

Licensing Sub-Committee

MINUTES of the OPEN section of the Licensing Sub-Committee held on Tuesday 10 August 2021 at 10.00 am (reconvened from 10 August 2021) 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 Adele Morris
Councillor Margy Newens

**OTHERS
PRESENT:** P.C. Ian Clements, Metropolitan Police Service

**OFFICER
SUPPORT:** Debra Allday, legal officer
Titilope Hassan, legal trainee (observing)
Wesley McArthur, licensing officer
Sailesh Chudasama, health and safety officer
Jayne Tear, licensing responsible authority officer
Andrew Weir, constitutional officer

1. APOLOGIES

This was a reconvened virtual licensing sub-committee meeting, adjourned from 5 August 2021.

The chair explained to the participants and observers how the virtual meeting would run. Everyone then introduced themselves.

There were no apologies for absence.

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 no late and urgent items of business.

4. DISCLOSURE OF INTERESTS AND DISPENSATIONS

There were none.

5. LICENSING ACT 2003: PASAJE PRIMAVERA, ARCH 146, EAGLE YARD, HAMPTON STREET, LONDON SE1 6SP - REVIEW

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

The Metropolitan Police Service officer, the applicant for the review addressed the sub-committee. The police officer also presented CCTV to the sub-committee. Members had questions for the police officer. The legal officer advising the sub-committee also had questions for the police officer.

The licensing sub-committee then heard from the health and safety officer. Members had questions for the health and safety officer.

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

The licensing sub-committee noted the written representation from the other person, supporting the premises.

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

The meeting adjourned at 12.13pm and reconvened at 12.32pm.

Members had further questions for the premises licence holder, designated premises supervisor and their legal representative.

All parties were given up to five minutes for summing up.

The meeting adjourned at 2.01pm for the sub-committee to consider its decision.

The meeting reconvened at 2.28pm and the chair advised everyone present of the decision.

RESOLVED:

That the council's licensing sub-committee, having considered the application made under Section 53C 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 Pasaje Primavera, Arch 146, Eagle Yard, Hampton Street, London SE1 6SP and having had regard to all other relevant representations, has decided it necessary for the promotion of the licensing objectives to:

- **Revoke the premises licence.**

Reasons for the decision

This was an application made by the Chief of Police for the Metropolitan Police Service for the review of the premises licence known as Pasaje Primavera, Arch 146, Eagle Yard, Hampton Street, London SE1 6SP. The application was made under Section 53C of the Licensing Act 2003.

The licensing sub-committee heard from an officer from the Metropolitan Police Service who advised that on Saturday 10 July 2021, at approximately 02:40, calls were received by the police stating that a fight was taking place in or near Rincon Costeno, Arch 146 Eagle Yard. The premises are also known as Pasaje Primavera.

Shortly after the police received the calls, a call from the London Ambulance Service (LAS) was received, stating they were dealing with a male victim, named Ian Gualavisi who had significant head injuries and a possible machete wound to his back. Police arrived on scene to speak with the victim, who was uncooperative and saying he could not remember where or how he received his injuries and wanted the matter forgotten. For the avoidance of all doubt, Ian Gualavisi is the victim in the incident that took place on 10 July 2021. Ian Gualavisi is also the son of the designated premises supervisor (DPS).

The incident took place at 146 Eagle Yard, SE1 6SP. When police attended the premises, they found it to be locked and secure with no staff or patrons inside. A key holder attended the premises and allowed Police access. Inside the Police found a significant amount of blood, tables and chairs turned over and smashed glass over the floor. No calls were made to emergency services from the premises or staff at the premises.

The police accessed the CCTV from the premises, which showed between six and eight persons inside sat at a table drinking bottles of beer. The son/victim was also in the premises. He bent down behind the bar area and the suspect crept up behind him and smashed a glass bottle across the back of his head. A fight then ensued. The other people inside the premises attempted to break up the fight.

Ian Gualavisi was attended to by the ambulance service outside Elephant & Castle tube station and was taken to hospital for further treatment.

The officer informed the sub-committee of an incident that occurred on 18 December 2018 when police witnessed a fight outside the premises at 146 Eagle Yard. This incident triggered a summary review of the premises licence. The suspect on this occasion was Ian Gualavisi, the son of the premises licence holder. At the full review on 16 January 2019 the licensing sub-committee permanently barred Ian Gualavisi from the premises. A condition was also imposed that SIA door supervisors would be employed on Friday and Saturday nights when the premises operated after midnight. No SIA were employed at the premises on 10 July 2021.

The police officer advised that as a direct result of the breaches of the licence conditions of the premises licence, a serious assault was committed inside the premises against the son/victim and no calls were made by the premises to emergency services from the premises, staff or even the son/victim. After hearing from the licence holder's legal representative, the officer stated he had no confidence in the management of the premises and recommended that the licence be revoked.

The licensing sub-committee heard from an officer from the council's health and safety team who expressed concern that the incident demonstrated a lack of management control of the premises, required under the Health and Safety at Work Act 1974 and the Management of Health and Safety at Work Regulations 1999. The management of the premises failed to call an ambulance and failed to contact the police. Although the victim did not wish to pursue the matter with the police, the premises was still required to inform the Health and Safety Executive and these failures amounted to prosecutable offences.

The licensing sub-committee heard from the officer representing licensing as a responsible authority whose representation was submitted under the prevention of crime and disorder, prevention of public nuisance, public safety and protection of children from harm licensing objectives. The officer also had regard to the Southwark statement of licensing policy 2021–2026.

The officer advised of that the premises was previously subject to an expedited review and at the final hearing on 16 January 2019, the licensing sub-committee modified the premises licence. One of the conditions added to the licence was that Mr Ian Gualavisi (condition 846) be excluded from the premises.

The officer fully supported the police review and advised that the review in 2019 gave the licensee and DPS a chance to improve the operation at the premises by applying robust conditions as the licensee and DPS had not taken their responsibilities to promote the licensing objectives seriously.

The officer advised that allowing Mr Ian Gualavisi into the premises was a breach of condition 846. Condition 841 (that a minimum of one SIA licensed door supervisors shall be on duty at the premises at all times when the premises are open between 00:00 and 03:00) was also breached.

No one from the premises attempted to call the police or ambulance service at the time of the incident. The officer stated that this confirmed a complete lack of understanding as to the requirements in managing a licensed premises, a disregard for the conditions imposed and a failure in promoting the licensing objectives. The officer recommended that the premises licence should be revoked in order to promote the objectives.

The licensing sub-committee noted the representation of one other person who was not present at the meeting.

The licensing sub-committee then heard from the legal representative for the premises who advised that on 10 July 2021 the kitchen closed at approximately 20:00 and after cleaning, the kitchen staff left at 21:30, leaving the DPS and his wife at the premises.

At this point there were eight customers made up of two tables of four. At approximately 22:00 six new customers arrived and purchased a bucket of beer. They then purchased another bucket of beer at 23:00. This was the last order that was taken by the DPS.

The DPS felt ill and both he and his wife were tired having worked a 16 hour shift. The DPS and premises licence holder's son offered to assist his parents by finishing the evening for them and to then lock up the premises once the customers left the premises.

After the son/victim was assaulted, he left the premises and contacted his sister to attend the premises to lock up. As far as the premises licence holder and DPS were concerned, the premises closed at midnight. It was accepted by them that their son had sold alcohol after they had left the premises, against their instructions. A spreadsheet detailing the transactions for 10 July 2021 was referred to, but the exact times of the sales had not been included. The licence holder's representative advised that the last sale was made at approximately 02:00.

During the discussion stage of the meeting, the legal representative advised that after the son had been assaulted, he left the premises and telephoned his sister (the daughter of the DPS and premises licence holder) and requested that she attend the premises to lock up. No real explanation was given why the daughter could not be contacted in the first instance to finish and lock up in the son/victim's place.

When the DPS was asked to explain Challenge 25, the DPS was unable to do so. The legal representative explained that the DPS had held a personal licence for seven years and knew what was expected of him. The premises licence had conditions prohibiting under 18s to enter the premises. The legal representative advised that the DPS may not recognise the term Challenge 25, but the aim relating to the under 18 policy was the same.

The premises licence holder and DPS stated that they recognised the six customers that entered the premises at 22:00 hours, but did not know their names. None of these customers were the other named individual who was banned from the premises in condition 846. Licensable activities had taken place after the licence holder and DPS had left the premises. However, they were of the view that the premises were closed and pursuant to the licence conditions, did not need any SIA door supervisors.

In determining this review application, the sub-committee had the choice to

- i. Remove the designated premises supervisor;
- ii. Modify the premises licence by altering, omitting or adding any condition
- iii. Suspend the premises licence;
- iv. Exclude a licensable activity from the scope of the licence
- v. Revoke the premises licence.

Pasaje Primavera (also known as Rincon Costeno) is a family run restaurant. The premises licence holder is Rincon Costeno Limited. The director of the company is Rocio Del Pilar Chango Mullo. Rocio Del Pilar Chango Mullo is the wife of the DPS. The licensing sub-committee found the DPS's knowledge and understanding of the Licensing Act 2003 and the conditions attached to the premises licence inadequate. Despite being assisted with translation by his niece, the DPS's account was inconsistent and questionable. The sub-committee found that the DPS was wholly unfit to hold a personal licence.

It was felt that it would be inappropriate to remove the DPS due to the nature of the operation of the restaurant being a family business. Even if the DPS were removed, it was likely that he would still somehow be involved in it. The premises licence had already been modified in 2019 to include robust conditions, which were not complied with so a further modification of the licence could not guarantee compliance. A suspension of the licence was also considered. Members again did not feel this could guarantee the future compliance of the licence. Similarly, this was members' conclusion when considering the removal of licensable activities.

The DPS and his wife trusted their son to ensure that the table of six patrons left in a timely manner and to lock up. Instead, the son sold alcohol, a fight ensued and the premises was subsequently abandoned and left empty and open for anyone to enter. Had the premises had complied with the premises licence conditions this incident would not have occurred. The licensing sub-committee had no confidence in the management of the premises and felt there to be no other option but to revoke the premises 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.

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.

Review of interim steps pending appeal

At the conclusion of the review hearing the licensing sub-committee reviewed the interim steps to determine which interim steps were appropriate for the promotion of the licensing objectives, pursuant to section 53D of the Licensing Act 2003. The sub-committee concluded that these interim steps were appropriate:

- **To suspend the premises licence.**

The licensing sub-committee were satisfied that these modified interim steps are more appropriate and proportionate to promote the licensing objectives to modify the interim steps, as detailed above

The interim steps are open to appeal by:

- a) The chief officer of police for the police area in which the premises is situated; or
- b) The holder of the premises licence

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 meeting ended at 2.32pm.

CHAIR:

DATED: