



NOTICE OF DECISION

LICENSING SUB-COMMITTEE – 1 OCTOBER 2013

LICENSING ACT 2003 - Banana's Bar, 374 Walworth Road, London SE17

1. Decision

The council's licensing sub-committee, having had regard to the application by Metropolitan Police Service for a review of the premises granted under the Licensing Act 2003 to Candido Rodrigues and Abilio Rodrigues as transferred to Sandra Silva Da Costa on 25 September 2013 in respect of the premises known as Banana's Bar, 374 Walworth Road, London SE17 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.

2. Reasons

The reasons for this decision are as follows:

This was a hearing of an application by the Metropolitan Police Service for a review of the premises known as Banana's Bar, 374 Walworth Road, London SE17

This application was made under Section 51 of the Licensing Act 2003.

The licensing sub-committee heard evidence from the Metropolitan Police Service the applicant for the review who stated that the application of the review was submitted on 2 August 2013 in respect of two licensing objectives, namely the prevention of public disorder and also the promotion of public safety. The premises came to the police's notice following an alleged offence of grievous bodily harm (GBH) and robbery of a customer who had been drinking in the premises. The incident occurred at approximately 04.00 on 13 April 2013 and the victim was reported to have been extremely drunk. The incident occurred over an hour after the premises should have been closed. The officer also detailed complaints relating to public safety in that the premises was continually operating beyond the terminal hour in addition to bypassing several of the licensing conditions. For example the main entrance/exit point had been found to be locked and secured from the inside with a large number of customers being provided with alcohol and entertainment.

The sub-committee were informed by the officer from the police that the premises had been run to an unsatisfactory standard since 2009. The police had previously objected to four TENS applications for which counter notices were issued in all cases. The officer then detailed fourteen incidents of crime and disorder which included complaints of theft, assaults and GBH. More recently, the police had been refused entry to the premises in the course of investigations and there had been a complete failure by the management to cooperate with the police.

The licensing sub-committee heard from the licensing officer representing the council as a responsible authority who advised that there had been a long history of complaints relating to the premises that had been reported to the licensing unit since 2011 (when the night time economy team came into being). The complaints detailed on pages 145 to 153 of the agenda demonstrated a lack of responsibility by the management and undermined the prevention of

public nuisance and the prevention of public disorder licensing objectives.

The licensing sub-committee heard from the health and safety team who informed the sub-committee that an inspection took place at the premises on 26 April 2013 where the officer experienced significant difficulty from the premises licence holder, Mr A Rodrigues, who was obstructive and uncooperative. No health and safety risk assessments or fire risk assessments were available, the toilets were in a poor state, no suitable washing facilities were available and the emergency lighting was not working, which amounted to a health and safety risk. In case of emergency people would not have been able to get out of the premises safely. At the revisit on 18 May 2013 the officer found that none of the works had been carried out, although a fire risk assessment was available. The officer stated that since 18 May 2013 he had not been able to re-inspect the premises. The officer did attend the premises on 20 July 2013 but due to the lack of police availability the officer deemed that it would be a health and safety risk for him to enter without them.

The licensing sub-committee heard from the Southwark Safeguarding Children Board who advised that they supported the police request for a review, the removal of the current licence. The officer highlighted that over the previous 12 months, all of the licensing objectives had been undermined by the premises. The officer raised serious concerns to contain crime and disorder arising in the club, the streets around the club and the surrounding residential area. Furthermore, the licence holders had been uncooperative with the police in their enquiries relating to allegations of underage persons in the premises.

The licensing sub-committee heard from the anti-social behaviour officer who stated that he had attended the premises on 28 June 2013 at 03.03 when patrons were still in the premises and loud amplified music was playing. On speaking to staff the officer stated that patrons were coming from the back bar and there was a hostile atmosphere. Two patrons stopped the officer and stated that he needed a warrant to be there. Mr A. Rodrigues became aggressive and refused to assist the officer. The officer also referred to his role as the ASBO officer. He stated that he was speaking on behalf of the local community and many residents had complained to him about noise from cars, noise from patrons entering and exiting the premises, fighting between the customers entering the local estate, patrons using communal benches to continue to drink, smoke and allegedly consume drugs and also the rear door to the premises was being used by patrons allowing noise to emanate to the estate. He advised that local residents had not made personal representations as they feared reprisals. He also stated that a considerable number of residents were suffering from sleep deprivation due to the Banana's Bar.

The licensing sub-committee noted the written representations from three other persons and the environmental protection team who were not present at the hearing.

The licensing sub-committee heard evidence from the representatives of Banana's Bar who accepted the shortcomings in the management of the premises and that they had identified the risks and that they intended to move forward and turn the premises around. An application had been submitted to transfer the premises licence from Messrs A and C Rodrigues to Sandra Silva Da Costa. An application to vary the premises licence to specify an individual as a designated premises supervisor (DPS) in the name of Dinis Baptista had also been submitted. The changes that they proposed would not have a negative impact on the licensing objectives. They advised that Banana's Bar would effectively close and reopen with a new name and would encourage the serving of food. They would install Clubscan, which would cost approximately £5-7,000 in addition to a monthly cost. This was confirmed by Mr John Anderson, a security consultant, who advised that he would also monitor the security arrangements at the premises.

The sub-committee considered very carefully all of the evidence that had been presented to it. The sub-committee noted that the new premises licence holder is the spouse of the previous premises licence holder, Mr A Rodrigues. Furthermore, she was also previously the DPS of the

premises when complaints had already been made regarding the premises' poor management: warning letters had been sent to her by the police. The new DPS, Mr Dinis Baptista, had previously worked at the premises as a bartender, again, at a time complaints began being made about the premises. The sub-committee noted that he had a personal licence for approximately one year and had completed a DPS training course the day preceding this hearing. The previous premises licence holder, Mr A Rodrigues is also the leaseholder to the property, 374 Walworth Road.

There had been significant complaints dating back to 2009 and despite variations related to the running of the premises by the management and promises of change, complaints have continued and have increased in terms of number and severity. The proposals in changes to the premises licence holder and the DPS do not fill the sub-committee with any confidence that the premises can be turned around. The client base will stay the same and have the same attitude, the relationships with local residents have broken down completely and all conditions and careful consideration has been given by all the responsible authorities to produce a licence with workable conditions that promote the licensing objectives. This sub-committee believes that no further conditions could be added that would make the licence viable. On this basis the sub-committee has no alternative but to revoke the licence.

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

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

3. **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.

Issued by the Constitutional Team on behalf of the Director of Legal Services

Date: 1 October 2013

NOTICE OF DECISION

LICENSING SUB-COMMITTEE – 27 AUGUST 2014

Licensing Act 2003: Section 53A - Banana's Bar, 374 Walworth Road, London SE17 2NF

1. Decision

That the premises licence be suspended as an interim step to promote the licensing objectives pending the determination of the review application at the full hearing.

2. Reasons

This was a hearing to consider if it is appropriate to take interim steps to promote the licensing objectives upon receipt of an application by the Metropolitan Police for an expedited summary review of the premises.

The licensing sub-committee considered the application made by the Metropolitan Police and supplementary evidence from the police presented at this hearing. The police advised that on 24 August 2014 at approximately 23.54 a fight involving four males armed with bottles occurred within the premises. One male received a serious head wound requiring 12 stitches. The premises failed to call the police or the ambulance service and this was left to a member of the public. The premises cleaned up the crime scene, mopping up the blood and glass and discarded the weapon (the bottle) in a glass recycling bin, negating forensic evidence.

The licensing sub-committee noted that there was no representative from the premises in attendance at the meeting.

The licensing sub-committee considered this incident to be extremely serious. It was noted that a similar incident occurred on 18 January 2014 when the premises failed to preserve the crime scene and also failed to inform the police of the incident. On 24 August 2014, the premises again failed to inform the police or the ambulance service and this was left to a member of the public to do. The premises had been cleaned and the crime scene was not preserved. Police officers at the scene struggled to find a witness who was not heavily intoxicated to give a statement so that they could continue with the investigation. No security staff or security measures were in place on the night of the incident. On 26 August 2014, the officer in the case (of the criminal investigation) spoke with the manager of the premises, Mr Lino Louenco, who advised that he did not have security working on 24 August 2014. This was in direct breach of conditions 290 and 291 of the premises licence.

Furthermore, two individuals had been charged in connection with the incident and have been remanded in custody, pending trial at Woolwich Crown Court.

The licensing sub-committee concluded that the premises remaining open posed a risk to public safety and therefore suspended the premises licence pending the full review hearing on 22 September 2014.

3. Appeal rights

There is no right of appeal to a magistrates' court against the licensing authority's decision at this stage.

The premises licence holder may make representation against any interim steps imposed and a hearing to consider the representation will be held within 48 hours of receipt of the representation.

Any representation should be in writing to: licensing@southwark.gov.uk between 9am and 4pm, Monday to Friday.

Issued by the Constitutional Team on behalf of the Director of Legal Services

Date: 27 August 2014

NOTICE OF DECISION

LICENSING SUB-COMMITTEE – 25 SEPTEMBER 2014

LICENSING ACT 2003: BANANA'S BAR, 374 WALWORTH ROAD, LONDON SE17

1. The council's licensing sub-committee, having had regard to the application by Metropolitan Police for a review of the premises granted under the Licensing Act 2003 to Candido Rodrigues and Abilio Rodrigues, in respect of the premises known as Banana's Bar, 374 Walworth Road, London SE17 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.

2 **Reasons for the Decision.**

This was a reconvened meeting of the licensing sub-committee from 22 September 2014. The meeting of 22 September 2014 was adjourned to allow the representatives from Banana's Bar to submit further evidence and bring witnesses, which they advised they would rely on.

The licensing sub-committee heard from the applicant for the review, the Metropolitan Police representative, on 22 September 2014, who stated that on 24 August 2014 at approximately 23.32 a fight took place involving four males with bottles taking place within the premises. One male received a serious head wound, which required 12 stitches. Another received serious wounds to his hands. The premises were cleaned up by members of staff and the crime scene was not preserved, mopping up the blood and glass and discarding the weapon, being a bottle, in a glass recycling bin. The sub-committee were shown CCTV footage of the staff from the premises cleaning up the crime scene. This was time stamped as 23.34.

The licensing sub-committee heard from the representatives from Banana's Bar at the reconvened meeting on 25 September 2014. CCTV footage was produced by the premises from the incident of 24 August 2014. The sub-committee saw footage from two of the cameras, one from the inside and one from the outside. The premises informed the sub-committee that it was their belief that the original CCTV footage had been wiped by the police for all the internal cameras pre 00.00. The internal CCTV footage had a time stamp of 23.34 at which point part of the dance floor within the premises had been cleaned. Members of staff could clearly be seen walking across the dance floor and not preserving the crime scene. There was no glass or Champagne bottle preserved in the area as suggested by Banana's Bar.

Concerning the external CCTV footage, this had a time stamp of 23.28 and it was accepted that the footage started prior to the incident. The primary victim was seen leaving the premises at 23.34 holding his head. It was clear from the footage that the victim had sustained a serious head wound which was bleeding heavily. The police were seen to arrive at 23.44.

The sub-committee heard from the manager of the premises, Mr Louenco, who stated that only ice cubes and water, not blood, were cleared within the premises. However, on the internal CCTV footage Mr Louenco was seen walking over the blood stained area within the premises. Mr Louenco produced a written statement dated 24 September 2014 in which he confirmed that he had not arranged for SIA security officers to be present, contrary to the licensing condition 290. He also stated that nobody saw or heard the incident, stressing that the incident took place next place to the DJ.

It is accepted by all parties, including the sub-committee that there was an approximately 20 minute delay in real time and the time stamp on all CCTV footage. The sub-committee found it concerning that the premises, for whatever reason, neglected to maintain their CCTV system in good working order (condition 288 of the licence). The premises were cleaned up at 23.34 and the police arrived at 23.44. This contradicted the premises contention that the premises were cleaned up when the police were in attendance.

The manager, Mr Louenco, said that nobody, including staff saw the incident because it happened so quickly and that there were no broken bottles involved. However, the police conceded that a call was made by a member of staff from a mobile phone (number ended in 813). In that call the individual stated “fight going on....bottles and glasses being thrown...no security” and “fight at location one male has bleeding head and one has bleeding hand wound – lots of glass being thrown at location causing injury”, as reported by the London Ambulance Service. The sub-committee therefore were not satisfied with Mr Louenco’s argument that nobody was aware of the incident. The sub-committee rejected Mr Louenco’s written statement that the incident occurred between approximately 22.30 and 23.30 and were extremely concerned that he was unable to specify exactly when the incident took place as this should have been recorded in an incident/accident book. Mr Louenco’s estimate of the time that the incident took place was at least 20 minutes prior to the actual time of the incident (being 23.54 as detailed in the single incident printout, incident number 9968:24AUG14).

There was considerable discussion concerning the licensing conditions 290 and 291, which the premises stated were confusing. However, it transpired through the discussion that condition 290 (That on Fridays, Saturdays and Sundays SIA staff supervisors shall be employed at all times after 22.00 until the terminal hour....etc”) was proposed by the premises as part of their variation application, dated 16 March 2010. As part of the conciliation process in this application, the premises subsequently offered a further condition which forms condition 291 (That SIA registered supervisors shall be employed after 22.00 until the terminal hour...etc”) that would take into account circumstances when the premises applied for temporary event notices. The premises were therefore well aware of the two conditions and how they both operated. The premises failure to employ SIA staff on 24 August 2014, was therefore deemed to be a blatant disregard to the licence conditions.

The sub-committee disregarded the police evidence concerning the incident on 10 April 2014 as the police were unable to confirm whether the matter had been prosecuted and/or its outcome or whether no further action had been taken.

On 1 October 2013, Southwark's licensing sub-committee revoked the premises licence under the grounds of crime and disorder. This is subject to appeal at the magistrates' court. There was an incident on 24 August 2014 where serious crime and serious disorder took place, which warranted a certificate being issued under 53A (1)(b) of the Licensing Act 2003 by a police superintendent. On 27 August 2014, the premises licence was suspended as an interim step. The incident that took place was serious and a prosecution is ongoing, which has had limited, if any cooperation from the premises. Forensic evidence had been destroyed and the manager has yet to provide a statement to the police. This licensing sub-committee is of the view that it was right to revoke the licence on 1 October 2013 and impose interim steps on 27 August 2014. This incident is so serious and the premises failings so great that there can be no alternative but to revoke the licence.

3 **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.

The interim steps imposed on 27 August 2014 remain in place and the licence is suspended. The premises holder may make representations against interim steps imposed and a hearing to consider the representations will be held within 48 hours of receipt of the representation. Any representation should be in writing to licensing@southwark.gov.uk between 9am and 4pm, Monday to Friday.

Issued by the Constitutional Team on behalf of the Director of Legal Services

Date: 25 September 2014