

Licensing Sub-Committee

MINUTES of the OPEN section of the Licensing Sub-Committee held on Thursday 14 October 2021 at 10.00 am 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 Charlie Smith
Councillor Kath Whittam

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

OFFICER SUPPORT: Debra Allday, legal officer
Andrew Heron, licensing officer
Ken Andrew, environmental protection team officer
David Franklin, licensing responsible authority officer
Ray Moore, trading standards officer
Andrew Weir, constitutional officer

1. APOLOGIES

This was a virtual licensing sub-committee meeting.

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: LA CANTALETA, 176-178 OLD KENT ROAD, LONDON SE1 5TY

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

The legal representative for the applicant addressed the sub-committee. They advised that they had the applicant and their translator on a separate line. Members had questions for the applicant and their legal representative.

The Metropolitan Police Service officer addressed the sub-committee. They also showed the sub-committee some body worn camera footage relating to the premises. Members had questions for the police officer. The legal representative for the applicant also had questions for the police.

The trading standards officer addressed the sub-committee. Members had no questions for the trading standards officer.

The environmental protection team officer addressed the sub-committee. Members had no questions for the environmental protection team officer. The legal representative for the applicant had questions for the environmental protection team officer.

The licensing responsible authority officer addressed the sub-committee. Members had questions for the licensing responsible authority officer. The legal representative for the applicant also had questions for the licensing responsible authority officer.

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

The meeting adjourned at 12.25pm for the sub-committee to consider its decision.

The meeting reconvened at 1.01pm and the chair advised everyone of the decision.

RESOLVED:

That the application made by La Cantaleta Limited for a premises licence to be

granted under Section 17 of the Licensing Act 2003 in respect of the premises known as La Cantaleta, 176-178 Old Kent Road, London SE1 5TY be refused.

Reasons

This was an application made by La Cantaleta Limited for a premises licence under Section 17 of the Licensing Act 2003 in respect of the premises known as La Cantaleta, 176-178 Old Kent Road, London SE1 5TY.

The licensing sub-committee heard from the applicant's representative who reminded the sub-committee that each application should be considered on its own merits. The applicant had taken a pragmatic approach, rather than appeal the previous decision and incur considerable costs to the local authority and the applicant in addition to taking up court time, a fresh application was submitted to give the licensing authority another opportunity to consider the application. The applicant's representative advised the sub-committee that the decision made on 5 August 2021 did not take into account his submission in respect of Southwark's statement of licensing policy.

As a policy, the hours set out in Section 7 should not be predetermined or fixed. It was the representative for the applicant's contention that the hours applied for could be considered as being within policy hours as detailed in section 7 of the statement of licensing policy.

The application should be considered in accordance with paragraph 173 of the policy in that the operating schedule in a licensing application should mitigate against crime, disorder and public nuisance taking into account: the location of the premises and the character of the local area; the proposed hours during which the licensable activities are proposed to take place; the adequacy of the proposed control measures intended to promote the licensing objectives and the availability of local public transport; the proximity of the premises to other licensed premises of a similar nature and the hours of operation of those premises.

Added to this, the representation from the environmental protection team did not refer to any complaints, nor did the Metropolitan Police Service, regardless of what was said of the body worn footage. Temporary event notices had operated without concern and the premises had not breached any licence conditions.

The representative for the applicant stated that the premises was neither a bar nor a nightclub and that dancing was allowed before 23:30 and anything else would have been spontaneous.

The premises were open beyond its licensable hours, but no licensable activities had been taking place. Music from a radio broadcast could be played and was not considered as regulated entertainment pursuant to paragraph 8, Schedule 1 of the Licensing Act 2003. Whilst this maybe the case, the Applicant's representative was unable to confirm or deny whether his client had a licence issued under the Public Copyrights Act 1988. Notwithstanding this, the applicant's representative

stated that the premises did not undermine the licensing objectives and no court would determine that there had been a public nuisance.

When questioned about whether a planning variation had been submitted, the sub-committee were reminded that planning was not a relevant consideration for licensing applications. The landlord for the premises made it clear that a planning variation would be made, if the licensing application were granted.

Due to the fact that the licence granted was not in accordance with the application made, the applicant was required to find an alternative business model so that the business was financially viable. This could mean either allowing customers to buy alcohol before the terminal hour of 22:30/23:30 for the rest of the customer's evening and having the radio being played on speakers. None of the activities described by the police amounted to a breach of the Licensing Act 2003, as no licensable activities had taken place.

The licensing sub-committee then heard from the Metropolitan Police Service who advised the sub-committee that on 4 September 2021 at 02.07 the police attended the premises and noticed persons entering and leaving the premises. There was also a SIA door supervisor standing outside the premises. Officers could hear loud music coming from the premises, as the door to the premises was opened. The music was described as extremely loud with disco lighting and people dancing between the tables and at the rear of the premises. Officers witnessed alcohol was being consumed at the tables, music was being played by way of a DJ (according to a witness outside the premises) and dancing was evident. The premises were extremely busy. Police were of the view that the premises were operating as a bar/nightclub and not a food led business as suggested to the licensing sub-committee on 5 August 2021.

A notification of offences was issued to the DPS and forwarded to the council's licensing unit for consideration for a prosecution under the Licensing Act 2003. The DPS was directed not to operate the premises outside the terms of the premises licence.

The police further informed the sub-committee that on 12 September 2021 at 00:20 police again attended the premises. On inspection, recorded music was being played at very loud levels, the premises as extremely busy with patrons entering still at the time of visit. Tables had bottles of wine and other alcoholic beverages on them. There was no sign of any food being consumed or present at the time of visit. The police left the premises after the DPS agreed to close the premises.

The officer representing the Metropolitan Police Service advised the sub-committee that he did not have any confidence that the premises licence holder, could operate a licenced premises in accordance with the licensed conditions and therefore asked that the application be refused. The police officer then showed excerpts of the police body worn camera footage from 4 and 12 September 2021.

The licensing sub-committee then head from trading standards. The officer advised

that the application was a near identical application to the one heard on 5 August 2021 and the issue was whether this premises intended to operate as a licensed restaurant or whether it would effectively be operating as a bar and nightclub. The officer added that this application went against the licensing sub-committee's previous decision which imposed conditions and limits on the hours in order to ensure that the premises operated as a licensed restaurant.

The licensing sub-committee then heard from the environmental protection team officer who advised that whilst the flats above the premises were under the control of the licensee this did not prevent the tenants from being subject to public nuisance.

The key to the prevention of nuisance licensing objective was prevention. Without complaints, officers could still make a determination regarding a statutory nuisance and would be under a duty to investigate. EPT therefore raise objection to this new premises licence. EPT expressed concerns over public nuisance and noise disturbance being caused to the residential properties directly above the premises, adjoining and opposite if the premises operate to the later hours applied for.

The premises licence granted on 5 August 2021 was consistent with the category of public houses, wine bars, and other drinking establishments for district town centres. The representation from the environmental protection team (EPT) officer (dated 16 September 2021) also referred to the Instagram account for La Cantaleta (@lacantaletapaisa) in which it described itself as a "bar y restaurant" and the vast majority of other posts promoted drinking and music. In view of this, EPT agreed with the opening hours granted by the licensing sub-committee on 5 August. These hours were also in line with the terminal hour on the relevant planning permission.

Licensing as a responsible authority then presented its objection to the application, which was submitted under the prevention of crime and disorder and the prevention of public nuisance licensing objectives and having regard to the Southwark's statement of licensing policy 2021–2026.

They advised that in accordance with the statement of licensing policy, the premises was situated in a residential area and the appropriate closing times for restaurants, cafes, public houses, wine bars or other drinking establishments is 23:00 daily. The current application was in excess of the appropriate closing times within the licensing policy 2021-2026 for the area. The officer also referred to the alleged breaches of the licence on 4 and 12 September 2021 and stated that they did not have confidence in the applicant to promote the licensing objectives or to adhere to the permitted hours or conditions that may be imposed as they already have an existing licence that is not being complied with. The officer therefore recommended that the application be refused.

This was an application made for a premises licence under Section 17 of the Licensing Act 2003. A premises licence application had previously been considered on 5 August 2021, when the application was granted with reduced

hours, without live music and conditions. The current application being considered is almost identical to that which was considered on 5 August. The applicant did not appeal that decision, but chose to submit a similar application to save costs to the parties and the court.

The licensing sub-committee considered the submissions made by the applicant's representative and is that it may depart from the statement of licensing policy 2021-2026 if the individual circumstances of a case merit such a decision, in the interests of the promotion of the licensing objectives.

Under section 7 of Southwark statement of licensing policy 2021-2026 (hours of operation), Table 2 divides the areas within the borough into four types of area: major town centres and strategic cultural areas, district town centres, local centres and small shopping parades and residential areas. In accordance with the policy, the premises situated at 176-178 Old Kent Road, London SE1 5TY comes within a residential area, where the closing time recommended as appropriate within the area for restaurants, cafes, public houses, wine bars and other drinking establishments is Monday to Sunday 23:00.

Southwark's statement of licensing policy provides further clarification concerning the definition of these areas in paragraph 182:

1. Major town centres – Canada Water, Elephant and Castle (including Walworth Road) and Peckham
2. Strategic cultural areas – Bankside, Borough and London Bridge (Note: These areas are also district town centres but here this classification will apply), St Mary's Churchyard (Rotherhithe)
3. District town centres – Camberwell, Herne Hill and Lordship Lane
4. Local centres and small shopping parades – The Blue, Dulwich Village and Nunhead
5. Residential – All other.

The statement of licensing policy was adopted by council assembly on 25 November 2020 and this sub-committee is satisfied that the areas as defined in the policy are correct. The suggestion made by the applicant's representative that the area is a major town centre area, or at least a district town centre and a major strategic cultural area is not accepted. This preliminary matter was decided on the basis that:

- a. All of the responsible authorities are of the view that this is a residential area.
- b. The environmental protection team refer to the residential properties above and across the road from the premises.
- c. The police, in both the licensing sub-committee on 5 August and 14 October, informed members that "there's probably at least 10 residential premises either above or opposite or behind all these commercial premises" (see page 18 of unofficial transcript).

- d. Trading standards refer to residential properties “Across the road, there are blocks of flats. And obviously the area is due for a lot of residential development to over the coming decade” (see page 18 of unofficial transcript).
- e. Finally, whilst it is accepted that the planning and licensing regimes are separate, the decision notice 19/AP/2549 (issued 21/02/2020) submitted with the representation from the environmental protection team makes specific reference “To safeguard the amenity of neighbouring residential properties in accordance with The National Planning Policy Framework 2019.....”.

Before the licensing sub-committee considered whether to depart from the statement of licensing policy, it felt compelled to then consider the objections from the responsible authorities. The representations were largely a repeat of those that were before the sub-committee on 5 August.

The Metropolitan Police Service submitted evidence from 4 and 12 September 2021. This application was not a review and it was felt important to consider both the witness statements and body worn camera footage as this was a reflection of the premises’ compliance since the licence had been granted in August 2021. This evidence presented by the Metropolitan Police was found to be compelling and members unanimously took the view:

- i. The fluorescent lit sign on the window of the premises highlighted “open” and was considered to be an invitation to members of the public to enter the premises.
- ii. Very loud music could be heard coming from the premises.
- iii. When customers were asked by police about the music, they were informed that it was being played “like by a DJ”. Members took this to mean that a DJ was had a playlist being amplified.
- iv. A SIA door supervisor was on the door allowing entry to the premises. There was no requirement of a SIA door supervisor on the premises licence, which suggested that the premises were operating not as a restaurant, but rather as a nightclub.
- v. The décor and lighting within the premises was reflected that of a nightclub. No evidence could be seen of happy birthday banners, which suggested that the premises had not been hired for a birthday party.
- vi. Alcohol could be seen on the tables. There was no evidence of food having being served.
- vii. With the exception of the SIA door supervisor, there was no evidence of staff supervising the condition that dancing could not take place except for a

maximum of 25% of customers throughout the premises. Further, the dancing did not appear to be ancillary to persons eating a table meal.

In light of police evidence, it was unanimously found by the licensing sub-committee that the premises had breached its premises licence and as a result, the sub-committee could not be confident that the applicant would promote the licensing objectives.

In view of this, it was felt unnecessary to consider whether to depart from Southwark's statement of licensing policy.

In reaching this decision, the licensing sub-committee had regard to all the relevant considerations, the four licensing objectives and considered that its decision was appropriate and proportionate in all the circumstances.

Appeal rights

The applicant may appeal against any decision:

- a. To impose conditions on the licence
- b. To exclude a licensable activity or refuse to specify a person as premises supervisor.

Any person who made relevant representations in relation to the application who desire to contend that:

- a. The licence ought not to be been granted; or
- b. That on granting the licence, the licensing authority ought to have imposed different or additional conditions to the licence, or ought to have modified them in a different way

may appeal against the decision.

Any appeal must be made to the Magistrates' Court for the area in which the premises are situated. Any appeal must be commenced by notice of appeal given by the appellant to the justices' clerk for the Magistrates' Court within the period of 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against.

The meeting ended at 1.03pm.

CHAIR:

DATED:

