

Licensing Sub-Committee

MINUTES of the OPEN section of the Licensing Sub-Committee held on Wednesday 16 November 2016 at 10.00 am at Ground Floor Meeting Room G02A - 160 Tooley Street, London SE1 2QH

PRESENT: Councillor Renata Hamvas (Chair)
Councillor Jon Hartley
Councillor Sandra Rhule

OTHERS PRESENT: Ismail Icedal, designated premises supervisor, Berfin Supermarket
Godkay Taz, advisor, Berfin Supermarket
P.C. Graham White, Metropolitan Police Service
Ian Coll, owner, Mamuska
Paulina, owner, Mamuska
Rachel Kapila, legal representative, Mamuska
Peter Stevenson, local resident, supporting Mamuska
Susan Vericat, local resident, supporting Mamuska
Kirsty Carnell-Phipps, applicant for the review
S.A. Jessop, legal counsel for the applicant for the review
Joanne Carnell-Phipps, supporting the applicant for the review
Olga Zaccarini, local resident, supporting the review
A.P. Zaccarini, local resident, supporting the review

OFFICER SUPPORT: Joanne Devlin, legal officer
Debra Allday, legal officer
Wesley McArthur, licensing officer
Bill Masini, trading standards officer
Bill Legassick, environmental protection officer
Andrew Weir, constitutional officer

1. APOLOGIES

There were none.

2. CONFIRMATION OF VOTING MEMBERS

The 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: BERFIN SUPERMARKET (T/A DENMARK FOOD AND WINE), 74 DENMARK HILL, SE5 8RZ

The licensing officer presented their report. Members had no questions for the licensing officer.

The trading standards officer, the applicant for the review, addressed the sub-committee. Members had questions for the trading standards officer.

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

The representative for the licensee of the premises addressed the sub-committee. Members had questions for the representative for the licensee.

All parties were given five minutes for summing up.

The meeting went into closed session at 11.00am.

The meeting resumed at 11.50am. As none of the parties were present the chair did not read out the decision of the sub-committee.

RESOLVED:

That the council's licensing sub-committee, having considered and application by trading standards for a review of the premises under Section 51 of the Licensing Act 2003 in respect of the premises known as Berfin Supermarket (also known as Denmark Food and Wine), 74 Denmark Hill, London SE5 8RZ. and having had regard to all other relevant representations has decided it necessary for the promotion of the licensing objectives to:

a) Remove the Designated Premises Supervisor being Ismail Icedal.

b) Reduce the hours for licensable activities as follows:

- Sunday to Thursday: from 08:00 to 00:00
- Friday and Saturday: from 08:00 to 01:00.

c) Modify the conditions of the licence by:

- Removing Conditions 128, 288, 289, 293, 326, 334, 336, 341, 342, 487, 488 and 489 and the following conditions added:

- (i) That there shall be a personal licence holder on the premises after 22.00 hours until closing time where alcohol is available for supply for the purpose of supervising such sales
- (ii) That the premises shall operate an age check 'Challenge 25' policy That a challenge 25 scheme shall be maintained at the premises requiring that staff selling alcohol request that any customer who looks under 25 years old, and who is attempting to purchase alcohol, provides valid photographic identification proving that the customer is at least 18 years old. Valid photographic identification is composed of a driving licence, passport, UK armed services ID card and any Proof of Age Standards Scheme (PASS) accredited card such as the Proof of Age London (PAL) card.
- (iii) That all staff involved in the sale of alcohol shall be trained in the prevention of sales of alcohol to underage persons, and the challenge 25 scheme in operation at the premises. A record of such training shall be kept / be accessible at the premises at all times and be made immediately available for inspection at the premises to council or police officers on request. The training record shall include the trainee's name (in block capitals), the trainer's name (in block capitals), the signature of the trainee, the signature of the trainer, the date(s) of training and a declaration that the training has been received.
- (iv) That clearly legible signs shall be prominently displayed where they can easily be seen and read by customers stating to the effect that a challenge 25 policy is in operation at the premises, that customers may be asked to provide proof of age and stating what the acceptable forms of proof of age are. Such signage shall be displayed at all entrances, points of sale and in all areas where alcohol is displayed for sale. The signage shall be kept free from obstructions at all times.
- (v) That a register of refused sales of alcohol shall be maintained in order to demonstrate effective operation of the challenge 25 policy. The register shall be clearly and legibly marked on the front cover as a register of refused sales, with the address of the premises and with the name and address of the licence holder. The register shall be kept / be accessible at the premises at all times. On a monthly basis, the designated premises supervisor (DPS) shall check the register to ensure it is being properly completed. The DPS shall sign and date the register to that effect and where appropriate take corrective action in a timely manner if the register is not being completed correctly. The register shall be made immediately available for inspection at the premises to council or police officers on request.
- (vi) That no beers / ciders in single cans, bottles or multi-packs with an ABV of above 6.5% will be displayed / sold or offered for sale from the premises, unless prior written permission has been obtained from a Metropolitan Police Licensing Officer for Southwark. Such permission must be kept at the premises and made available immediately on request to relevant authorities.
- (vii) That an approved CCTV system shall be installed at the premises that records clear images of both the interior and exterior of the premises. The

CCTV installed inside the premise shall be positioned to capture the sale of alcohol. The CCTV system shall have a minimum of 31 days recording facility and will be positioned to capture the sale of alcohol and tobacco products. The CCTV system shall have a minimum of 31 days recording facility and will be maintained in full working order at all times and be continually recording at all times the premise is in use under the licence. The CCTV System must be capable of capturing a clear facial image of every person who enters the premise. All CCTV footage shall be kept for a period of thirty one (31) days and shall, upon request, be made immediately available to the police and/or authorised officers from Southwark Council.

- (viii) That all staff working at the premise shall be trained and be fully conversant in the correct operation of the CCTV and be able to demonstrate its operation on immediate request by police and/or authorised officers from Southwark Council

Reasons

The reasons for this decision are as follows:

The licensing sub-committee heard from the trading standards officer, the applicant for the review who stated that following an inspection at the premises on 3 August 2016 various breaches of the licensing conditions were witnessed.

For example the officers witnessed alcohol being sold without a personal licence holder being present in breach of condition 336 of the premises licence.

The premise licence showed the incorrect licence holder and whilst it was clear that the transfer of the Designated Premises Supervisor had been made to Ismail Incedal in 2013, officers concluded that there was effectively no premise licence holder in existence and that a transfer was required.

Furthermore no training records were available for anyone working in the shop in breach of condition 326. Officers also witnessed the sale of alcohol with ABV content above 5.5% after 23:00 hours which was in breach of condition 342.

Trading standards officers suggested that the designated premises supervisor is removed and that the conditions on the licence are modified to reflect the hours of operation and assist in addressing the problems associated with super strength beers, lagers and ciders in the area.

The officer also suggested a reduction in the operating and licensable hours of the premises.

The Metropolitan Police Service representative stated that they were concerned with the problem of street drinking within the area and the number of incidents and breaches of the premises licence and agreed with the list of amendments and additions to the licensing conditions supplied by trading standards for the premise. The Metropolitan Police Service also agrees that these amendments could help to assist with the promotion of the licensing objectives.

The representative for the licensee of the premises addressed the sub-committee and

informed the committee that the licence holder agreed to change the current Designated Premises Supervisor. The Licence holder confirmed that both he and his wife along with the assistance of a part time member of staff manage the premises. The licence holder proposed that his wife has recently obtained a personal licence and that she would become the new Designated Premises Supervisor. The Licence holder informed the sub committee that the change will assist in the operation of the premises in line with the conditions and the licensing objectives.

In making this decision the licensing sub-committee had regard to all of the licensing objectives and considered that in the circumstances the 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. LICENSING ACT 2003: MAMUSKA, 16 ELEPHANT AND CASTLE, LONDON SE16 6TH

The licensing officer presented their report. Members had no questions for the licensing officer.

The applicant for the review, a local resident, and their legal representative addressed the sub-committee. Members had questions for the applicant and their representative.

The Metropolitan Police representative addressed the sub-committee. Members had questions for the police representative.

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

Two local residents, supporting the review, addressed the sub-committee. Members had questions for the local residents.

Two local residents supporting the premises addressed the sub-committee. Members had questions for the local residents.

The licensee for the premises addressed the sub-committee. Members had questions for the licensee of the premises.

All parties were given five minutes for summing up.

The meeting went into closed session at 2.02pm.

The meeting resumed at 3.10pm. As none of the parties were present the chair did not read out the decision of the sub-committee.

RESOLVED:

That the council's licensing sub-committee, having considered and application by an other person for a review of the premises under Section 51 of the Licensing Act 2003 in respect of the premises known as Mamuska, 16 Elephant and Castle, London SE1 6TH and having had regard to all other relevant representations has decided it necessary for the promotion of the licensing objectives to:

Modify the conditions of the licence by adding the following conditions:

1. That the premises will be open Monday to Saturday between 10.00 to 02:30 and on Sunday 12:00 to 23:00.
2. That a contact telephone number the management of the premises will be clearly displayed within the premises.
3. That external waste handling, collections, deliveries and the cleaning of the external areas shall only occur between 08:00 and 22:00.
4. That the external picnic tables and chairs will be stacked and secured in such a way as to discourage their use after closure of the premises.
5. That the premises will use its best endeavours to encourage those visiting the premises not to park their vehicles alongside the wall of the Strata Pavilion.
6. That the premises shall install and maintain a comprehensive CCTV system, with all entry and exit points being covered, enabling clear facial image identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days, with date and time stamping. Viewing of the recordings shall be made available upon the reasonable request of the Police or authorised Council officer throughout the entire 31 day period (subject to any obligations under the Data Protection Act 1998).
7. That a staff member from the premises who is conversant with the operation of the CCTV system must be able to provide a Police or authorised Council officer copies of recent CCTV images or data with the absolute minimum of delay.
8. That the maximum external capacity will be limited to 50.
9. No drinks in unsealed containers are permitted beyond the external frontage area at anytime.
10. That the external tables and chairs shall be located no closer than 1 metre to the wall

of the Strata Pavilion building.

