

Licensing Sub-Committee

MINUTES of the OPEN section of the Licensing Sub-Committee held on Thursday 4 March 2021 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 Maria Linforth-Hall (Reserve)
Councillor Charlie Smith

OFFICER SUPPORT: Debra Allday, legal officer
Toyin Clafos, legal officer
Dorcas Mills, licensing officer
Justin Williams, licensing officer
Jayne Tear, licensing responsible authority officer
Mark Prickett, environmental protection officer
P.C. Graham White, Metropolitan Police Service
P.C. Jon Ducker, Metropolitan Police Service

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.

Apologies for absence were received from Councillor Lorraine Lauder MBE. Councillor Maria Linforth-Hall was in attendance as the reserve member.

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

Councillor Maria Linforth-Hall advised that she had attended wine tastings at the premises on Lant Street 10 to 15 years ago. She confirmed that this would not prejudice her in any way when it came to making the decision.

5. LICENSING ACT 2003: LANT STREET WINE COMPANY, 59-61 LANT STREET, LONDON SE1 1QN

The licensing officer presented their report and highlighted the key issues to the licensing sub-committee. Members had questions for the licensing officer.

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

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

The Metropolitan Police Service officer addressed the sub-committee. Members had no questions for the Metropolitan Police Service officer.

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

At this juncture, the licensing officer advised the sub-committee that the premises was in a cumulative impact area.

The other persons, namely local residents, supporting the premises addressed the sub-committee. Members had questions for the other persons supporting the premises.

The legal representative for the premises, the premises licence holder and designated premises supervisor addressed the sub-committee. Members had questions for the premises.

All parties were given five minutes for summing up.

The meeting adjourned at 12.43pm for the sub-committee to consider its decision.

The meeting reconvened at 1.35pm 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 a local resident for the review of the premises licence issued in respect of Lant Street Wine Company, 59-61 Lant Street, London SE1 1QN and having had regard to all relevant representations, has decided to modify the premises licence by adding the following conditions:

Conditions

1. That a CCTV system be installed at the premises and be maintained in good working order and be continually recording at all times the premises are in use under the licence. The CCTV System must be capable of capturing a clear facial image of every person who enters the premises.
2. That all CCTV footage be kept for a period of 31 days and shall on request be made immediately available to officers of the police and the council.
3. That a member of staff should be on duty at all times the premises is open that is trained in the use of the CCTV and able to view and download images to a removable device on request of police or council officer.
4. That all staff are trained in their responsibilities under the licensing act 2003 and training records to be kept and updated every six months and shall, upon request, be made immediately available to officers of the police and the council.
5. That signs shall be displayed in the window with the telephone number of the manager on duty.
6. That a personal licence holder will be on the premises at all times when intoxicating liquor is being offered for on sales.
7. That there shall be no on sales of alcohol at the premises until a scheme of noise isolation has been submitted to the EHO and approved. The details of the scheme thus approved shall be implemented in full and maintained permanently thereafter. The scheme shall ensure that a minimum airborne sound insulation of 55dB DnT,w + Ctr is provided between the ground and first floor premises.

Furthermore the solution shall ensure that a noise level of 25dBA $L_{eq5mins}$ is not exceeded in the first floor flat above the premises due to noise from the use of the premises."

Access is to be provided to the first floor flat in order to establish:

- a) Existing base line performance.
- b) Performance level achieved and efficiency of measures during works phase.
- c) Final performance following completion of works.

If such access is not provided then the level will be deemed acceptable and satisfied in full and on sales of alcohol shall be permitted to be carried out at the premises.

The resident of the first floor flat above the premises will cooperate with providing of access to his premises, the request of which will be made in writing giving seven days notice.

Reasons

This was a review of the premises licence of Lant Street Wine Company, 59-61 Lant Street, London SE1 1QN which was brought by a local resident (the applicant).

The applicant addressed the licensing sub-committee and explained that they were the person most directly affected by the premises. They advised that they had been a resident in the building for many years and that the complaint related solely to the warehouse premises at number 59 Lant Street. The operation of the shop at 61 Lant Street had caused no problems that warranted any complaint.

The applicant gave a background to the complaint and advised that the premises had failed to advertise the variation application in 2019 which concerned the warehouse and as a result, the applicant was unaware of the variation application and was unable to submit any representations opposing the application. The applicant further stated that the 2019 application was not valid and that the subsequent grant of the licence breached planning consent.

The applicant advised that a noise abatement notice had been issued in 2019 and since this time, it had been breached on at least 11 occasions. The construction and the use of the warehouse was such that it caused a public nuisance. A Planning Enforcement Notice had been served in November 2019 and since that time, the applicant had received two threats and on one occasion had been assaulted by someone from the premises. The applicant therefore sought a revocation of the premises licence in respect of the warehouse at 59 Lant Street.

When asked by the sub-committee, the applicant advised that due to construction of the warehouse, everything in the warehouse could be heard, even down to hearing bottles of wine being opened. In 30 years prior to the grant of the licence in respect of the warehouse, there were no complaints, particularly in respect of noise.

The officer representing licensing as a responsible authority informed the sub-committee that her representation related to the promotion of the prevention of

crime and disorder and the prevention of public nuisance licensing objectives and has regard to the Southwark statement of licensing policy 2021-2026. She advised that the licensing team had received complaints from the applicant regarding this premises and noise issues, breaches of licence conditions and unlicensed activities taking place.

The officer stated that the premises had been visited and warnings letters sent to the licensee regarding a breach of condition 307 (the accommodation limit of 32 patrons) and on 22 November 2019 an officer witnessed a breach of condition 340 (written dispersal policy) and condition 4AB (training in the sale of alcohol to prevent underage sales and the operation of a challenge 25 scheme).

The licensing sub-committee then heard from the Metropolitan Police Service who advised that extensive searches had been undertaken but the crime recoding systems did not produce any further crime reports than those referred to by the applicant in both his review application and those mentioned in his verbal submissions. The officer stated that he would welcome specific best practice conditions being added to the licence which would ordinarily be included on a premises licence.

An officer from the environmental protection team (EPT) informed the licensing sub-committee that the first complaint received by the licensing team was on 1 October 2019 and the first complaint to the noise team was on 11 October 2019, both of which alleged public nuisance created as a result of carrying out licensable activities at 61 Lant Street.

They advised that a noise team officer attended the applicant's property on 8 November 2019 and witnessed a statutory noise nuisance from activities associated with the 61 Lant Street premises, which was described as follows:

"The level of the music witnessed would affect the quiet enjoyment or use of the complainant's property" and the music "felt as if the song was being played from within the complainant's property".

As a result, a section 80 Environmental Protection Act 1990 statutory noise nuisance abatement notice, was served on 11 November 2019. No further statutory noise nuisance had been witnessed by the noise team since this time.

The EPT officer went on to advise the sub-committee that planning permission for a "temporary change of use to premises at the front of no 59, to hold public wine tastings (Use Class A4) for a three year period, subject to hours of operation conditions and other conditions" was currently the subject of appeal and that an Enforcement Notice had been issued in November 2020, which is also subject to an appeal by the premises. Currently, the premises has no planning permission in place for the use of the premises as a drinking establishment.

The legal advisor enquired of the EPT officer, that whilst a statutory noise nuisance had been witnessed and a Section 80 noise abatement notice issued, whether the

noise witnessed could amount to a public nuisance. The officer confirmed that numerous residents lived in close proximity to the premises and there was a concern that public nuisance could be caused to numerous residents in close proximity to 59 Lant Street if the premises licence were permitted to continue operate as currently granted. The officer supported the review application and sought a suspension of the licence until the substantial insulation works could be undertaken.

The licensing sub-committee noted that the planning team had submitted comments detailing enforcement action against the premises. The comments did not relate to any of the licensing objectives and were submitted for the committee's information only.

The representative for the premises informed the sub-committee that the premises was well established for over 30 years and that 61 Lant Street had been closed as any kind of bar since December 2019, when the enforcement notice had been issued. Once the planning and insulation issues had been resolved, it was the premises intention to continue the tasting events. Many of the events were private parties where a fee was paid for a wine critic to attend and the provision of wine was free.

They further added that the representatives from licensing as a responsible authority and the Metropolitan Police Service had both submitted neutral representations and were essentially requesting the addition of 'best practice conditions'. Whilst it was accepted that an enforcement notice was in place, there had been no enforcement action taken in respect of the notice.

The premises stated that there was an argument as to whether the noise complained of did amount to a public nuisance. Regardless of this, the premises sought an amicable resolution to issues. There was discussion of the sub-committee removing the activity of amplified music, which the premises were agreeable to, but it was felt that this would not resolve the noise insulation problem. The premises had instructed an acoustic expert and had drafted a condition, which the EPT officer was unable to agree, as it required access to the applicant's residence.

During the discussion stage of the sub-committee meeting, the applicant said that they would agree access. The premises also accepted that Southwark had declared a climate emergency and agreed to refrain from using single use plastics and adhering to The Environmental Protection (Plastic Straws, Cotton Buds and Stirrers) (England) Regulations 2020.

The licensing sub-committee then heard from local residents, parties seven, thirteen, and fifteen who supported the premises. The local residents all stated that they were surprised that the review application related to noise, when none of them had been disturbed. One of the local residents (party 13) lived directly above 61 Lant Street. These residents spoke passionately about the premises, stating it brought a sense of community to Lant Street and that at all times the premises had

been very quiet and no music or loud sounds had been witnessed by them.

The licensing sub-committee noted the further 14 written representations submitted by local residents in support of the premises.

The licensing sub-committee were concerned whether the noise complained of did amount to a public nuisance, given that there was only one complainant who never complained of general “warehouse noise” prior to the 2019 variation application. However, given the significant number of local residents in the vicinity of the premises, the sub-committee were of the opinion there was the ‘potential’ to cause public nuisance as explained by EPT.

The suggestion by EPT to suspend the premises licence until the insulation works had been completed was not an option to licensing sub-committee as under section 52(4)(d), a suspension may only be imposed for a maximum of three months.

Concerning the specifics of the proposed insulation, the sub-committee were mindful, that these were a matter for planning, which is a separate regime to licensing. The premises planning status is currently being resolved via the appeal process.

The condition concerning the insulation works was offered by the premises. With the applicant’s agreement to allow access it is hoped that the parties are able to move forward more harmoniously. Whilst the planning committee is not bound this decision, this committee sees the condition concerning the insulation works as advancing paragraph 101 of Southwark’s statement of licensing Policy 2021-2026 that: “This Authority will look to ensure proper integration with the planning regime”.

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’ 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. LONDON LOCAL AUTHORITIES ACT 1991: 157 CAMBERWELL ROAD, LONDON SE5 0HQ

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

The applicant and their son, who was acting as a translator for the applicant, addressed the sub-committee. Members had questions for the applicant.

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

Both parties were given five minutes for summing up.

The meeting adjourned at 11.04am for the sub-committee to consider its decision.

The meeting reconvened at 11.35am and the chair advised all parties of the decision.

RESOLVED

That the application made by Xue Mei Phung, for the renewal of their special treatment licence under Part II of the London Local Authorities Act 1991, in respect of the premises known as 888 Nails, 157 Camberwell Road, London SE5 0HQ be refused.

Reasons

The licensing sub-committee heard from the licensing officer who stated that the application concerned a renewal of a special treatment licence. The licensing officer stated that the applicant first applied for a licence in 2015 and that application was subsequently granted.

The licensing officer informed the licensing sub-committee that there had been an objection by the Metropolitan Police Service concerning illegal immigrants found working at the premises.

The licensing officer confirmed that he had visited the premises previously and, remembered there being four, maybe five tables where treatments could be obtained.

The licensing officer confirmed that the issue with illegal immigrant workers took

place during the operational period of their last licence in 2019 and; that due to Covid-19, the council extended all special treatment licences by six months. He confirmed that ordinarily, special treatment licences are renewed yearly.

The licensing sub-committee heard from Mr Michael Phung, the applicant's son. He spoke on her behalf and acted as his mother's translator. He confirmed that the premises had held a continuous licence from Southwark Council since January 2016 and, that they had never traded under any other name.

Mr Phung believed the police alleged the premises had allowed its licence to lapse. He denied this. He stated that after the police raided their premises on 17 December 2019, the applicant provided a declaration to the Home Office regarding the workers who were at the premises that day. Mr Phung stated that the authorities took no further action against the applicant. Mr Phung said that they applied for a special treatment licence after the police raid and that licence application was granted. He said his mother had never committed any crime and, he believed the allegations against her are false.

The licensing officer explained to the licensing sub-committee that the premises licence was due to expire on 31 July 2020, but due to the pandemic, the council automatically extended the licence until 31 January 2021 therefore, the application was not granted as put forward by Mr Phung.

Mr. Phung confirmed that he was aware that when an operative joined the business, they (the applicant), would have to apply to the council to place that new operative on the licence. He confirmed that all of the operatives he employed were trained in the UK.

He confirmed that all of his operatives worked under contract, were salaried and paid tax and national insurance contributions. He explained that the business and their accountant negotiated a reasonable fee with the operative, which included the London living wage or a salary every month. He then stated that the workers were paid according to what the business could afford.

Mr Phung confirmed that 888 nails has three operatives who are currently working in the shop. It transpired that of these three persons, one of the persons had not been registered with the council at all and, another was not mentioned on the current licence application. The licensing officer explained that an application to vary their special treatment licence adding the operative who had never been registered with the council was due to be heard at a later date.

Mr Phung stated that they recruited staff through word of mouth and the applicant would ensure that recruits would have the right qualifications, the right to work legally in the UK and that they are competent. He said that spot checks with the colleges were not carried out; but going forward, said he would consider doing this.

Mr Phung confirmed that all the members of staff had a contract of employment, paid tax and national insurance. He confirmed that they were all paid the minimum

wage or a salary and not what the company could afford as stated earlier.

Mr Phung said they had four tables at the premises and four employees including the applicant who worked part time. It was pointed out that the applicant was not listed as an operative on the application. Mr. Phung replied stating that his mother worked as a manager and does not do nails. He went on to deny that there were illegal workers at the premises or that any of his employees rented tables. He went on to claim that on the day of the raid, the arrested persons in the shop were just there and not behind the tables working as alleged by the police.

Mr Phung mentioned that his mum was listed as an operative on a previous licence. Mr Phung was asked where his mother went to college; Mrs Phung said she could not recall the name of the college she had attended due to the passage of time.

Mr Phung confirmed third parties maintained the business premises and that supplies were ordered locally. He went on to say his mother leased the premises and reiterated that employees were not renting tables from her.

Mr Phung said that staff could not work due to the pandemic so were furloughed. He confirmed that the business had a health and safety certificate on the wall of the shop.

The licensing sub-committee then heard from the Metropolitan Police Service ("the police") who were objecting to the grant of a licence under section 8 (c) and (e) of the London Local Authorities Act 1991 which provides:

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

The police informed the licensing sub-committee that officers from the night-time economy team, the council's licensing team, trading standards and immigration officers attended the premises on 17 December 2019. Upon entering the premises, officers were able to confirm that six persons were working at the premises, all those persons found working at the premises were illegal immigrants of which, two were juveniles. All of the illegal immigrants were giving treatments and were wearing face masks.

It was noted that the raid took place prior to the pandemic in the UK, so there was no requirement for ordinary members of the public to wear masks at that time. The juveniles were subsequently placed in the care of social services.

The licensing sub-committee heard from an officer acting as a witness for the police who was present at the raid. He said that the operation was part of a number of visits within Southwark. The officer stated that this particular day

unusual, as officers from Gang Masters were also present. All persons arrested during the raid were subsequently interviewed by the Gang Masters. He recalled that there were customers in the shop at the time and that some of the arrested operatives were giving special treatments to those customers. He also noted that the operatives were predominately male, which he found to be unusual. The officer went on to confirm that none on the operatives arrested were named on the licence contained within the premises.

The officer rejected the proposition that background checks were carried by the applicant as alleged by Mr Phung. He stated that if this were the case, there would not have been so many illegal workers in the premises at the time of the raid.

The officer did not recall the applicant being present at the time of the raid but said he could not be sure. He believes there were six tables in the shop, of which, two further tables were down some stairs further along the ground floor.

Mr Phung did not accept that there was any evidence to suggest that his mother had employed illegal immigrants or that she had broken the law as no further action was taken against her.

In closing, Mr Phung stated that his mother had become a business owner who tried to adhere to the law. He said the business was his mother's only source of income and that she had made the premises Covid-19 proof. He also stated that they were only seeing clients by appointment at this time. He said that if the licence were renewed, there would be no regulatory concerns and they would be happy to be subjected to further checks.

When asked by the Chair, Mr Phung stated that one member of staff was working at the premises prior to lockdown and that member of staff had been furloughed. He denied having staff working at the business who were not on the licence. Mr Phung stated that the furloughed staff he referred to earlier were cleaners and did not give special treatments to members of the public.

A member of the licensing sub-committee informed Mr Phung that the business is not allowed to be open to see clients by appointments during lockdown. Mr Phung responded by saying they were not seeing clients at this time and that they only saw clients by appointments prior to lockdown.

Having heard all of the evidence, the licensing sub-committee preferred the evidence of the police, which they found to be credible, reliable and consistent.

The licensing sub-committee had no confidence that placing conditions on the special treatment licence would be workable or enforceable. The licensing sub-committee formed the view that the applicant was not a fit and proper person to hold a special treatment licence. The licensing sub-committee believed the applicant had allowed illegal workers including juveniles, to work in the premises and in doing so, had allowed the premises to be improperly conducted.

The licensing sub-committee formed the view that the applicant had willfully failed to register their operatives as required to do so under the licensing regime and allowed persons unknown to the council to provide special treatments to members of the public.

The licensing sub-committee believed that that there was a real risk of repetition as the applicant's conduct during 2019, showed she had very little regard for the licensing regime under the London Local Authorities Act 1991. The licensing sub-committee noted that the licensing regime had been put in place to protect members of the public from harm.

In reaching its decision, the licensing sub-committee had regard to all the relevant considerations and are of the view that its decision was appropriate and proportionate in all of the circumstances.

Appeal rights

The following parties may appeal a decision of the sub-committee:

- An applicant for the grant, renewal or transfer of a licence whose application is refused.
- An applicant for the grant, renewal or transfer of a licence who is aggrieved by any term, condition or restriction on or subject to which the licence is granted, renewed or transferred.

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 3.18pm.

CHAIR:

DATED: