



## Licensing Sub-Committee

MINUTES of the OPEN section of the Licensing Sub-Committee held on Monday 23 September 2013 at 10.00 am at Ground Floor Meeting Room G01C - 160 Tooley Street, London SE1 2QH

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**PRESENT:** Councillor Renata Hamvas (Chair)  
Councillor Jeff Hook  
Councillor Wilma Nelson

**OTHERS PRESENT:** John Brunton, Herne Hill Society  
Councillor Robin Crookshank Hilton, ward councillor  
PC Graham White, Metropolitan Police Service  
Anthony Graham, representative of Hypnotic  
Marketh Hovorka, proposed new licensee of Hypnotic  
Benson Fabusiwa, proposed new licensee of Hypnotic

**OFFICER SUPPORT:** Debra Allday, legal officer  
Gavin Blackburn, planning enforcement officer  
Dorcas Mills, licensing officer  
David Swaby, licensing officer representing the council as a responsible authority  
Sarah Newman, environmental protection officer  
Andrew Weir, constitutional officer

### 1. APOLOGIES

There were none.

### 2. CONFIRMATION OF VOTING MEMBERS

The three members present were confirmed as the voting members.

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

There were none.

#### **4. DISCLOSURE OF INTERESTS AND DISPENSATIONS**

There were none.

#### **5. LICENSING ACT 2003 - HYPNOTIC RESTAURANT, 75-79 NORWOOD ROAD, LONDON SE22 9AA**

The licensing officer presented their report and circulated a transfer of licence document. The witness statement of the licensing officer, David Franklin, which had been omitted from the agenda in error was also circulated. Members had no questions for the licensing officer.

The planning enforcement officer, the applicant for the review addressed the sub-committee. Members had questions for the planning enforcement officer.

The sub-committee heard from the representative from the police. Members had questions for the police.

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

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

Councillor Crookshank Hilton, the ward councillor representing local residents and the Herne Hill Society addressed the sub-committee. Members had questions for the ward councillor.

The sub-committee heard from the representative from Hypnotic. Members had questions for the representative from Hypnotic.

The sub-committee went into closed session at 11.53am.

The sub-committee resumed at 1.40pm and the chair read out the decision of the sub-committee.

#### **RESOLVED**

That the council's licensing sub-committee, having had regard to the application by the local council planning authority for a review of the premises granted under the Licensing Act 2003 to Mr Lincoln Smith and Mr Satchell Thompson-Smith in respect of the premises known as Hypnotic, 75-79 Norwood Road situated at 75-79 Norwood Road, London SE24 and having had regard also to all other relevant representations has decided it necessary for the promotion of the licensing objectives to revoke the licence.

#### **Reasons**

This was a hearing of an application by the local council planning authority for a review of the premises known as Hypnotic, 75-79 Norwood Road, London SE24.

This application was made under Section 51 of the Licensing Act 2003. The application was supported by the Metropolitan Police Service, the licensing authority, the environmental protection team and one other person.

The licensing sub-committee heard evidence from the planning officer, the applicant for the review who stated that it was an offence under section 179 of the Town and Country Planning Act 1990 to operate the Hypnotic premises as a night club. The owner of the premises, Mr Lincoln Smith, was aware of this and had been notified of his operating an unauthorised nightclub on many occasions, including (but not limited to): service of an enforcement notice on 18 February 2010, planning inspector's decision letter on 3 December 2010, meeting with the planning enforcement team on 11 January 2011, a further meeting with the planning enforcement team on 28 September 2012 and by the Tower Bridge Magistrate's Court on 24/25 June 2013.

On 25 June 2013 Lincoln Smith was convicted of an offence under the Town and Country Planning Act 1990. The sub-committee are aware that Mr Smith is due to be sentenced at the Crown Court together with an application under the Proceeds of Crime Act 2002. Despite this, the premises have still been operated as a nightclub on numerous occasions from 28 June 2013 to 13 September 2013.

The licensing sub-committee heard evidence from the Metropolitan Police Service who supported the planning review application. The officer from the police referred to the conviction of 25 June 2013. Furthermore, there was a serious assault at the premises on 18 August 2013 at 03.15 when one of the door staff working at the premises had an altercation with a man attempting to get into the premises. This resulted in the door staff obtaining a 14 inch kitchen knife and assaulting the male. The police also advised the sub-committee of complaints about the smoking of drugs at the rear of the premises, which was overlooked by the night club owners and loud music being played inside the venue, which could be heard outside. Two closure notices had also been served in respect of the premises for the breach of licence (no personal licence holder on the premises and failure to have a computer based identification system in operation).

The licensing sub-committee heard from the environmental protection officer who informed the sub-committee that they had received a number of complaints from members of the public. The last complaint received was on 15 July 2013. The environmental protection team attempted to set a sound limiting device at the premises on three occasions, however this was not facilitated by the licensee.

The licensing sub-committee heard from the licensing officer representing the council as a responsible authority who advised the sub-committee that as recently as 7 August 2013, the premises were inspected by the licensing team who found breaches of the licence namely, the licensee was unable to produce a counting device (condition 345) and also the licensee was unable to produce the details of the duty manager (condition 355). The officer referred to other historical breaches of the licence including operating beyond the terminal hour, allowing patrons to enter the premises beyond midnight and no personal licence holder being on the premises while it was in operation.

The licensing sub-committee heard from The Herne Hill Society who were represented by the ward councillor who advised that there had been complaints regarding the premises being made since 2007. The premises has had a negative impact on the regeneration of the local area and local residents being intimidated by the owners. The premises had

been still operating as an unauthorised nightclub up to approximately one week ago. The ward councillor mentioned that in the mornings there was vomit, urination and rubbish outside the premises; the whole atmosphere of the local area had been destroyed by Hypnotic.

The licensing sub-committee heard evidence from the representative of Hypnotic who confirmed that an application to transfer the premises licence had been submitted on 19 September 2013. The police have 14 days to object to this application. The representative stated that he was aware of the incidents and complaints over recent years and did not dispute any of these. Ultimately, Hypnotic was no longer as of 13 September 2013, when a ten year lease was entered into by Benson Fabusiwa, one of the proposed new licensees. Mr Fabusiwa confirmed that he signed the lease in the full knowledge of today's review hearing and the options available to this sub-committee. The proposed new licensees had different aspirations for the premises and want the premises to be kept in line with the current use as a restaurant/bar. The sub-committee heard from both of the proposed licensees who advised that they planned to run the premises as an American Grill/bar with a lounge area for patrons to have cocktails. They advised that they planned to play background music and that there would be no DJs for now.

The licensing sub-committee took some time considering the premises licence in its current form and were of the view that the licence is not fit for purpose for the proposed operation set out in the transfer application. Despite the significant history of non-compliance by the licence holder and the criminal conviction, the premises have continued to be run as an unauthorised nightclub. This continued after the conviction until the last day of operation as Hypnotic on 13 September 2013. Neither of the licence holders attended today's licensing sub-committee hearing. Their representative did not dispute any of the allegations or incidents. Hypnotic have shown a complete disregard for licensing conditions and have disregarded planning conditions which has undermined the crime and disorder licensing objective. The impact of Hypnotic's activities has had a negative impact on the local community and surrounding environment, which undermines the prevention of public nuisance licensing objective. The sub-committee unanimously agreed that there was no alternative but to revoke the licence in this case.

In reaching this decision the sub committee had regard to all the relevant considerations and the licensing objectives.

The licensing sub-committee considered that its decision was appropriate and proportionate in order to address the licensing objectives.

### **Appeal rights**

This decision is open to appeal by:

- 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.

The meeting closed at 1.50pm.

**CHAIR:**

**DATED:**