

NOTICE OF DECISION

LICENSING SUB-COMMITTEE – 21 JANUARY 2019

SECTION 51 LICENSING ACT 2003: RED SEA, 85 CAMBERWELL ROAD, LONDON SE5 0EZ

1. That the council's licensing sub-committee, having considered an application made under Section 51 of the Licensing Act 2003 by the Metropolitan Police Service for the review of the premises licence issued in respect of the premises known as Red Sea, 85 Camberwell Road, London SE5 0EZ having had regard to all other relevant representations has decided it necessary for the promotion of the licensing objectives to
 - i. Revoke the premises licence.

2. Reasons for the Decision

The reasons for the decision are as follows:

The licensing sub-committee heard from the representative of the Metropolitan Police Service, the applicant for the review who advised that on 13 August 2018 at approximately 02:00 hours the police were called to the premises to a suspected attempted murder. On police arrival it was established that a male had tried to gain entry to the premises but was refused due him being intoxicated. The male suspect left the premises then returned later and attempted to stab a member of the security team outside of the venue. The male suspect was detained and arrested for attempted murder. Further investigation showed that in fact the suspect for the attempted murder had been allowed access to the premises, CCTV from the venue shows him apparently intoxicated and drinking what appears to be a bottle of beer on the dance floor. The premises was operating in breach of the premises licence and was open to the public at least two and a half hours after they should have been closed to the public. This incident was entirely avoidable had the premises been operating in line the restrictions of its premises licence.

The premises had been the subject of a summary licence review in September 2016 following a serious incident of when male was punched and kicked to the ground. His injuries were consistent with grievous bodily harm. As an interim measure the licensing sub-committee suspended the premises licence (9 September 2016); at the full review hearing on 3 October 2016 the premises licence holder informed the licensing sub-Committee that they would change the operation of the premises to a restaurant and would not provide any type of regulated entertainment. This was reflected in the modified conditions when the licensing sub-committee modified the conditions of the premises licence. A six week suspension was also imposed to allow for the premises licence holder to put in place the provisions of the modified conditions.

On this occasion the premises were providing regulated entertainment, they were open considerably later than the terminal hour of 23:30, there is evidence from CCTV to suggest that alcohol was being provided in the form of bottled beer and consumed on the premises. All in breach of the conditions of the premises licence.

The officer for the Metropolitan Police Service also referred to a variation application that was considered by the licensing sub-committee on 30 October 2018. The variation

application sought an extension of the hours permitted for the sale of alcohol and opening times. The premises licence holder provided evidence to the committee and it became apparent that regulated entertainment occurred regularly by way of a DJ over the weekends. The licence holder also advised that there still remained only one personal licence holder at the premises (being herself), contrary to the assurance made at the review hearing (3 October 2016) that a further two staff would become personal licence holders. It was argued that the premises had been operating in breach condition 851 (that the DPS and one other personal licence holder are on the premises at all times regulated entertainment is provided) since 3 October 2016.

Coupled with the licensing visits, when further breaches of the premises licence were witnessed, it was submission of the Metropolitan Police Service that the premises licence holder demonstrated a complete disregard towards the promotion of the licensing objectives and had consistently operated in breach of the premises licence and had no confidence that the premises would improve with additional controls measures being placed on the licence and recommended the revocation of the premises licence.

The licensing sub-committee heard from licensing as a responsible authority who supported the review by the Metropolitan Police Service of the premises licence to the Red Sea Restaurant. Under Southwark's statement of licensing policy 2016 - 2020 the appropriate closing times for restaurants, public houses, wine bars or other drinking establishments in this area the premises is located is 23:00 daily. Night clubs (with sui generis planning classification) are not considered appropriate.

The premises as a 'restaurant and bar' already had an extremely generous licence, with hours outside those recommended for a residential area within the policy. The premises appear to be changing in nature and operation as a night club, which under the policy is not considered appropriate for this area. The premises also had been the subject of an expedited review following an incident of serious crime and/or serious disorder. Despite the licence was modified and suspended to allow the modifications to be implemented in 2016, the premises continued to operate in breach of the licence. In addition to the very serious incident that occurred in August 2018 a full licensing inspection was carried out on 5 September 2018 at 18:00 hours and 8 breaches of licence conditions were witnessed: condition 298 ('Drugs Free Zone' and 'No Search No Entry, Management reserve the right to refuse entry' signage); condition 309 (sound limiting device); condition 311 (quiet and orderly signage); condition 320 (sound limiter to be installed in basement room); condition 841 (staff training); condition 8AB (challenge 25 training); condition 8AI (refusals register) and condition 341 (entrance lobby). In respect of these breaches, the premises licence holder and DPS admitted the offences and received a caution for offences committed under the Licensing Act 2003.

A further licensing inspection was conducted on 15 December 2018 at 21:30 hours and further breaches of the premises licence were witnessed: condition 841 (training records); condition 8AB (challenge 25 training); condition 8AI (refusals register); condition 789 (member of staff to be on duty at all times trained in the use of the CCTV). As a result, further enforcement has commenced. The premises licence holder had been invited to attend an interview under caution to explain the breaches, but through her legal representative, the invitation had been refused. The licensing objectives were being consistently undermined therefore, agreed with the recommendation that the premises licence be revoked.

The licensing sub-committee then heard from public health, who in response to the incidents raised the police review application that had occurred at the Red Sea, advised that the premises were located in the Faraday ward, where 66% of the population was in the most deprived quintile. The Red Sea was also located within a residential area,

within a 400 metre radius of the premises there are several other licensed premises, one primary school and two hostels/alcohol recovery centres, within a walking distance from the premises. As a result of this, children and other vulnerable residents/visitors would be likely to come in contact with individuals buying alcohol from the premises or were intoxicated. Faraday ward is responsible for 4% of all alcohol related ambulance call-outs in Southwark and the standardised admission ratio for alcohol related harm is statistically higher than England. As a result, public health supported the recommendation made by the Metropolitan Police Service to revoke the premises licence.

Finally the licensing sub-committee heard from the DPS/premises licence holder who advised that the event on 13 August 2018 was a private function and no regulated entertainment had taken place. The suspect had left the premises and had been refused re-entry. The suspect had become troublesome and because of this, the police were called. Regardless, there were two SIA security officers at the premises. The premises licence holder was on the premises in addition to another, Emilio (Person A).

Since the 2016 modification of the licence, the premises licence holder had submitted 16 temporary event notices (TENs). Two counter-notices had been issued. No TENs had been submitted for the 13 August 2018 event. The evidence provided concerning this event became confused. The legal representative advised that this was because it was a private staff event; a wedding, although no documentary evidence was produced to corroborate this. The person holding the event (Person A) held a personal licence and he brought the alcohol. There was a suggestion that person A had purchased alcohol from the premises, but this was subsequently retracted. Person A was responsible for event on 13 August 2018. The premises licence holder was responsible for the upstairs restaurant. During the course of 13 August, the restaurant was open to the public at 22:00 hours. The party started at 23:00-23:30 hours. Those persons in the restaurant who were with the wedding party could eat, pay and go to the basement for the party.

When it transpired that Person A was the new management in place for the premises, the members of the sub-committee enquired when he commenced his employment. This changed between November 2017 and November 2018. Again no records were produced to confirm this.

After the incident in August 2018, the premises licence holder had closed the premises to implement changes and didn't reopen again until 26 November 2018 with a changed management. The premises licence holder incurred a substantial loss as a result of the closure.

Concerning the inspection on 15 December 2018 Person A had been at the premises during the inspection, so it made no sense why he was unable to provide the requisite documents as he knew where they were.

The legal representative for the DPS/premises licence holder acknowledged his client had not run the premises as she should have; she accepted that she was unable to run the premises alone. The Police had instigated the review of the licence at the very high end; that there had been an attempted murder. Four months had passed and the investigation had dropped to grievous bodily harm with intent, and still no one had been charged. Regardless, she had done a lot of work and invested a substantial amount of money. And the premises were her livelihood and she took the operation of the premises very seriously. The licensing sub-committee were invited to feel reassured that negotiations with a new management team with considerable experience running licensed premises were in progress. Because the negotiations with the new manager with on-going, it was not possible to provide any documentary evidence of the

manager's appointment. An unsigned/undated tenancy agreement for the property was provided as an alternative. The premises licence holder sought to remain the DPS.

The licensing sub-Committee considered the representations from all the parties very carefully. The premises licence to the Red Sea Restaurant and Bar were subject to a summary review brought by the police as a result of an incident of serious disorder which as a result, the premises licence was modified and suspended for 6 weeks to allow for those modifications. Since the decision of 3 October 2016, it appears little has changed in terms of the management of the premises.

The premises licence holder advised in October 2016, that she proposed to change to style of operation of the premises to a pizzeria. She also proposed having two friends as personal licence holders to assist her in running the premises. Neither of these things has been implemented. In spite of knowing of the very high risk of the premises licence being revoked, no written records were produced detailing the personal licence holders that had been employed since the 2016 review. This includes the employment as person A to which the committee heard contradictory evidence about when his employment commenced. Furthermore, at the variation application heard by the licensing sub-Committee in October 2018, evidence was provided of the lack of personal licence holders available to work at the premises. This is now refuted.

It has been claimed that the event on 13 August 2018 was a private party/wedding, however, no evidence was produced to corroborate this. The premises licence holder mentioned that there was a "community event". At the variation hearing in October 2018 the premises licence holder stated that regulated entertainment with DJs took place at the premises most weekends. Whilst this is now denied, the premises licence holder submitted 16 TENs since the 2016 review application. It was noted that the premises had not applied for any temporary event notices (TENs) between late 2017 and August 2018. The police confirmed that none of the witnesses interviewed concerning the 13 August incident, stated that the event was private. Despite the insistence of the event of 13 August being a private party, the premises licence holder allegedly ensured that two personal licence holders were at the premises and SIA security officers were also present. This licensing sub-committee find at wedding parties guests are generally known to one another and as such, the need for SIA security is defunct. Again, knowing the risk of the premises licence being revoked, no documentary evidence was produced to confirm that a private party/wedding was taking place. On the balance of probabilities this Licensing Sub-Committee find that this was an event open to the public.

The licensing sub-committee note that the premises licence holder acknowledges the failings at the 5 September 2018 inspection, and accepted a caution for the Licensing Act 2003 offences. It is claimed that the premises licence holder is too ill to answer the additional Licensing Act 2003 offences at an interview under caution, but has found herself able to attend this review application.

The premises licence holder also advised that she broke her leg and was unable to work for four months meaning that there was no functional DPS during this period; no alternative DPS was put in place. The premises licence holder passed her personal licence exam, yet appears either unable or unwilling to comprehend the terms of the premises licence. It is also questionable whether a true translation of the proceedings took place between the premises licence holder and her nephew who acted as translator. As a result, the licensing sub-committee question who the real driving force is behind the operation of the premises.

No documentary evidence with any probative value was produced concerning the new management for the premises. The only evidence produced was an unsigned and

undated tenancy agreement which only detailed the rights and obligations relating to the leasehold of 85 Camberwell Road, London SE5 0EZ. The new management should have been in attendance at the licensing sub-committee meeting to answer any queries members may have had concerning the future operation of the business. There is no reason why new management can't apply for a premises licence in their right if one is found.

The premises licence holder finally motioned that she wished to remain DPS regardless of her consistent failings in running the premises and admission that she was unable run the premises alone. This suggests that the premises licence holder intends to continue to have a future role in the operation of the business.

However, this licensing sub-committee concluded the seriousness of the breaches are such that the licensing sub-committee felt in the circumstances that the only appropriate and proportionate course of action is to revoke the licence

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.

3. 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.

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

Date: 21 January 2019