2014) and under Section 146 of the Licensing Act 2003 (selling alcohol to a minor).

Following Sohail Khan taking over the premises licence to Foodlink in 2019, the trading standards officer received a visit at the council offices by a known

associate of Sohail Khan who alleged that he had been forcibly evicted from the premises by Sohail Khan and his father. The associate went on to allege that both Sohail Khan and his father were also running a brothel from the property at Wyndham Road.

During the officer's visit to the premises on 9 July 2020, numerous breaches of the premises licence were found, including no personal licence holder on the premises. The person behind the counter, and in charge of the Foodlink at the time, said that he had worked at the premises for a month. When asked why there were entries in the refusals register dating beyond this start date at the premises, he laughed and said that Sohail Khan had made him write them in the book.

The licensing sub-committee then heard from the officer representing licensing as a responsible authority, who also supported the police's review under the prevention of crime and disorder, public safety and the protection of children from harm licensing objectives and had regard to the Southwark's statement of licensing policy 2019-21.

The officer referred to the police's expedited review in 2014. The officer continued that following the outcomes of recent inspections by the police and trading standards application, there was no faith in the current licensee and designated premises supervisor.

The premises licence holder and designated supervisor then very briefly spoke with the members of the sub-committee and advised that his father had told the employee who spoken to by trading standards on 9 July 2020, that he needed to complete the refusal's book, not falsify it. Concerning the drugs found, he claimed that he was not aware of the up to date position and that he had also changed the CCTV. He also advised that he was bereaving and not in the right state of mind to run the premises properly. However, he was unhappy to surrender the premises licence, saying that the business wouldn't survive without one and if were revoked, it would break him.

The licensing sub-committee considered both the oral and written evidence before it very carefully and found that the evidence in support of the revocation of the licence compelling; the oral evidence of Mr Khan failed to give any convincing reason why the premises licence should not be revoked.

In responding to this review of the premises licence, the sub-committee recognised that it had five options it could consider for the promotion of the licensing objectives:

- i. Modify the conditions of the licence by altering, omitting or adding any condition.
- ii. Exclude a licensable activity from the scope of the licence
- iii. Remove the designated premises supervisor
- iv. Suspend the licence for a period not exceeding three months
- v. Revoke the licence.

As a result of the expedited review, additional extensive and detailed conditions were added to the premises licence. Given the catalogue of licence breaches, since 2014, the sub-committee determined that it would be inappropriate and futile to add any further conditions. Concerning the exclusion of a licensable activity, the premises licence to Foodlink consists only of the sale of alcohol, so its exclusion would also be inappropriate. The premises previously had a one month's suspension of its premises licence, which clearly had no effect on the way the premises has been managed (post 2014) so the sub-committee found that there would be no benefit in imposing even a three month suspension at this stage, The premises licence holder, Mr Khan, is currently the designated licence holder and whilst a premises licence transfer and designated premises variation was submitted in advance of this review, this could not be granted as it was found that Mr Khan would remain the controlling mind to the business. In all the circumstances, there was no other option to revoke this premises licence.

### **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. LICENSING ACT 2003: TRANSFER AND VARIATION OF DESIGNATED PREMISES SUPERVISOR APPLICATIONS - FOODLINK, 98-100 WYNDHAM ROAD, LONDON SE5 0UB**

The meeting adjourned at 10.20am for the applicant to be contacted in order that they could address the sub-committee and be questioned by the sub-committee. The meeting reconvened at 10.40am.

The licensing officer presented their report. The licensing officer informed the sub-committee that the licensing agent for the application had written to him to advise that she would not be attending the meeting and that she would have advised against the DPS transfer and variation, given that the premises was also subject to

a review. Members had questions for the licensing officer.

The applicant addressed the sub-committee. Members had questions for the applicant. The police also had questions for the applicant, which the chair allowed.

The Metropolitan Police Service representative addressed the sub-committee. They also called a trading standards officer as a witness. Members had questions for the police and their witness.

Both parties were given up to five minutes for summing up.

The meeting adjourned at 11.49am for the sub-committee to consider its decision.

The meeting reconvened at 12.14pm and the chair advised all parties of the decision.

### **RESOLVED:**

That the applications made by Gul Mohammed for the variation of the designated premises supervisor (DPS) under s.37 and transfer of the premises licence under s.42 of the Licensing Act 2003 in respect of the premises known as the Foodlink, 98-100 Wyndham Road, London SE5 0UB be refused.

### **Reasons**

At the start of the meeting, neither the applicant, nor his representative was present.

The licensing officer informed the sub-committee that he had received an email from the applicant's representative that read:

“Thank you for your emails. I will not be attending the hearing today as I had not been made aware at any time of the situation relating to the premises and was only asked to deal with the transfer and change of DPS applications. If I had been aware of the circumstances regarding the transfer I would have advised them that this was not an appropriate action to be taken under the circumstances. I presume that they have another agent who is representing them at the review hearing”.

Since the previous premises licence holder and DPS, Sohail Khan was present, he was asked to make contact with the applicant, requesting that he attend, which he did. The sub-committee noted that Mr Khan appeared surprised that he would not be allowed to make representations on behalf of the applicant.

The licensing sub-committee heard from the applicant who informed the members that he had signed a business operating agreement on 9 September 2020 and since this time, the business was his. He stated that he had not worked at the premises prior to 9 September nor did he have any links to Sohail Khan.

The applicant stated that as he had not worked for three months, a friend of his had informed him of Foodlink being for sale. He recognised the premises potential and took over the premises for five years, buying the stock and paying Sohail Khan £2,000 compensation weekly. The applicant also accepted that he had not been a business proprietor before, nor had he worked in retail, but understood his obligations under the Licensing Act 2003, having been trained by a friend. However, he was unable to answer when asked about the condition in respect of invoices. He was also unable to assist the sub-committee concerning who the supplier's to Foodlink were and he advised that ordering stock was made from looking at the shelves in the shop.

The applicant confirmed that he was aware that the premises was being reviewed and stated that he was not interested in selling alcohol; ultimately, he wanted to train and then run a butcher's. When questioned the applicant as to what proportion of total sales related to alcohol, the applicant was uncertain. When pressed for a figure, he said that alcohol sales made up approximately 30% of Foodlink's overall sales. Initially the applicant said that weekly profits were between £15-17,000, which he then corrected to £7,000 on the advice of someone else who could heard advising the applicant, whom he advised was his wife. When asked to clarify whether the £7,000 was profit or turnover, the applicant was unable to do so.

The licensing sub-committee heard from the representative of the Metropolitan Police Service who also called a trading standards officer as a witness. The sub-committee members were informed that following the execution of a police warrant on 3 July 2020 a Section 51 review of the premises licence to Foodlink was submitted by the police. The DPS variation and premises licence transfer were submitted on 14 September 2020 by a licensing consultant who informed the licensing officer that she has had no contact with the applicant, Mr Mohammed, nor had she a contact number for him or an email address. She had confirmed that all her dealings had been with Sohail Khan.

It was the police contention that the DPS variation and premises licence transfer was an abuse of process and an attempt to circumvent the review process. The applications had been submitted on behalf of Sohail Khan and without the licensing agent being authorised by the applicant and the applications should have been rejected from the outset.

By the applicant's own admission, he had no previous retail experience, no experience in the sale of alcohol and no had not run a business before. The land registry had been checked that morning and Sohail Khan remained the freeholder of 98-100 Wyndham Road. The business operating agreement provided that morning allowed for a 28 day break clause, so that the Foodlink business could revert to Sohail Khan after the break period. This evidence demonstrated that Sohail Khan would remain the controlling influence of the premises.

Foodlink is a known problem premises and the sub-committee were extremely concerned with the applicant's lack of business, retail or sale of alcohol

experience. The applicant demonstrated that he did not know the conditions of the premises licence to the premises.

The licensing sub-committee was reminded of paragraphs 98 and 99 of Southwark's statement of licensing policy which provides:

"Applications for transfer of a premises licence following application for a review

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

99. 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".

Neither application provided any supporting documents or additional information that would support the suggestion that this business is now under new management control. The applicant provided an unsigned business operating agreement late (at 12:33am on

17 September 2020) and in a format that could not be adequately considered by the police or the sub-committee. Regardless, it was verbally established that the document contained a 28 day break clause. The previous premises licence holder was also remained the freeholder owner. In summing up, the applicant also stated that he had no knowledge of the pending review application.

In the circumstances, the licensing sub-committee were therefore satisfied that the applications were an attempt to circumvent the full review process under Section 51 of the Licensing Act 2003 thereby undermining the crime and disorder licensing objective. Therefore both applications are 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 refuse the variation of the designated premises supervisor
- b) To impose conditions on the licence
- c) 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 1.45pm.

**CHAIR:**

**DATED:**