11. That the external area will be out of use between 22:00 and 08:00, with all furniture having been brought into the premises or, if left outside, rendered unusable.
12. That the premises will use its best endeavours to ensure that any moving of outside furniture and barriers is done in a quiet and orderly fashion.
13. That between 23:00 and 08:00, no alcoholic drinks sold or supplied by the premises shall be permitted to be consumed in the external area outside the premises.
14. That after 23:00, customers permitted to temporarily leave and then re-enter the premises to smoke must be directed towards a designated smoking area, located to the right of the premises (as viewed from the street) and away from the Strata Pavilion building. No more than 7 customers will be permitted to remain in this designated smoking area at any one time.
15. That no external areas of the premises, including the external frontage area, shall be used for the purposes of regulated entertainment.
16. That amplified music, song or speech shall not be broadcast in external areas at any time after 19:00.

Reasons

The reasons for this decision are as follows:

The licensing sub-committee heard from both the applicant and the representative for the applicant of the review who advised the licensing sub-committee that the operation of the premises causes a noise nuisance throughout the day with offensive language being used at times, and noise nuisance at anti-social hours which, on occasions, went beyond the end of the premises terminal hour for licensable activities, sometimes, until past 04:00. Noise pollution had been caused by the broadcasting of live sport events to the exterior of the premises. Tables and chairs get dragged across the floor and in addition to this waste glass gets tipped into the premises' bottle bin at anti-social hours often past midnight and into the early hours of the morning causing noise nuisance. Benches were being left outside of the premises after the premises close which invited passers by to use them.

The Metropolitan Police Service representative advised the sub-committee of a number of incidents most of which were noise related issues, including bad language, and such offensive words can constitute an offence under the Public Order Act 1986. Regardless of whether a criminal offence has been committed, such incidents can amount to anti-social behaviour. The Metropolitan Police viewed the allegations referred to in the review application as amounting to a public nuisance and recommended that conditions be added to the licence relating to CCTV, SIA staff and a possible reduction in hours.

The environmental protection officer addressed the sub-committee and advised that the council's noise nuisance team had a number of complaints of noise nuisance concerning patrons of the premises.

The representative for the environmental protection team recommended a number of conditions be added to the licence. The officer also informed the meeting that the land immediately outside the premises belonged to the council's housing department and that

the premises had neither a table and chairs licence, nor permission from the housing department allowing the premises to have the sole use the land outside the premises.

The licensing sub-committee heard from two local residents supporting the review who submitted representations relevant to the prevention of crime and disorder and public nuisance licensing objectives. Complaints included that benches were not being removed at night promoting people to use them when the premises were shut; noise nuisance caused by customers and delivery motorcycles; odour nuisance caused by the cooking at the premises and customers smoking and anti-social behaviour.

The licensing sub-committee heard from two other persons supporting the premises. Both advised that the management for the premises were proactive when comments or complaints were very reactive and the premises played a positive role in the community.

The licensee of the premises addressed the sub-committee and advised that the company has been in operation since 2009 until 2015 when they moved to the current location. The premises are a restaurant bar that serve traditional Polish food with a modern twist in a fast casual environment with low prices. Any concerns raised by local residents were addressed at the earliest opportunity. All of the applicant's complaint had now been resolved. A list of proposed conditions was produced and the licensee stated that there remained a handful of items that remained in dispute, namely, the movement of the furniture including the barrier, and the use and maximum capacity of the external area.

The licensing sub-committee were grateful to the parties for the extent of conciliation that had taken place prior to the meeting. Mamuska Restaurant Bar is located in a mixed residential and commercial area and as such, the premises must be mindful of the impact its operation has on local residents. This sub-committee accept that the operation of Mamuska Bar Restaurant has had a greater negative impact upon the residents of the Strata Pavilion than those of Draper House due to design and layout of block. The residents of Strata Pavilion are as close as 4 metres to the premises' outside furniture and the dragging of this furniture and people noise outside of the premises means that the residents no longer have any quiet enjoyment in their homes. The conditions imposed will go some way to address this imbalance.

The licensee is finally reminded that at present there is no table and chairs licence nor permission to use the external frontage outside of the premises. The necessary permission must be sought failing which enforcement action is likely to be taken.

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.

Meeting ended at 3.10 pm

CHAIR:

DATED: