

Licensing Sub-Committee

MINUTES of the OPEN section of the Licensing Sub-Committee held on Thursday 17 December 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 Adele Morris
Councillor Ian Wingfield

**OFFICER
SUPPORT:** Debra Allday, legal officer
Toyin Calfos, legal officer
Andrew Heron, licensing officer
Farhad Chowdhury, health and safety officer
Mark Prickett, environmental protection officer
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.

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

There were none.

5. LICENSING ACT 2003, GRAFTERBOY LOUNGE, 332C CAMBERWELL NEW ROAD, LONDON SE5 0RW

The licensing officer presented their report. They advised that the police and the licensing authority had withdrawn their representations. Members had questions for the licensing officer.

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

The health and safety officer, objecting to the application, addressed the sub-committee. Members had questions for the health and safety officer.

The environmental protection officer addressed the sub-committee. Members had questions for the environmental protection officer.

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

The meeting adjourned at 11.35am for the sub-committee to consider its decision.

The meeting reconvened at 12.05pm and the chair advised all parties of the decision.

RESOLVED:

That the application made by Mr. Cain Green and Mr. Latyr Faye for a premises licence to be granted under s.17 of the Licensing Act 2003 in respect of the premises known as Graftorboy Lounge, 332c Camberwell New Road, London SE5 0RW be refused.

Reasons

The Licensing Officer presented his report to the Licensing Sub-Committee who by way of an update, advised the members that on 16 December 2020, a warning letter had been issued concerning an inspection that had taken place on 6 December. The visit had been carried out to determine whether licensable activities were being carried out. Whilst none were being carried out, during the inspection officers witnessed Shisha being prepared within the basement kitchen area of the premises. Under the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020, restrictions were imposed to protect against the

risks to public health arising from coronavirus. In all three tiers, water pipes used for the consumption of tobacco or any other substance or electronic shisha were prohibited on business premises. The applicant Cain Green accepted a warning letter had been received. He did not however, accept that shisha was being prepared on the premises, but rather food and drink.

In addressing the licensing Sub-Committee the applicant, Mr. Cain Green stated that the co-Applicant, Latyr Faye was a business partner until very recently, but that he was no longer a part of the business venture. Mr. Green mentioned that he was a national ambassador for young people aged 18-25 and gets involved to help improve local and national services. He was a mentor for the youth. He wanted to build on this and his vision to modernise Camberwell as there were not many shisha bars in the area. The premises would be a small café/restaurant and cocktail bar, selling alcohol and small snacks.

Concerning the issues raised by the Environmental Protection Team, the applicant stated that the premises did hold an A4 class planning permission required to operate a shisha café and this was confirmed by the Planning Team. The operational hours had already been amended and approved by the Metropolitan Police Service and Licensing as a responsible authority. There would also be no commercial kitchen in the premises, meals would not be cooked. It was planned that there would only be a preparation room where equipment would be accommodated and ready made meals would be reheated. Therefore, no odours could escape the premises except via the existing vent. Concerning sound insulation, this was undertaken by the previous owners. Regardless of this, the applicant said that no loudspeakers would be installed that would allow for amplified music or bass to be nuisance to neighbours.

Ultimately, the premises would not be a pure drinking establishment, there would be a limited cocktail menu containing maximum 11% ABV alcohol content, discouraging alcohol consumption. The drinks menu would be primarily milkshake, smoothie and soft drinks.

The Licensing Sub-Committee then heard from the officer from the Health and Safety Team who informed the members that the Application stated that the main floor would allow shisha smokers, smoking indoors. It also referred to 50% air coming into the property. The plan to the premises did not show an outside area and being substantially enclosed, did not comply with the Health Act 2006. The officer also referred to the inspection that he carried out on 6 December 2020 during which he raised concern that the applicant was about to light a shisha and allow smoking inside the premises. This was a breach of the Health Act 2006 in addition to the Covid Regulations. The applicant's intention was to permit smoking shisha indoors on the ground floor and possibly conceal shisha smoking in the basement.

During the meeting, the applicant spoke of removing the shop frontage then to achieve the 50% Health Act 2006 compliance, which would still effectively allow smoking within the premises and it would be classed as indoors and thus, still not

permitted. The officer also mentioned activity taking place in the basement which from a fire risk perspective lives would be at risk, if shisha smoking was permitted in the basement. The officer left the premises, a group of boys walked out, with one shouting "I will sit outside here with my girl, nobody can tell me I can't, don't listen to them" .

With the applicant's agreement, photographs from Instagram were shown to the sub-committee. The photographs clearly showed people smoking shisha pipes. The applicant maintained that the people were family.

The officer from the Environmental Protection Team representation referred to the premises not having planning permission for A4 use and contrary to the applicant's own representation. The current planning permission (reference 18/AP/1938) was personal to the previous owners, Sharks Micropubs Ltd which did not confer to the land, so the applicants could not benefit from it. The permission also included conditions prohibiting the provision of hot food in the premises. The planning approval was also conditioned to avoid adverse impacts on the residents that reside above the premises and to the immediate rear. Further, the planning application included the need for a noise impact assessment including the testing of the ceiling/floor separating these premises from the residential above it on the first floor. Because the development did not proceed, the sound insulation was not installed, so noise from activities in the premises would most likely impact on the residents above.

The Licensing Sub-Committee were concerned by the Instagram photographs and did not accept that these were merely promotional showing family members as indicated by the applicant. The pictures not only confirmed a breach of the Health Act 2006, but also, the various COVID-19 Regulations relating to social distancing and smoking on the premises. In one of the pictures a pile of canisters could be clearly seen, which strongly resembled nitrous oxide canisters, and two of the people appeared to have balloons at their mouths. Under the Psychoactive Substances Act 2016, it is a criminal offence to supply or offer to supply, a psychoactive substance.

During the discussion part of the meeting, the members asked a number of probing questions. Members queried the low alcohol cocktails referred to in the application; in response, the applicant made reference to the "Sex on the Beach" cocktail, which included vodka and fruit juice. However, vodka is typically (approximately) 40% ABV and could never be classed as low alcohol. The applicant was also asked about Challenge 25, but his answer was not sufficiently clear. The applicant, Mr Green also demonstrated a lack of understanding regarding off-sales, in that he had applied for off-sales, but did not appreciate that the condition of off-sales of cocktails could not be achieved in take away plastic cups, as these were not "sealed containers". Directing patrons to across the road was also considered inappropriate in respect of the off-sales condition of consuming off-sales away from the vicinity of the premises.

The members also found the premises licence application was also confusing.

The applicants' original vision for the business came across confused: a shisha lounge bar that provided low alcohol cocktails, a juice bar and appeared to morph offering ready made snacks, a dessert bar and a community hub. It may be due to the changing face of the hospitality trade due to the COVID-19 pandemic, but the Sub-Committee felt Mr. Green's lack of experience was highlighted as a result. The members would strongly recommend that Mr. Green obtains specialist licensing law advice in respect of any future application he may make.

The Grafterboy Shisha Lounge is located in the Camberwell Cumulative Policy Area. This policy was introduced by the Council in 2008 to address the Licensing Committee's concern over rising trends of late night alcohol related violence against the person and late night disorder and rowdiness associated with late night licensed premises in the area. The effect of this policy is to create a presumption that all applications for new premises licences or variations that are likely to add to the existing cumulative impact will normally be refused, following relevant representations, unless the applicant can demonstrate in their operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives. The applicants have failed to rebut this presumption to refuse this premises licence application. 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 Cumulative Policy Area, 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:

The licence ought not to be been granted; or 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: AGUILA RESTAURANT, FIRST FLOOR, ARCH 147, EAGLE YARD, HAMPTON STREET, LONDON SE1 6SP

The licensing officer presented their report. They advised that the responsible authorities had withdrawn their representations.

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

The licensing sub-committee noted the written representations from the local resident objectors.

The applicant's representative was given up to five minutes for summing up.

The meeting adjourned at 12.45pm for the sub-committee to consider its decision.

The meeting reconvened at 1.06pm and the chair advised all parties of the decision.

RESOLVED:

That the application made by Jose Ernesto Mesa Santana for a premises licence to be granted under Section 17 of the Licensing Act 2003 in respect of the premises known Aguila Restaurant, First Floor, Arch 147, Eagle Yard, Hampton Street, London, SE1 6SP be granted as follows:

- The sale by retail of alcohol (on sales only)
 - Monday to Thursday: 10:00 to 22:00
 - Friday to Saturday: 10:00 to 00:30 the following day
 - Sunday: 10:00 to 23:30
- Late Night Refreshment (indoors)
 - Friday to Saturday: 23:00 to 00:30 the following day
 - Sunday: 10:00 to 00.00
- The provision of recorded music (indoors) – (unamplified)
 - Monday to Saturday: 23:00 to 01:00 the following day
 - Sunday: 23:00 to 00:00 the following day

- Opening hours
 - Monday to Thursday: 10:00 to 00:00
 - Friday to Saturday: 10:00 to 01:00 the following day
 - Sunday: 10:00 to 00:00.

Conditions

The operation of the premises under the licence shall be subject to relevant mandatory conditions, conditions derived from the operation schedule highlighted in Section M of the application form, the conditions agreed with the Metropolitan Police Service, Planning and the Licensing Unit during the conciliation process and the following additional conditions agreed by the sub-committee:

1. That external waste handling, collections, deliveries and the cleaning of external areas shall only occur between the hours of 08:00 and 20:00.
2. That the depositing of waste glass into external waste receptacles or the collection of waste glass shall not take place between 20:00 and 08:00 the following day.
3. That a telephone number shall be prominently displayed and made available to residents.

Recommendations:

1. That the premises shall not use single use plastics, where possible.
2. That Aguila Restaurant and resident groups are encouraged to have an open dialogue between the two, to allow residents a forum to air their concerns regarding the licensed premises.

Reasons

The Licensing Sub-Committee was advised by the Licensing Officer that through the conciliation process, all representations made by the Metropolitan Police Service, Planning, and the Licensing Unit had been formally withdrawn. The Responsible Authorities and Aguila Restaurant had been agreed to conditions being added to the license.

The Licensing Officer stated 10 residents had raised objections to the grant of the license and that none of those residents had informed him of their intention to attend the Licensing Meeting, but all had submitted written representations.

The Licensing Sub-Committee heard from Mr. Glen Lake who represented Aguila Restaurant. Mr. Lake confirmed Aguila Restaurant would like to work with the residents and open a dialogue with them. He stated that Aguila Restaurant was

eager to work with other traders and residents to introduce a form of pub/neighbourhood watch using CCTV in the surrounding streets to act as a deterrent to anti-social behaviour. He outlined Aguila Restaurant's dispersal policy which would use exit routes from the restaurant, which would reduce the impact on residents, of patrons leaving late at night.

Mr. Lake explained that the applicant, Mr. Jose Santana had another business venue close by and there have been no issues with that premises. He confirmed that through the conciliation process, the capacity of Aguila Restaurant shall not exceed 36 persons and that rubbish and bottles collected for disposal, would not be disposed of between 20:00-08:00.

Mr. Lake stated that ordinarily, most customers would be served alcoholic drinks with their meal however; there would be a limited capacity to buy a drink whilst waiting to be seated for their meal. Mr. Lake said that customers would be actively encouraged to attend the Aguila Restaurant by public transport. He said staff and the website would signpost customers to attend the restaurant by public transport. Mr. Lake also confirmed that there would be a telephone number made available to residents so they could speak with Mr. Santana directly.

Mr. Lake agreed not to use single-use plastics wherever possible in response to the climate emergency declared by the London Borough of Southwark.

In essence, the representations from the residents concerned the high number of licensed premises that were already in the area, loud music being played by those licensed premises, anti-social behavior caused by the number of people visiting those licensed premises, the noise nuisance caused by patrons who failed to vacate venues quietly and the unusually late hours of opening requested by Aguila Restaurant and Aguila Restaurant's failure to state its capacity in the application.

The Licensing Sub-Committee had sight of, and noted, the written representations made by all the residents and considered their objections. The Licensing Sub-Committee formed the view that the fears outlined in the representations of the residents had been addressed by Aguila Restaurant who had agreed to reduce their operational hours, had implemented a dispersal plan to reduce noise and public nuisance which impacted on residents and was willing to open a dialogue with resident groups going forward.

In reaching this decision the Licensing 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
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supervisor.

Any person who made relevant representations in relation to the application who desire to contend that:

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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 1.12pm.

CHAIR:

DATED: